

**SEC ADOPTS FINAL RULES APPLICABLE TO REGISTERED INVESTMENT
COMPANIES UNDER THE SARBANES-OXLEY ACT: SHAREHOLDER REPORTS,
FINANCIAL EXPERTS AND CODES OF ETHICS**

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On January 22, 2003, the Securities and Exchange Commission (the "SEC") adopted final rules and revisions to SEC forms to implement certain provisions of the Sarbanes-Oxley Act of 2002 (the "Act") relating to the certification of shareholder reports on Form N-CSR and the designation of those certified reports as reports that satisfy the periodic reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the inclusion of financial experts on audit committees and codes of ethics for senior officers.¹

The SEC recently adopted final rules regarding several other provisions of the Act. We are preparing separate memoranda regarding these other important developments, each of which will be distributed to our mailing list and will be available upon request or at our website at www.simpsonthacher.com.²

New York Stock Exchange-listed registered investment companies should also be aware that the NYSE has filed with the SEC proposed new corporate governance and disclosure standards (the "Proposed NYSE Standards") that include requirements that overlap with the SEC's rules regarding financial experts and codes of ethics. The Proposed NYSE Standards remain subject

¹ Release No. 34-47262 and IC-25914 (the "Final Rules Release"). Rules with respect to Form N-CSR were proposed on August 28, 2002 in SEC Release Nos. 33-8124; 34-46427 and IC-25722. Rules with respect to financial experts and codes of ethics were proposed on October 22, 2002 in SEC Release Nos. 33-8138; 34-46701 and IC-25775. The proposed rules with respect to Form N-CSR were discussed in our memorandum dated September 6, 2002 entitled "*New Rules Applicable to Registered Investment Companies Including CEO/CFO Certifications and Reporting of Trades By Insiders*" (the "September Fund Memorandum") and the proposed rules with respect to financial experts and codes of ethics were discussed in our memorandum dated November 11, 2002 entitled "*SEC Proposes Rules Pursuant to the Sarbanes-Oxley Act: Financial Experts, Codes of Ethics, Internal Controls Assessments and Improper Influence on Auditors*" (the "November Memorandum"). This memorandum supersedes the September Fund Memorandum and the November Memorandum and supplements our other memoranda regarding the Act, which are available upon request or at our website: www.simpsonthacher.com.

² If you would like to be added to our mailing list, please e-mail sbussy@stblaw.com.

to SEC approval and may be revised prior to final approval. The SEC has not indicated when it expects to finalize these proposed listing standards.

EXECUTIVE SUMMARY

The SEC's final rules:

- require senior officers of registered investment companies other than unit investment trusts ("UITs") and small business investment companies ("SBICs") to file and certify new Form N-CSR ("Certified Shareholder Report") within 10 days after the transmission to shareholders of any annual or semi-annual report required under Rule 30e-1 of the Investment Company Act of 1940, as amended (the "Investment Company Act");
- designate Form N-CSR as a report that satisfies the periodic reporting requirements of Exchange Act Sections 13(a) or 15(d) and Section 30 of the Investment Company Act;
- require registered investment companies to maintain, and regularly evaluate the effectiveness of, controls and procedures designed to ensure that the information required in reports on Form N-CSR is recorded, processed, summarized and reported on a timely basis;
- remove the current requirement that senior officers certify Form N-SAR;³
- require annual disclosure of whether the registered investment company has at least one "audit committee financial expert" serving on its audit committee and:
 - if so, the name of the audit committee financial expert and whether the audit committee financial expert is independent of management; and
 - if not, an explanation of why the registered investment company does not have at least one audit committee financial expert;
- require a registered investment company to disclose (1) in its year-end report on Form N-CSR whether it has a code of ethics that is generally designed, among

³ UITs and SBICs are not required to report financial information based on their financial statements on Form N-SAR. Therefore, the SEC determined that requiring UITs and SBICs to certify Form N-SAR would not promote the intent of Section 302 of the Act. Because UITs and SBICs are also not required to provide shareholders with reports containing their financial statements, they will not be required to file Form N-CSR. UITs and SBICs will, however, continue to be required to file, but not to certify, Form N-SAR under both the Exchange Act and the Investment Company Act.

other things, to deter wrongdoing and to promote honest and ethical conduct and that is applicable to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions regardless of whether these individuals are employed by the registered investment company or a third party and (2) any amendments to, or waivers from, the code of ethics for the specified officers;⁴ and

- introduce the new term “audit committee financial expert,” which is defined more broadly than the term “financial expert” was defined in the proposed rules. The new definition has significantly expanded the range of backgrounds that can serve as a basis for acquiring the necessary financial and accounting expertise, including by recognizing experience with:
 - *financial analysis and evaluation*, including as an investment banker, venture capitalist or private equity or other investment professional, or oversight at a regulatory body;
 - *active supervision* of others engaged in preparing, auditing, analyzing or evaluating financial statements;
 - *financial statements of companies in industries unrelated to the registered investment company*, as long the accounting issues raised by the other companies’ financial statements present a breadth and level of complexity comparable to those raised by the registered investment company’s financial statements; and
 - *financial statements of non-public companies*.

These changes to the definition of audit committee financial expert substantially broaden the pool of potentially qualified candidates. Registered investment companies that are, nevertheless, unable to identify and/or nominate an audit committee financial expert should understand that the rules impose only a *disclosure* obligation. As a result, if a registered investment company does not have an audit committee financial expert, it can, in addition to so stating, include disclosure that may address investor concerns, such as describing the collective financial experience of all audit committee members or disclosing an intention to retain third party expert financial services consultants to advise the audit committee in connection with complicated accounting issues. That additional disclosure may prove beneficial from an investor relations standpoint.

⁴ Unlike the proposed rules, the final rules do not require disclosure of codes of ethics of a registered investment company’s investment adviser or principal underwriter.

EFFECTIVE DATES FOR NEW RULES

A registered investment company with a fiscal annual or semi-annual period that (1) ends on or before March 31, 2003, may file and certify either Form N-CSR or Form N-SAR⁵ and (2) ends on or after April 1, 2003, must file and certify Form N-CSR for that period. A UIT or SBIC may immediately begin omitting the certification from Form N-SAR.

Both the new audit committee financial expert disclosure requirements and the new code of ethics disclosure requirements apply to year-end reports on Form N-CSR filed for fiscal years ending on or after July 15, 2003. The requirements with respect to disclosure of amendments to, and waivers from, codes of ethics do not apply until on or after the date on which the registered investment company files its first year-end report in which the code of ethics disclosure is required.

NEW FORM N-CSR

FINAL RULES

The final rules adopted by the SEC to implement the intent of Section 302 of the Act (the "Final N-CSR Rules"):

- require the filing and certification of new Form N-CSR;
- designate Form N-CSR as a report that satisfies the periodic reporting requirements of Sections 13(a) or 15(d) of the Exchange Act and Section 30 of the Investment Company Act;
- apply the requirement to maintain disclosure controls and procedures to all registered management investment companies; and
- remove the certification requirements for Form N-SAR and provide that for registered investment companies, Form N-SAR will be filed under the Investment Company Act only and not the Exchange Act.

