

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 249 and 274

[Release Nos. 34-57711; IC-28254; File No. S7-02-08]

RIN 3235-AK05

DISCLOSURE OF DIVESTMENT BY REGISTERED INVESTMENT COMPANIES IN ACCORDANCE WITH SUDAN ACCOUNTABILITY AND DIVESTMENT ACT OF 2007

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to its forms under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 that will require disclosure by a registered investment company that divests, in accordance with the Sudan Accountability and Divestment Act of 2007, from securities of issuers that the investment company determines, using credible information that is available to the public, conduct or have direct investments in certain business operations in Sudan. The Sudan Accountability and Divestment Act limits civil, criminal, and administrative actions that may be brought against a registered investment company that divests itself from such securities, provided that the investment company makes disclosures in accordance with regulations prescribed by the Commission.

EFFECTIVE DATE: [Insert date of publication in the Federal Register]

FOR FURTHER INFORMATION CONTACT: Devin F. Sullivan, Attorney, Office of Disclosure Regulation, Division of Investment Management, at (202) 551-6784, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5720.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (“Commission”) is adopting amendments to Form N-CSR¹ and Form N-SAR² under the Securities Exchange Act of 1934 (“Exchange Act”)³ and the Investment Company Act of 1940 (“Investment Company Act”).⁴

I. DISCUSSION

On December 31, 2007, the President signed the Sudan Accountability and Divestment Act of 2007 (“Sudan Divestment Act”) into law.⁵ Among other things, the Sudan Divestment Act provides that no person may bring any civil, criminal, or administrative action against any registered investment company, or any employee, officer, director, or investment adviser of the investment company, based solely upon the investment company divesting from, or avoiding investing in, securities issued by persons that the investment company determines, using credible information that is available to the public, conduct or have direct investments in certain business operations in Sudan.⁶ This limitation on actions does not apply to a registered investment company, or any of its employees, officers, directors, or investment advisers, unless the investment company makes disclosures about the divestments in accordance with regulations prescribed by the Commission.⁷ To that end, the Sudan Divestment Act requires us to prescribe regulations not later than 120 days after enactment that require disclosure by

¹ 17 CFR 294.331 and 274.128.

² 17 CFR 294.330 and 274.101.

³ 15 U.S.C. 78a et seq.

⁴ 15 U.S.C. 80a-1 et seq.

⁵ Pub. L. 110-174, 121 Stat. 2516 (2007).

⁶ Section 4(a) of the Sudan Divestment Act [to be codified at 15 U.S.C. 80a-13(c)(1)].

⁷ Section 4(a) of the Sudan Divestment Act [to be codified at 15 U.S.C. 80a-13(c)(2)(B)].

each registered investment company that divests itself of securities in accordance with the Act. The Sudan Divestment Act states that these rules shall require this disclosure to be included in the next periodic report filed under Section 30 of the Investment Company Act following the divestment.⁸

To implement the Sudan Divestment Act, we proposed amendments to Form N-CSR and Form N-SAR that would require disclosure by a registered investment company that divests, in accordance with the Sudan Divestment Act, from securities of issuers that the investment company determines conduct or directly invest in certain business operations in Sudan.⁹ We received two comment letters in response to our proposals.¹⁰ The commenters generally supported the proposals, while recommending several changes. We are adopting the proposed amendments with certain modifications suggested by the commenters.

A. Amendments

To implement the Sudan Divestment Act, we are requiring each registered investment company that divests securities in accordance with the Sudan Divestment Act to disclose the divestment on the next Form N-CSR or Form N-SAR that it files following the divestment. Management investment companies will provide the disclosure on Form N-CSR, and unit investment trusts will provide the disclosure on Form N-SAR.¹¹ We are requiring disclosure of information that will identify the

⁸ Section 4(b) of the Sudan Divestment Act.

⁹ Investment Company Act Release No. 28148 (Feb. 11, 2008) [73 FR 8976 (Feb. 15, 2008)] (“Proposing Release”).

¹⁰ Letter of Calvert Group, Ltd. (Mar. 14, 2008) (“Calvert letter”); Letter of Investment Company Institute (Mar. 10, 2008) (“ICI letter”).

¹¹ Item 6(b) of Form N-CSR; Item 133 of Form N-SAR.

securities divested and the magnitude of the divestment. This includes the issuer’s name; exchange ticker symbol; Committee on Uniform Securities Identification Procedures (“CUSIP”) number; total number of shares or, for debt securities, principal amount divested; and dates that the securities were divested.¹² In addition, if the registered investment company continues to hold any securities of the divested issuer, it will be required to disclose the exchange ticker symbol; CUSIP number; and total number of shares or, for debt securities, principal amount of such securities, held on the date of filing.¹³ We believe that this disclosure is in the public interest and protects investors.

One commenter suggested that the Commission require disclosure of divestments in accordance with the Sudan Divestment Act in shareholder reports, as well as in Form N-CSR and Form N-SAR, in order to bring more prominence to the issue and make the information more easily accessible by shareholders.¹⁴ Consistent with the Sudan Divestment Act, which directs the Commission to prescribe regulations that “require the disclosure to be included in the next periodic report filed with the Commission,” (emphasis added)¹⁵ we are not making the requested change. We have concluded that disclosure of divestments under the Sudan Divestment Act in Form N-CSR and Form N-SAR, coupled with existing requirements for complete quarterly portfolio holdings disclosure in semi-annual shareholder reports and on Form N-Q filed with the

¹² Item 6(b)(1)-(5) of Form N-CSR; Item 133.A.-E. of Form N-SAR. We are also adopting technical amendments to Form N-SAR to change cross-references to Item 132 to reflect the addition of Item 133.

