

**MEMO# 6633**

February 6, 1995

## **SEC PROPOSES ADMENDMENTS TO RULES 24F-1 AND 24F-2 UNDER THE 1940 ACT**

February 6, 1995 TO: ACCOUNTING/TREASURERS COMMITTEE No. 9-95 COMPLIANCE  
COMMITTEE No. 5-95 SEC RULES COMMITTEE No. 17-95 UNIT INVESTMENT TRUST  
COMMITTEE No. 14-95 RE: SEC PROPOSES ADMENDMENTS TO RULES 24f-1 AND 24f-2  
UNDER THE 1940 ACT

The Securities and Exchange Commission has proposed amendments to Rule 24f-2 under the Investment Company Act of 1940, which permits certain investment companies to register an indefinite number of securities under the Securities Act of 1933. A minor change has also been proposed to Rule 24f-1, which permits certain investment companies to register securities sold in excess of the number of shares included in a registration statement. In addition, the Commission has proposed a new form, Form 24F-2, to serve as the form for annual notices filed under Rule 24f-2. A copy of the Commission's release proposing these amendments and the new form is attached. The proposed amendments are summarized below.

A. Delayed Filings - The Commission has proposed new paragraph (f) to Rule 24f-2 to clarify the date on which a Rule 24f-2 Notice will be deemed filed with the Commission. Specifically, proposed paragraph (f) states that the date of filing a Rule 24f-2 Notice will be the date it is actually received by the Commission; however, a notice received after the applicable deadline will be deemed to have been timely filed "if the issuer establishes that the Rule 24f-2 Notice had been transmitted timely to a third party company or governmental entity, which guaranteed delivery of the Notice to the Commission no later than the required filing date." Funds that file Rule 24f-2 Notices on EDGAR would not be affected by this provision because the timeliness of their filings does not depend on the mail or courier services. Comment is requested on whether there are other circumstances under which filings that do not reach the Commission on a timely basis should be deemed timely filed.

B. Dividend Reinvestment Shares - The release notes that while shares issued in connection with dividend reinvestment plans ("DRIP shares") typically are not included as "sales" for purposes of Rule 24f-2, some investment companies include them when determining the amount of shares redeemed during the fiscal year for purposes of Rule 24f-2's netting provision. To address this inconsistent treatment, Rule 24f-2 would be amended to require funds taking advantage of the netting provisions to include DRIP shares when determining the amount of shares sold and redeemed during the fiscal year. The Commission requests comment on alternative approaches to the treatment of DRIP shares. One alternative approach suggested in the release would be to require funds to determine the ratio of DRIP shares issued during the period to shares sold in transactions registered under the Securities Act and to apply that ratio to determine the amount of redeemed

shares that would be available under the rule's netting provision. C. Mergers and Other Business Combinations - Paragraph (b)(3) of Rule 24f-2, dealing with the filing requirements for a fund planning to cease operations, would be amended to delete the current requirement that a fund file its final Rule 24f-2 Notice prior to ceasing operations. As proposed to be amended, paragraph (b)(3) would specify that for purposes of the rule, if a fund ceases operations, the date the registrant ceases operations would be deemed to be the close of its fiscal year. For funds involved in certain business combination transactions, paragraph (b)(3) would be amended to specify that a fund ceases operations for purposes of Rule 24f-2 on the date that the fund's assets are distributed in a liquidation, the effective date of a merger, or, when there has been a sale of all or substantially all of the fund's assets, the date those assets are transferred. D. Calculation of Time Periods - The Commission has proposed to revise paragraphs (b)(1) and (c) of Rule 24f-2 to replace the "six month" and "two month" time periods with "180 day" and "60 day" time periods, respectively. In addition, a new paragraph (e) would be added to the rule to specify that the first day of the time periods is the first calendar day of the fiscal year following the fiscal year for which the Rule 24f-2 Notice is filed. Similar changes would be made to Rule 24f-1. E. Proposed Form 24F-2 - The release describes proposed Form 24F-2 and the instructions thereto. Of particular note is the codification in Instruction A.3 of the staff's position that an issuer may file a single Rule 24f-2 Notice for more than one class or series, provided each class or series has the same fiscal year end and is registered on the same Securities Act registration statement. The release notes that this instruction does not affect the method of allocating expenses among multiple classes of shares in accordance with existing orders or proposed Rule 18f-3 under the Investment Company Act. The Commission requests comment on a technical matter involving its verification of the Rule 24f-2 fee calculation. Specifically, the release explains that the work sheet that would be required in Item 12 of the proposed Form is similar to the method for reporting the calculation of Rule 24f-2 fees on EDGAR. Under EDGAR, a registrant is required to prepare a header for each Rule 24f-2 Notice. The Commission's computer systems are programmed to "check" the filer's fee calculation based on the information provided in the header. As proposed, Form 24F-2 would not alter the headers for EDGAR filings. Comment is solicited on whether the Commission's computer systems should be modified to permit computer verification of the fee calculation based on information in the Notice rather than the header. 3 \* \* \* Comments are due to the Commission on the proposed amendments to Rules 24f-1 and 24f-2 and new Form 24F-2 within 45 days after publication of the proposing release in the Federal Register. Please provide me with your comments on the proposals by February 28, 1995. My direct number is 202/326-5824 and the fax number is 202/326-5827. Amy B.R. Lancellotta Associate Counsel Attachment