⁵ The certification of Form N-CSR filed for a fiscal period ending on or before March 31, 2003, is not required to include the statements in paragraphs (b)(4), (5) and (6) of Investment Company Act Rule 30a-2, which relate to "disclosure controls and procedures" and "internal controls" and the other disclosure about the effectiveness of "disclosure controls and procedures." A registered investment company choosing to certify Form N-SAR for a fiscal period ending on or before March 31, 2003, must separately file its annual or semi-annual report to shareholders for that period as currently required.

CONTENTS OF FORM N-CSR

Amended Investment Company Act Rule 30b2-1 requires a registered management investment company to file new Form N-CSR containing (1) a copy of any shareholder report required under Investment Company Act Rule 30e-1 (annual and semi-annual reports), (2) additional information regarding principal executive officers' and principal financial officers' conclusions about disclosure controls and procedures and significant changes to internal controls, (3) the certification required by Section 302 of the Act (the "302 Certification") and (4) if the Form N-CSR contains an annual report, the disclosure with respect to audit committee financial experts and code of ethics. A copy of Form N-CSR is attached to this memorandum as Exhibit A.

Form N-CSR must be filed within 10 days after the transmission to shareholders of a required annual or semi-annual report. Form N-CSR must be signed by and on behalf of the registered investment company by its principal executive officer or officers and its principal financial officer or officers. The 302 Certification of the Form N-CSR required of each principal executive officer and principal financial officer (or persons performing similar functions), must be filed as an exhibit to a report on Form N-CSR and must be in the exact form prescribed by the Form N-CSR. No wording changes are permitted in the 302 Certification, no matter how inconsequential the change may seem. The 302 Certification may not be signed on behalf of the certifying officer pursuant to a power of attorney or other form of confirming authority.

The SEC also adopted amendments to require a registered investment company to file Form 12b-25 if it will not be able to file a report on Form N-CSR on time. The filing of Form 12b-25 will provide the registered investment company with an automatic extension of time to file Form N-CSR of up to 15 calendar days from the prescribed due date. Form 12b-25 will continue to be available for late reports on Form N-SAR for all registered investment companies.

If a fund prepares additional reports to shareholders, such as a voluntary quarterly report, a Form N-CSR need not be filed with respect to that report, however, the report continues to be required to be filed with the SEC within 10 days after it is sent to shareholders.

CERTIFICATION OF FORM N-CSR

Text of Certification

The 302 Certification is largely identical to the 302 certification that was required for Form N-SAR and to the 302 certifications required for other types of issuers. The text of the required 302 Certification is set forth below:

I, [identify the certifying individual], certify that:

1. I have reviewed this report on Form N-CSR of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, changes in net assets, and cash flows (if the financial statements are required to include a statement of cash flows) of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Rule 30a-2(c) under the Investment Company Act of 1940) for the registrant and have⁶:
 - (a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this report (the "Evaluation Date"); and
 - (c) presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize, and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this report whether or not there were significant changes in internal controls or in other factors that could

⁶ As noted above, the 302 Certification included in a Form N-CSR filed for a fiscal period ending on or before March 31, 2003 is not required to include the statements in paragraphs 4, 5 and 6.

significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

[Signature]
[Title]

Analysis of the 302 Certification

Our memorandum dated September 6, 2002 entitled “SEC Adopts New CEO/CFO Certification Rules Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002” (the “September 6th Memorandum”) contains a detailed analysis of and recommended compliance procedures for the certification statements under the caption “Preparing for the 302 Certification – Analysis of the Six 302 Certification Paragraphs”.⁷ The discussion provides practical guidance for certifying officers and companies to comply with the 302 certification requirements. The analysis and recommended procedures set forth in our September 6th Memorandum will generally apply to registered investment companies, keeping in mind that the actual procedures will vary from company to company and be highly fact specific. Our September Fund Memorandum contained a detailed analysis of the elements of the 302 certification that were required under Form N-SAR that apply uniquely to investment companies under the caption “Analysis of the 302 Certifications.”

Scope of 302 Certification Requirement

The Final N-CSR Rules require that all information filed on Form N-CSR, including all required and voluntary information in a shareholder report filed as part of Form N-CSR, be certified. This includes information such as a President’s Letter to Shareholders, portfolio manager commentary, Management’s Discussion of Fund Performance and information about an investment company’s directors.

Penalties for Noncompliance

A certifying officer who willfully fails to sign the 302 Certification or willfully files a false 302 Certification subjects the officer and the issuer to criminal and civil liability. Penalties for individuals may include a fine of up to \$5,000,000 and imprisonment for 20 years (for violation of the Exchange Act) or 25 years (for other criminal violations). Penalties for corporations may include a fine of up to \$25,000,000. Additionally, the SEC could pursue a civil enforcement action against either the officer or the company or both. For further discussion of the penalties of noncompliance with the 302 Certification requirements, please refer to the discussion in our September 6th Memorandum under the caption “Liability for Failure to File a 302 Certification or for Filing a False Certification.”

FORM N-CSR AS A PERIODIC REPORT UNDER THE EXCHANGE ACT

New Investment Company Act Rule 30d-1 designates Form N-CSR as a report that satisfies the periodic reporting requirements of Section 13(a) or 15(d) of the Exchange Act. Accordingly, regardless of whether the registered investment company is otherwise subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Exchange Act, it will be required to

⁷ The 302 certifications for issuers other than registered investment companies can be found in new Exchange Act Rules 13a-14 and 15d-14.

certify reports on Form N-CSR.⁸ Additionally, as discussed in the September Fund Memorandum, because under the Final N-CSR Rules, Form N-CSR will be a periodic report containing financial statements filed under Section 13(a) or 15(d) of the Exchange Act, Form N-CSR will be required to be accompanied by the certification required by Section 906 of the Act (the "906 Certification"), which had not been required for investment companies prior to the adoption of the Final N-CSR Rules.⁹ The SEC has indicated that it will not be adopting rules regarding 906 Certifications because Section 906 of the Act is a criminal statute and is not expressly part of the securities laws. Therefore, we recommend that registered investment companies file both the 302 Certification and the 906 Certification with their reports on Form N-CSR until clarification is provided. Our recommended form of 906 Certification is attached to this memorandum as Exhibit B. For more information regarding the 906 Certifications, please see our memorandum dated July 31, 2002 entitled "*Sarbanes-Oxley Act of 2002: CEO/CFO Certifications, Corporate Responsibility and Accounting Reform*" and our memorandum dated August 8, 2002 entitled "*Sarbanes-Oxley Act of 2002: Supplemental Memorandum No. 1.*"

DISCLOSURE CONTROLS AND PROCEDURES

Amended Investment Company Act Rule 30a-2(c) uniformly requires all registered management investment companies to maintain controls and other procedures to ensure that all information required to be disclosed in their Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. These procedures are identified as "*disclosure controls and procedures.*" Previously, only investment companies filing reports under Section 13(a) or 15(d) of the Exchange Act were required to maintain disclosure controls and procedures. The 302 Certification contains statements regarding the accuracy of these "*disclosure controls and procedures,*" as well as the investment company's "*internal controls,*" a pre-existing term under the Exchange Act relating to internal controls for financial reporting. The term "*disclosure controls and procedures*" is much broader than (and presumably includes most) "*internal controls.*" "*Disclosure controls and procedures*"

⁸ For example, some investment companies are registered under the Investment Company Act but their securities are not registered under the Securities Act of 1933, as amended (the "Securities Act"), and therefore they are not subject to the periodic reporting requirements of the Exchange Act.

⁹ Section 906 of the Act amends the U.S. Criminal Code to require that each periodic report containing financial statements filed by an issuer with the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act be accompanied by specified certifications by the CEO and CFO of the issuer. Section 906 requires the CEO and CFO to certify, with each periodic report containing financial statements filed by an issuer with the SEC pursuant to Section 13(a) and 15(d) of the Exchange Act, that:

- the report *fully complies* with the requirements of Section 13(a) or 15(d) of the Exchange Act; and
- the information contained in the report *fairly presents*, in all material respects, the financial condition and results of operations of the company.

encompass *all* information required to be disclosed in the Exchange Act reports, while “internal controls” only address financial information reporting and assets.

A registered investment company, under the supervision and with the participation of its principal executive officers and principal financial officers, is required to evaluate its disclosure controls and procedures within the 90-day period prior to the filing date of each Form N-CSR. This evaluation would form the basis for the 302 Certification as well as for the disclosure about the effectiveness of the disclosure controls and procedures.¹⁰ Registered management investment companies are required to maintain disclosure controls and procedures with respect to Form N-CSR; the SEC did not adopt the proposed rule, which would have required evaluations of disclosure controls and procedures with respect to non-Exchange Act filings.

We recommend, if practicable, that registered investment companies maintain a Disclosure Committee consisting of members from relevant areas that may have input or insight with respect to the information that will be included in the Form N-CSR, including third-party service providers. In light of the fact that registered investment companies typically rely on third-party service providers for accounting and financial reporting services, evaluation of disclosure controls and procedures will require careful scrutiny of the controls and procedures in place at those service providers. Additionally, it would be appropriate to obtain a certification from sub-advisers with respect to their disclosure controls and procedures. In conducting each evaluation of disclosure controls and procedures, we also suggest that the certifying officers review in particular the impact on the registered investment company’s disclosure controls and procedures of any significant changes such as installation of new systems, changes in personnel involved in disclosure controls and procedures and expansion of number of portfolios or funds. Further, we recommend that certifying officers consult with the Audit Committee as to the continued adequacy of the disclosure controls and procedures in light of the registered investment company’s business and internal management practices. We believe that this process should include an evaluation of any material change in circumstances since the adoption of the procedures including a review of any deficiencies in disclosure controls and procedures identified by internal personnel, the auditors or the Audit Committee.

¹⁰ The SEC noted in the Final Rules Release that in the case of a series fund or family of investment companies, the disclosure controls and procedures for each fund in the series or family may be the same. Therefore, a single evaluation of the effectiveness of the disclosure controls and procedures for the series or family could be used in multiple certifications for the fund in the series or family, as long as the evaluation has been performed within the 90 days of the date of the report on Form N-CSR.

**REMOVAL OF CERTIFICATION
REQUIREMENT FOR FORM N-SAR**

The Final N-CSR Rules amend Form N-SAR to remove the 302 certification requirement from Form N-SAR with respect to all registered investment companies¹¹ and to clarify that Form N-SAR will be filed under the Investment Company Act only and not the Exchange Act.

**DISCLOSURE REQUIREMENTS RELATING TO
AUDIT COMMITTEE FINANCIAL EXPERTS**

STATUTORY BACKGROUND

Section 407 of the Act directs the SEC to issue rules requiring each issuer to disclose whether its audit committee has at least one member who is a “financial expert” and, if not, an explanation of why it has no financial expert on its audit committee. The Act also requires the SEC to define “financial expert,” taking into consideration whether a person, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, or from a position involving the performance of similar functions, has:

- an understanding of generally accepted accounting principles and financial statements;
- experience in the preparation or auditing of financial statements of generally comparable issuers and the application of generally accepted accounting principles in connection with the accounting for generally comparable estimates, accruals and reserves;
- experience with internal accounting controls; and
- an understanding of audit committee functions.

FINAL RULES

General

The Final Rules under Section 407 of the Act (the “Financial Expert Rules”) require all registered investment companies filing annual reports on Form N-CSR and SBICs filing annual reports on Form N-SAR in respect of fiscal years ending on or after July 15, 2003 to disclose in

¹¹ However, as discussed above, a registered investment company with a fiscal annual or semi-annual period that ends on or before March 31, 2003, may file and certify either Form N-CSR or Form N-SAR.

the relevant report that its board of directors has determined that the registered investment company either:¹²

- has at least one “audit committee financial expert”¹³ 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 of why the reporting company does not have such an expert.

The Financial Expert Rules also apply to companies that have boards of directors but do not have separate audit committees, because the Act defines the term “audit committee” to mean the entire board of directors in the absence of a separate audit committee and the disclosure rules apply regardless of whether the registered investment company is required to file reports under Section 13(a) or 15(d) of the Exchange Act.

The Financial Expert Rules require that the board of directors conduct an evaluation of its audit committee members to determine if at least one member qualifies as an audit committee financial expert. The SEC Release states that this determination should be subject to relevant state law principles, such as the business judgment rule, although it is possible that a court could disregard this guidance from the SEC. A registered investment company may not disclose that it does not have an audit committee financial expert with the explanation that it has decided not to make the determination or that, in lieu of making the determination, it is providing the qualifications of all its audit committee members. In addition, a registered investment company may not disclose that it does not have an audit committee financial expert if the registered investment company’s board of directors has actually determined that at least one audit committee member satisfies the applicable criteria.¹⁴ Once a board of directors has

¹² The Financial Expert Rules are codified for registered investment companies as Item 3 of Form N-CSR and for SBICs as an exhibit to Form N-SAR pursuant to instruction 102P3(b) of Form N-SAR. The Financial Expert Rules do not apply to UITs.

¹³ The SEC’s Financial Expert Rules use the term “audit committee financial expert” instead of the Act’s term “financial expert.” The Final Rules Release refers to the final rules release for Section 407 of the Act with respect to operating companies, which states that the “term [audit committee financial expert] suggests more pointedly that the designated person has characteristics that are particularly relevant to the functions of the audit committee, such as: a thorough understanding of the audit committee’s oversight role, expertise in accounting matters as well as understanding of financial statements, and the ability to ask the right questions to determine whether the company’s financial statements are complete and accurate.” See SEC Release Nos. 33-8177 and 34-47235 (the “SEC Release”).

¹⁴ While the SEC would resist any effort by a director to evade proper identification as an audit committee financial expert, a board in making its evaluation may wish to consider whether a board member believes that he or she is a financial expert. The views of such a board member, however, would not relieve the board from making its own determination.

identified at least one audit committee financial expert, it is permitted but not required to evaluate the qualifications of its other audit committee members, although, in practice, we would expect the qualifications of all members of the audit committee to be considered at the same time.¹⁵

Although a registered investment company cannot determine that it has an audit committee financial expert by pooling all the attributes of its audit committee members, the SEC indicated that if a company has determined that it does not have an audit committee financial expert, it would be appropriate for that company to disclose which attributes its audit committee members possess. A registered investment company may also wish to disclose, if applicable, the audit committee's intention to access other sources of financial or accounting expertise for advice with respect to complicated accounting issues.

The Financial Expert Rules do not require disclosure of changes in an audit committee financial expert's status as an expert or as a member of the audit committee, except in connection with the board's subsequent annual determinations regarding audit committee financial expert disclosure.

Definition of "Audit Committee Financial Expert"

Definition. The Financial Expert Rules define the term "audit committee financial expert" to mean a person who has *all* of the following attributes (the "Required Attributes"):

1. an understanding of generally accepted accounting principles and financial statements;
2. the ability to assess the general application of such principles in connection with the accounting for estimates, accruals, and reserves;
3. 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 issuer's financial statements, or experience actively supervising one or more persons engaged in such activities;
4. an understanding of internal controls and procedures for financial reporting; *and*
5. an understanding of audit committee functions.

¹⁵ The Financial Expert Rules permit, but do not require, the disclosure of the names of other audit committee members whom the board of directors determines satisfy the definition of "audit committee financial expert." If an additional audit committee financial expert is disclosed, we believe the disclosure must identify the individual and also specify whether the additional audit committee financial expert is independent.

Analysis of the Required Attributes. In response to substantial criticism of the definition of financial expert in the proposed rules, the Financial Expert Rules substantially expand the definition and thus the field of potential candidates. The following is a brief discussion of each of the Required Attributes, highlighting the changes from the definition in the proposed rules.

1. *An understanding of generally accepted accounting principles and financial statements.*

This item was adopted substantially as proposed and should not pose difficulty for most registered investment companies. Individuals in the financial community, even non-accountants, may understand financial statements and generally accepted accounting principles if, for example, they regularly review and analyze in depth financial statements prepared using generally accepted accounting principles.

2. *The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves.*

The final rules also substantially modified item two of the definition. Many persons commenting on the proposed rules had expressed concern that the rule as proposed would substantially narrow the pool of eligible financial experts as it not only required *experience applying generally accepted accounting principles* to estimates, accruals and reserves, but also required that such estimates, accruals and reserves be *generally comparable to those of the issuer* (i.e., in the fund industry).

Final item two requires that an individual have the ability to assess the general application of generally accepted accounting principles in connection with accounting for estimates, accruals and reserves. The final rules no longer specifically require that the individual have that ability with respect to estimates, accruals and reserves that are *generally comparable* to those of the registered investment company on whose audit committee he or she would sit. Whereas item two as proposed appeared to require significant actual experience in the fund industry, final item two appears only to require that an audit committee financial expert have had experience that provides him or her with the ability to evaluate and analyze accounting for estimates, accruals and reserves. The SEC indicates that it believes that final item two better satisfies the intent of the statute and the role to be played by audit committees, focusing the requirement less on a need for highly specialized technical knowledge within a particular industry and more on ensuring that individuals understand the general application of accounting principles in connection with accounting for estimates, accruals and reserves.

3. *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 issuer's financial statements, or experience actively supervising one or more persons engaged in such activities.*

Final item three also establishes criteria that are notably broader than those originally proposed by the SEC. As proposed, item three would have required a financial expert to have

actual experience *preparing* or *auditing* financial statements. Final item three also permits individuals with experience performing financial statement analysis or evaluation to qualify as audit committee experts. Individuals actively engaged in industries such as investment banking, venture capital investment, and professional financial analysis, may have sufficient direct and close exposure to, and experience with, financial statements and related processes to be capable of adequate scrutiny and diligent and zealous questioning of management and the registered investment company's auditor with respect to financial statements.

The other significant change is that the financial statements that have been prepared, audited, analyzed or evaluated by a candidate need not present accounting issues that are generally comparable to those *raised by the issuer's financial statements*. Rather, the financial statements need only present a "breadth and level of complexity" of accounting issues that are generally comparable to the breadth and complexity of those raised by the issuer's financial statements. This modification clarifies that an audit committee financial expert need not have had experience in the same or a related industry as the issuer, nor have had experience with a public company. Candidates who have prepared, audited, analyzed or evaluated financial statements of an issuer in a completely separate industry should be eligible to satisfy item three, as long as those financial statements present issues having a breadth and level of complexity commensurate with those faced by the registered investment company. Satisfaction of this criteria requires a "facts and circumstances" inquiry. Accordingly, a board should focus on a variety of factors, such as the size of the company with which the person has had experience, the scope of that company's operations and the complexity of its financial statements and accounting. No particular financial reporting or accounting issues, or any other narrow area of experience, should be dispositive.

Final item three also expands the universe of individuals eligible to serve as audit committee financial experts by including those with experience *actively supervising* individuals responsible for preparing, auditing, analyzing or evaluating financial statements. According to the SEC, "active supervision" means more than the mere existence of a traditional hierarchical reporting relationship between supervisor and those being supervised, however, and a principal executive officer should not be presumed to qualify. "Active supervision" involves having some experience comparable to that of the individuals being supervised. For example, a principal executive officer with considerable operations involvement, but little financial or accounting involvement, likely would not have exercised the necessary active supervision. A person engaged in active supervision participates in, and contributes to, the process of addressing, albeit at a supervisory level, the same general types of issues regarding preparation, auditing, analysis or evaluation of financial statements as those addressed by the person or persons being supervised.

4. *An understanding of internal controls and procedures for financial reporting.*

Rather than requiring an individual to have actual *experience* involving internal controls for financial reporting, the final item four requires that an individual need only have an *understanding* of such internal controls. The SEC believes that the important focus should be on

understanding the reasons for and purposes of a company's internal controls and procedures for financial reporting, their design and their operation, so that an audit committee financial expert can properly evaluate them.

5. *An understanding of audit committee functions.*

This item was adopted as proposed. Individuals who have served on boards of directors or audit committees for public companies, individuals who have served in management positions that involved meaningful interaction with audit committees or individuals who have been an auditor of a public company are examples of those who may have an understanding of audit committee functions sufficient to satisfy this requirement.

Required Experience for Obtaining the Required Attributes

The Financial Expert Rules provide that a person must have obtained the Required Attributes through any of the following:

- 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.¹⁶

¹⁶ If an audit committee financial expert has acquired the Required Attributes through "other relevant experience," the registered investment company's Form N-CSR or Form N-SAR must briefly list that person's relevant experience. This disclosure may be made by reference to disclosure regarding the director's business experience that is already required under separate Exchange Act rules and regulations. The "other relevant experience" category replaces a provision in the proposed rules that would have permitted a board of directors to determine that an individual has acquired the necessary expertise through "similar expertise and experience" to that otherwise required by the proposed rules, with a list of ten suggested factors to consider in making such determination. These factors have not been incorporated in the final Financial Expert Rules, although the list may still provide a useful point of reference in determining whether an individual has appropriate "other relevant experience." The suggested factors that were included in the proposed rules are as follows:

- the level of the person's accounting or financial education, including whether the person has earned an advanced degree in finance or accounting;

While the proposed rules in effect limited the field of potential candidates to individuals with experience as a chief financial officer, controller or accountant, the Financial Expert Rules recognize a broader range of experiences as potential sources of financial expertise, including the following:

- An audit committee financial expert may have obtained the required expertise through *experience with a “non-public company”* (i.e., a company that is not required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act), such as a private company that is contractually required to prepare audited financial statements that comply with generally accepted accounting principles.
-
- whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time the person actively has practiced as a certified public accountant, or the equivalent;
 - whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards in respect of such expertise, whether that person is in good standing with the recognized private body, and the length of time that the person has been actively certified or identified as having this expertise;
 - whether the person has served as a principal financial officer, controller or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act, and if so, for how long;
 - the person’s specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions;
 - the person’s level of familiarity and experience with applicable laws and regulations regarding the preparation of financial statements that must be included in reports filed under Section 13(a) or 15(d) of the Exchange Act;
 - the level and amount of the person’s direct experience reviewing, preparing, auditing or analyzing statements that must be included in reports filed under Section 13(a) or 15(d) of the Exchange Act;
 - the person’s past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act;
 - the person’s level of familiarity and experience with the use and analysis of financial statements of public companies; and
 - whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the registrant’s financial statements and other financial information and to make knowledgeable and thorough inquiries whether:
 - o the financial statements fairly present the financial condition, results of operations and cash flows of the company in accordance with generally accepted accounting principles; and
 - o the financial statements and other financial information, taken together, fairly present the financial condition, results of operations and cash flows of the company.

- An audit committee financial expert may have obtained the required expertise *overseeing or assessing the performance of companies or accountants* with respect to the preparation, auditing or evaluation of financial statements. For example, that individuals working for governmental, self-regulatory and private-sector bodies who oversee the banking, insurance or securities industries may have had sufficient experience with financial statement issues to qualify as audit committee financial experts. In addition, an individual in the venture capital, private equity, investment banking or other investment professional fields may have had the requisite experience assessing companies to qualify as an audit committee financial expert.
- An individual may have obtained the required expertise *actively supervising* a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions. For example, an individual who has substantial experience serving on an audit committee may have had the requisite experience actively supervising the preparation, auditing, analysis or evaluation of financial statements to qualify as an audit committee financial expert, so long as he or she possesses the Required Attributes. A person who has served as a CFO is also likely to have the requisite expertise, but in many cases, CEOs may not have had sufficient experience actively supervising unless they have been actively involved in the financial reporting or other financial aspects of a company's business.

The Independence Determination

Registered investment companies must also disclose whether the audit committee financial expert is "independent." In order to be considered independent, a member of an audit committee of a registered investment company 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:

1. accept directly or indirectly any consulting, advisory, or other compensatory fee from the registered investment company; or
2. be an "interested person" of the registered investment company as defined in Investment Company Act Section 2(a)(19).

National securities exchanges and associations will be required to adopt rules prohibiting the listing of any security of any issuer that does not, among other things, maintain an audit committee comprised solely of independent directors. The proposed definition of

independence is substantially similar to the one above. The SEC is required to adopt rules by April 26, 2003.¹⁷

COMPARING FINANCIAL EXPERT RULES AND PROPOSED NYSE STANDARDS

The NYSE has filed with the SEC proposed new listing standards regarding corporate governance, which, among other things, address the composition of a NYSE-listed registered investment company's audit committee. Both the current and the Proposed NYSE Standards require each member of the listed fund's audit committee to be "financially literate" and at least one member to "have accounting or related financial management expertise." Although the Proposed NYSE Standards do not currently require that audit committees include a "financial expert," the NYSE's proposed requirements may be reconsidered and revised in light of the SEC's rulemaking.

LIABILITY OF AUDIT COMMITTEE FINANCIAL EXPERTS - "SAFE HARBOR"

One of the most significant concerns relating to Section 407 of the Act and the SEC's related rulemaking has been the question of whether an individual designated as a "financial expert" or "audit committee financial expert" would be exposed to greater potential liability because of such designation. The Financial Expert Rules seek to provide comfort on this point by including a "safe harbor" provision, which states that:

- a person who is determined to be an audit committee financial expert will not be deemed an "expert" for any purpose, including without limitation for purposes of Section 11 of the Securities Act, as a result of being designated or identified as an audit committee financial expert;
- the designation or identification of a person as an audit committee financial expert does not impose on such person any duties, obligations or liability greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification; and
- the designation or identification of a person as an audit committee financial expert does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

The SEC indicates that its intention in including these provisions is, among other things, to clarify that any information in a registration statement reviewed by the audit committee financial expert is not "expertised" by virtue of the audit committee financial expert reviewing

¹⁷ For a full discussion of the proposed rules, see our memorandum dated February 11, 2003 entitled "SEC Proposes Audit Committee Rules Pursuant to Sarbanes-Oxley," which is available upon request or at our website at www.simpsonthacher.com.

the registration statement solely in his or her capacity as an audit committee financial expert, and that an audit committee financial expert is not subject to a higher level of due diligence with respect to the registration statement.

Despite the Financial Expert Rules' "safe harbor" provision and the SEC's stated position disclaiming additional potential liability for audit committee financial experts, we would note there is precedent in state and federal law for holding an individual to a standard of liability commensurate with the individual's experience, access to information and expertise. In this regard, an audit committee member who is identified as an audit committee financial expert by virtue of his or her special knowledge, experience and expertise could be held to a higher standard of responsibility than other audit committee members under state law. While designation as a financial expert, in and of itself, does not affect the individual's experience, access or expertise and, accordingly, should not *change* an individual's liability, it may make it more difficult for an audit committee member to disclaim effectively expertise in specific areas of finance and accounting. The implications of the "financial expert" designation in this context have yet to be developed.

CODES OF ETHICS

STATUTORY BACKGROUND

Section 406 of the Act directs the SEC to issue rules requiring each issuer to disclose:

- whether or not it has adopted a code of ethics that applies to senior financial officers and that is generally designed, among other things, to deter wrongdoing and to promote honest and ethical conduct and, if not, the reason for not having adopted a code of ethics; and
- any change to, or waiver from, its code of ethics for senior financial officers.

FINAL RULES

General

The code of ethics rules (the "Code of Ethics Rules") require all registered investment companies filing annual reports on Form N-CSR and SBICs filing annual reports on Form N-SAR in respect of fiscal years ending on or after July 15, 2003 to disclose in those reports:¹⁸

¹⁸ Because UITs are unmanaged, passive investment companies, they typically do not have any of the specified officers and, therefore, UITs are not subject to the Code of Ethics Rules.

- whether, as of the end of the period covered by the report, the registered investment company has adopted a written code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the registered investment company or a third party (the “specified officers”); and
- if the registered investment company has not adopted such a code of ethics, the reasons for not having done so.

The Code of Ethics Rules apply to all registered investment companies regardless of whether they are required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act. The Code of Ethics Rules do not, as was proposed, require disclosure of similar codes of ethics of an investment company’s investment adviser and principal underwriter because the SEC determined that this would have gone beyond the scope of the Act.

The Code of Ethics Rules also require a registered investment company to make a copy of its code of ethics available to the public through any one of the following means:¹⁹

- filing it as an exhibit to its year-end report on Form N-CSR or Form N-SAR;
- posting it on its website and disclosing in its most recently filed report on Form N-CSR or Form N-SAR its website address and the fact that it has posted the code of ethics on the website;²⁰ or
- undertaking in its most recently filed report on Form N-CSR or Form N-SAR to provide it to any person without charge upon request and explaining the manner in which such a request may be made.

Definition of “Code of Ethics”

The Code of Ethics Rules define “code of ethics” to mean written standards that are reasonably designed to deter wrongdoing and to promote:

¹⁹ The Code of Ethics Rules permit registered investment companies to have separate codes of ethics for different types of officers. Furthermore, if a company incorporates the required “code of ethics” for the specified officers within a broader document, such as an all-employee policy manual, the Code of Ethics Rules clarify that the disclosure obligations only apply to the portions of the broader document that address the subject areas outlined in the rules’ definition of “codes of ethics” and only with respect to their application to the specified officers.

²⁰ For registered investment company’s with more than one website, this website should be the website the registered investment company normally uses for its investor relations function. The code of ethics must remain on the website for as long as the issuer remains subject to the Code of Ethics Rules and chooses to satisfy the requirement to make its code of ethics available to the public through posting on its website.

- honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;²¹
- full, fair, accurate, timely and understandable disclosure in reports and documents that a registered investment company files with, or submits to, the SEC and in other public communications made by the company;
- 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.

Investment Company Act Rule 17j-1 currently requires investment companies and their investment advisers and principal underwriters to adopt codes of ethics designed to prevent fraud in connection with personal trading in securities by portfolio managers and other employees (a “Rule 17j-1 Code of Ethics”). As noted above, the Code of Ethics Rules do not apply to investment advisers and principal underwriters however, they cover a broader range of conduct than that required by Rule 17j-1.

The SEC indicates in the SEC Release that a registered investment company retains discretion to determine the *appropriate* person to whom a violation of the code should be reported, with the caveats that the person not be involved in the matter giving rise to the violation and that the person have sufficient authority in the company to adequately deal with the violator. Because codes of ethics are required to apply to officers who carry substantial authority within the registered investment company, we believe that a reasonable interpretation of the SEC’s guidance suggests that the registered investment company should designate a senior officer of the fund or the fund’s adviser.

The Code of Ethics Rules impose only a *disclosure* obligation and would not require a registered investment company to adopt a code of ethics if it has not already done so, or even to amend its existing code of ethics.²² We expect, however, that virtually all registered investment companies will adopt codes of ethics and further, that these registered investment companies will not incorporate this new code of ethics into their existing Rule 17j-1 Code of Ethics but will

²¹ The SEC eliminated the proposed component of the definition of code of ethics requiring the code to promote the “avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict,” because it believed such conduct was already addressed by the first prong of the definition.

²² The SEC did, in the SEC Release, encourage companies to adopt codes that may be broader and more comprehensive than may be strictly required to meet the new disclosure requirements.

choose to maintain them separately because the code of ethics applies to a limited number of individuals and covers different conduct. We also note that the Proposed NYSE Standards would actually require NYSE-listed registered investment companies to adopt similar codes of ethics as discussed below.

Current Disclosure Regarding Amendments or Waivers

General. The Code of Ethics Rules require a registered investment company to disclose both of the following occurrences:

- a brief description of any amendment to its code of ethics during the period covered by the Form N-CSR or Form N-SAR, as applicable; and
- a brief description of any grant to a specified officer of a waiver, including an implicit waiver, from a provision of its code, accompanied by the date and the name of the person for whom such waiver was granted.

The registered investment company must provide this disclosure either in its Form N-CSR or Form N-SAR, as applicable, or, in the alternative, it may provide the required disclosure by posting the information on its website within five business days²³ following the date of the amendment or waiver. To post the required disclosure on its website, a registered investment company must have notified investors in advance by having disclosed in its most recently filed report on Form N-CSR or N-SAR, as applicable, its intention to provide the information on its website and the address of its website.²⁴

Only amendments or waivers relating to the specified elements of the code of ethics and the specified officers must be disclosed. For example, if a director subject to the same code of ethics as a specified officer is granted a waiver, no disclosure of a waiver granted to the director is required. The Code of Ethics Rules do not require disclosure of amendments to the code of ethics that are “technical,” “administrative” or “non-substantive.”

The Code of Ethics Rules define a “waiver” as the approval by the registered investment company of a material departure from a provision of the code of ethics, including through an “implicit waiver.” An “implicit waiver” is defined as the failure of the registered investment company to take action within a reasonable period of time regarding a material departure from

²³ If the amendment or waiver occurs on a Saturday, Sunday or holiday on which the SEC is not open for business, then the five business day period begins to run on and include the first business day thereafter.

²⁴ If electing to post the disclosure on its website, the issuer is required to maintain posting for at least the 12-month period following its initial posting and further to retain a copy of the disclosure for a period of not less than six years following the end of the fiscal year in which the amendment or waiver occurred.

a provision of the code of ethics that has been made known to an executive officer²⁵ of the registered investment company.²⁶ We believe that no implicit waiver should be deemed to exist while the incident is being investigated and the appropriate remedy or sanction is being considered, provided that the process is conducted in a reasonable manner and on a timely basis.

Furthermore, as long as the company responds to a violation of the code of ethics by one of the specified officers in accordance with the terms of the code of ethics and, thus, no waiver from the code is granted, the Code of Ethics Rules do not require disclosure of the fact that a violation of the code has occurred.

COMPARING CODE OF ETHICS RULES AND PROPOSED NYSE STANDARDS

The Code of Ethics Rules differ in several important respects from the requirements of the Proposed NYSE Standards:

- *Nature of obligation.* The Code of Ethics Rules impose a disclosure obligation as to whether a registered investment company has a code of ethics, while the Proposed NYSE Standards would actually *require* NYSE-listed registered investment companies to adopt codes of ethics.
- *Individuals covered.* The Code of Ethics Rules require that a code apply only to the principal executive officer and the specified principal financial officers. The Proposed NYSE Standards would require that codes apply to all directors, all officers and all employees.
- *Issue-areas covered.* The Proposed NYSE Standards suggest a specific list of topics that NYSE-listed registered investment companies should address in their codes of ethics, as compared to the Code of Ethics Rules which are much more general in nature. For example, the Proposed NYSE Standards specifically state that confidentiality and protection and proper use of company assets are topics that should be covered in a listed fund's code of ethics.

²⁵ "Executive Officer" is defined as it is under Rule 3b-7 of the Exchange Act and means, with respect to a registered investment company, its president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions for the registered investment company. Executive officers of a subsidiary may be deemed executive officers of the registered investment company if they perform such policy making functions for the registrant.

²⁶ Registered investment companies should remember that a code of ethics is required to include adequate internal procedures for the reporting of violations, as well as provisions for ensuring adherence to the code, e.g., provisions applying sanctions for not complying with the code.

- *Waivers.* The Code of Ethics Rules require disclosure of waivers either in Form N-CSR or Form N-SAR, as applicable, or, in the alternative, by posting the information on the registered investment company's website within five business days. The Proposed NYSE Standards require "prompt" disclosure. Furthermore, the Proposed NYSE Standards would require disclosure of any waiver for directors or executive officers as compared to the Code of Ethics Rules, which require disclosure of waivers only for the specified officers.

In light of the differing applicability and requirements of the Code of Ethics Rules and the Proposed NYSE Standards, NYSE-listed registered investment companies may confront the issue of whether to use a single code of ethics or two or more codes of ethics. When the Proposed Rules were issued, some listed funds considered creating a separate code of ethics for senior officers so that they would not have to disclose the portions of their code of ethics that did not apply to those officers. Because the Code of Ethics Rules require companies to make available only the portions of their code of ethics corresponding to the requirements of the Code of Ethics Rules and only insofar as applicable to the specified officers, this concern has been largely eliminated. Similarly, the requirement under the Code of Ethics Rules to disclose amendments to and waivers from the code of ethics applies only to the specified provisions of the code and the specified officers. Accordingly, NYSE-listed registered investment companies may find that there is no compelling justification for adopting separate codes of ethics meeting the requirements of the Code of Ethics Rules and the Proposed NYSE Standards, particularly in light of the fact that the Proposed NYSE Standards would require listed funds to disclose their codes of ethics applicable to all officers, employees and directors.

* * *

This memorandum is for general informational purposes and should not be regarded as legal advice. Please contact Sarah E. Cogan (scogan@stblaw.com, 212-455-3575), Cynthia Cobden (ccobden@stblaw.com, 212-455-7744), Brynn D. Peltz (bpeltz@stblaw.com, 212-455-2210), David E. Wohl (dwohl@stblaw.com, 212-455-7937) or Marisa Van Dongen (mvandongen@stblaw.com, 212-455-2303) of our firm. Additional memoranda regarding recent corporate governance developments can be obtained from our website, www.simpsonthacher.com.

SIMPSON THACHER & BARTLETT LLP

**EXHIBIT A:
FORM N-CSR**

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

FORM N-CSR

CERTIFIED SHAREHOLDER REPORT OF REGISTERED MANAGEMENT INVESTMENT COMPANIES

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-CSR is to be used by management investment companies to file reports with the Commission not later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under Rule 30e-1 under the Investment Company Act of 1940 (17 CFR 270.30e-1). The Commission may use the information provided on Form N-CSR in its regulatory, disclosure review, inspection, and policymaking roles.

A registrant is required to disclose the information specified by Form N-CSR, and the Commission will make this information public. A registrant is not required to respond to the collection of information contained in Form N-CSR 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 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-CSR.

Form N-CSR is a combined reporting form that is to be used for reports of registered management investment companies under Section 30(b)(2) of the Investment Company Act of 1940 (the "Act") and Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act"), filed pursuant to Rule 30b2-1(a) under the Act (17 CFR 270.30b2-1(a)). A report on this Form shall be filed within 10 days after the transmission to stockholders of any annual or semi-annual report that is required to be transmitted to stockholders pursuant to Rule 30e-1 under the Act (17 CFR 270.30e-1).

B. Application of General Rules and Regulations.

The General Rules and Regulations under the Act and the Exchange Act contain certain general requirements that are applicable to reporting on any form under those Acts. 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 and Rules 12b-11 (17 CFR 240.12b-11) and 12b-12 (17 CFR 240.12b-12) under the Exchange 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.
3. Attention is directed to Rule 12b-20 under the Exchange Act (17 CFR 240.12b-20), which states: "In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading."

D. Incorporation by Reference.

A registrant may incorporate by reference information required by Item 10(a), but no other Items of the Form shall be answered by incorporating any information by reference. All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: Rule 10(d) of Regulation S-K under the Securities Act of 1933 (17 CFR 229.10(d)) (general rules on incorporation by reference, which, among other things, prohibit, unless specifically required by this Form, incorporating by reference a document that includes incorporation by reference to another document, and limits incorporation to documents filed within the last 5 years, with certain exceptions); Rule 303 of Regulation S-T (17 CFR 232.303) (specific requirements for electronically filed documents);

Rules 12b-23 and 12b-32 under the Exchange Act (17 CFR 240.12b-23 and 240.12b-32) (additional rules on incorporation by reference for reports filed pursuant to Sections 13 and 15(d) of the Exchange Act); and Rules 0-4, 8b-23, and 8b-32 under the Act (17 CFR 270.0-4, 270.8b-23, and 270.8b-32) (additional rules on incorporation by reference for investment companies).

E. Definitions.

Unless the context clearly indicates the contrary, terms used in this Form N-CSR 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 shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such copy filed with each exchange 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 (who also must provide the certification required by Rule 30a-2 under the Act (17 CFR 270.30a-2) exactly as specified in this Form) and its principal financial officer or officers (who also must provide the certification required by Rule 30a-2 under the Act (17 CFR 270.30a-2) exactly as specified in this Form).

(b) The name of each person who signs the report shall be typed or printed beneath his or her signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the report. Attention is directed to Rule 12b-11 under the Exchange Act (17 CFR 240.12b-11) and Rule 8b-11 under the Act (17 CFR 270.8b-11) concerning manual signatures and signatures pursuant to powers of attorney.

Item 1. Reports to Stockholders.

Include a copy of the report transmitted to stockholders pursuant to Rule 30e-1 under the Act (17 CFR 270.30e-1).

Item 2. Code of Ethics.

(a) Disclose whether, as of the end of the period covered by the report, the registrant has adopted a code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the registrant or a third party. If the registrant has not adopted such a code of ethics, explain why it has not done so.

Instruction to paragraph (a).

The information required by this Item is only required in an annual report on this Form N-CSR.

(b) For purposes of this Item, the term "code of ethics" means written standards that are reasonably designed to deter wrongdoing and to promote:

(1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;

(3) Compliance with applicable governmental laws, rules, and regulations;

(4) The prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and

(5) Accountability for adherence to the code.

(c) The registrant must briefly describe the nature of any amendment, during the period covered by the report, to a provision of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the registrant or a third party, and that relates to any element of the code of ethics definition enumerated in paragraph (b) of this Item. The registrant must file a copy of any such amendment as an exhibit pursuant to Item 10(a), unless the registrant has elected to satisfy paragraph (f) of this Item by posting its code of ethics on its website pursuant to paragraph (f)(2) of this Item, or by undertaking to provide its code of ethics to any person without charge, upon request, pursuant to paragraph (f)(3) of this Item.

(d) If the registrant has, during the period covered by the report, granted a waiver, including an implicit waiver, from a provision of the code of ethics to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the registrant or a third party, that relates to one or more of the items set forth in paragraph (b) of this Item, the registrant must briefly describe the nature of the waiver, the name of the person to whom the waiver was granted, and the date of the waiver.

(e) If the registrant intends to satisfy the disclosure requirement under paragraph (c) or (d) of this Item regarding an amendment to, or a waiver from, a provision of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in paragraph (b) of this Item by posting

such information on its Internet website, disclose the registrant's Internet address and such intention.

(f) The registrant must:

(1) File with the Commission, pursuant to Item 10(a), a copy of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, as an exhibit to its annual report on this Form N-CSR;

(2) Post the text of such code of ethics on its Internet website and disclose, in its most recent report on this Form N-CSR, its Internet address and the fact that it has posted such code of ethics on its Internet website; or

(3) Undertake in its most recent report on this Form N-CSR to provide to any person without charge, upon request, a copy of such code of ethics and explain the manner in which such request may be made.

Instructions to Item 2.

1. A registrant may have separate codes of ethics for different types of officers. Furthermore, a "code of ethics" within the meaning of paragraph (b) of this Item may be a portion of a broader document that addresses additional topics or that applies to more persons than those specified in paragraph (a). In satisfying the requirements of paragraph (f), a registrant need only file, post, or provide the portions of a broader document that constitutes a "code of ethics" as defined in paragraph (b) and that apply to the persons specified in paragraph (a).

2. If a registrant elects to satisfy paragraph (f) of this Item by posting its code of ethics on its website pursuant to paragraph (f)(2), the code of ethics must remain accessible on its website for as long as the registrant remains subject to the requirements of this Item and chooses to comply with this Item by posting its code on its website pursuant to paragraph (f)(2).

3. The registrant does not need to provide any information pursuant to paragraphs (c) and (d) of this Item if it discloses the required information on its Internet website within five business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed report on this Form N-CSR its Internet address and intention to provide disclosure in this manner. If the amendment or waiver occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the five business day period shall begin to run on and include the first business day thereafter. If the registrant elects to disclose this information through its website, such information must remain available on the website for at least a 12-month period. The registrant 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. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

4. The registrant does not need to disclose technical, administrative, or other non-substantive amendments to its code of ethics.

5. For purposes of this Item:

(a) The term "waiver" means the approval by the registrant of a material departure from a provision of the code of ethics; and

(b) The term "implicit waiver" means the registrant's failure to take action within a reasonable period of time regarding a material departure from a provision of the code of ethics that has been made known to an executive officer, as defined in Rule 3b-7 under the Exchange Act (17 CFR 240.3b-7), of the registrant.

Item 3. Audit Committee Financial Expert.

(a)(1) Disclose that the registrant's board of directors has determined that the registrant either:

(i) Has at least one audit committee financial expert serving on its audit committee; or

(ii) Does not have an audit committee financial expert serving on its audit committee.

(2) If the registrant provides the disclosure required by paragraph (a)(1)(i) of this Item, it must disclose the name of the audit committee financial expert and whether that person is "independent." In order to be considered "independent" for purposes of this Item, a member of an audit committee 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:

(i) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer; or

(ii) Be an "interested person" of the investment company as defined in Section 2(a)(19) of the Act (15 U.S.C. 80a-2(a)(19)).

(3) If the registrant provides the disclosure required by paragraph (a)(1)(ii) of this Item, it must explain why it does not have an audit committee financial expert.

Instructions to paragraph (a).

1. The information required by this Item is only required in an annual report on Form N-CSR.

2. If the registrant's board of directors has determined that the registrant has more than one audit committee financial expert serving on its audit committee, the registrant may, but is not required to, disclose the names of those additional persons. A registrant choosing to identify such persons must indicate whether they are independent pursuant to paragraph (a)(2) of this Item.

(b) For purposes of this Item, an "audit committee financial expert" means a person who has the following attributes:

- (1) An understanding of generally accepted accounting principles and financial statements;
- (2) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals, and reserves;
- (3) 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 registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;
- (4) An understanding of internal controls and procedures for financial reporting; and
- (5) An understanding of audit committee functions.

(c) A person shall have acquired such attributes through:

- (1) 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;
- (2) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor, or person performing similar functions;
- (3) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing, or evaluation of financial statements; or
- (4) Other relevant experience.

(d)(1) A person who is determined to be an audit committee financial expert will not be deemed an "expert" for any purpose, including without limitation for purposes of Section 11 of the Securities Act of 1933 (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item.

(2) The designation or identification of a person as an audit committee financial expert pursuant to this Item does not impose on such person any duties, obligations, or liability that are greater than the duties, obligations, and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(3) The designation or identification of a person as an audit committee financial expert pursuant to this Item does not affect the duties, obligations, or liability of any other member of the audit committee or board of directors.

Instruction to Item 3.

If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (c)(4) of this Item, the registrant shall provide a brief listing of that person's relevant experience.

Items 4-8. [Reserved]

Item 9. Controls and Procedures.

(a) Disclose the conclusions of the registrant's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the registrant's disclosure controls and procedures (as defined in Rule 30a-2(c) under the Act (17 CFR 270.30a-2(c))) based on their evaluation of these controls and procedures as of a date within 90 days of the filing date of the report that includes the disclosure required by this paragraph.

(b) Disclose whether or not there were significant changes in the registrant's internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Item 10. Exhibits.

File the exhibits listed below as part of this Form. Letter or number the exhibits in the sequence indicated.

(a) Any code of ethics, or amendment thereto, that is the subject of the disclosure required by Item 2, to the extent that the registrant intends to satisfy the Item 2 requirements through filing of an exhibit.

(b) A separate certification for each principal executive officer and principal financial officer of the registrant as required by Rule 30a-2 under the Act (17 CFR 270.30a-2) in the exact form set forth below:

CERTIFICATIONS

I, [identify the certifying individual], certify that:

1. I have reviewed this report on Form N-CSR of [identify registrant];
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations,

changes in net assets, and cash flows (if the financial statements are required to include a statement of cash flows) of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Rule 30a-2(c) under the Investment Company Act of 1940) for the registrant and have:

a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this report (the "Evaluation Date"); and

c) presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize, and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: _____

[Signature]
[Title]

SIGNATURES

[See General Instruction F]

Pursuant to the requirements of the Securities Exchange Act of 1934 and 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 _____

Pursuant to the requirements of the Securities Exchange Act of 1934 and the Investment Company Act of 1940, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title)* _____

Date _____

By (Signature and Title)* _____

Date _____

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

**EXHIBIT B:
FORM OF 906 CERTIFICATION**

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Report of _____ (the "Company") on Form N-CSR for the [period][year] ended _____ as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, _____, Chief [Executive][Financial] Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Chief [Executive][Financial] Officer
Date:_____