¹³ Item 6(b)(6) of Form N-CSR; Item 133.F. of Form N-SAR.

¹⁴ Calvert letter at 3.

¹⁵ Section 4(b) of the Sudan Divestment Act.

Commission, will provide shareholders with ready access to information about such divestments.

We also received comment recommending that, rather than requiring disclosure of divestment of securities in accordance with the Sudan Divestment Act on the next Form N-CSR or Form N-SAR filed following such divestment, we should instead require disclosure of divestments made during the period covered by the financial information included with the Form N-CSR or Form N-SAR (i.e., the prior semi-annual fiscal period).¹⁶ Under this recommendation, a divestment made between the close of a semi-annual fiscal period and the filing of the Form N-CSR or Form N-SAR for that period would not be disclosed in that Form but would be disclosed on the next succeeding Form N-CSR or Form N-SAR. Disclosure of a divestment made shortly after the close of a semi-annual fiscal period would be delayed for approximately 10 months. Consistent with the Sudan Divestment Act,¹⁷ we are not adopting that recommendation but instead are adopting the rule as proposed. We are requiring the disclosure to be included in the next periodic report filed with the Commission,¹⁸ which will help to reduce extended delays between divestments and the associated disclosure to investors.

One commenter recommended that the amendments not require disclosure of the exchange ticker symbol and CUSIP number of securities divested in accordance with the

¹⁶ ICI letter at 2-3.

¹⁷ Section 4(b) of the Sudan Divestment Act.

¹⁸ As proposed, a registered investment company that divests securities in accordance with the Sudan Divestment Act during the period that begins on the fifth business day before the date of filing a Form N-CSR or Form N-SAR and ends on the date of filing may disclose the divestment in either that filing or an amendment thereto. The registered investment company must file the amendment not later than five business days after the date of filing the Form N-CSR or Form N-SAR. Instruction 2. to Item 6(b) of Form N-CSR; Instructions to Item 133 of Form N-SAR.

Sudan Divestment Act.¹⁹ We are retaining this requirement, which we believe will help to more precisely identify the specific securities for which a registered investment company may claim the benefit of the limitation on actions provided by the Sudan Divestment Act.

Both commenters addressed the proposed requirement that a registered investment company disclose information about continued holdings of securities of a divested issuer. One commenter supported it as enhancing investment company accountability to shareholders.²⁰ The other commenter opposed it on the grounds that the Sudan Divestment Act's limitation on actions only requires disclosure made in connection with a decision to divest and that this additional disclosure is unnecessary because registered investment companies are already required to disclose their portfolio holdings.²¹ We are retaining this requirement because we believe that it will help assure that investors do not confuse a registered investment company's divestment from a portion of its holdings of a particular issuer's securities with divestment from all of its holdings of that issuer's securities. The disclosure of portfolio holdings that is currently required will not necessarily prevent such confusion because that disclosure is required as of the end of each fiscal quarter, which often will not coincide with the date of a divestment.

We are adopting, as proposed, Instructions to Form N-CSR and Form N-SAR clarifying that while a registered investment company is not required to disclose divestments of securities of an issuer that conducts or has direct investments in certain

¹⁹ ICI letter at 2.

²⁰ Calvert letter at 3.

²¹ ICI letter at 3.

business operations in Sudan, the limitation on actions provided in the Sudan Divestment Act does not apply with respect to a divestment that is not disclosed.²² We are also adopting, as proposed, Instructions to Form N-CSR and Form N-SAR providing that, for purposes of determining when a divestment should be reported, if a registered investment company divests its holdings in a particular security in a related series of transactions, the company may deem the divestment to occur at the time of the final transaction in the series.²³ We received no comments on these Instructions.

B. Termination Provision

The provisions of the Sudan Divestment Act concerning registered investment company divestments terminate 30 days after the President certifies to Congress that the Government of Sudan has undertaken certain actions.²⁴ We are adopting a termination provision in order to clarify that the new disclosure requirements will not apply to divestitures occurring after the investment company provisions of the Sudan Divestment Act terminate. Both Form N-CSR and Form N-SAR will provide for termination of the amendments we are adopting one year after the date on which the related provisions of the Sudan Divestment Act terminate pursuant to the terms of the Act. The termination provision responds to commenters' requests that we include a provision terminating the amendments to the forms that is parallel to the termination provision of the Sudan Divestment Act.²⁵ We have provided that the amendments terminate one year after termination pursuant to the Sudan Divestment Act to allow sufficient time for disclosure,

²² Instruction 1. to Item 6(b) of Form N-CSR; Instructions to Item 133 of Form N-SAR.

²³ Instruction 3. to Item 6(b) of Form N-CSR; Instructions to Item 133 of Form N-SAR.

²⁴ Section 12 of the Sudan Divestment Act.

²⁵ Calvert letter at 3; ICI letter at 3-4.

after termination of the Act's provisions, of divestments that occur prior to termination of the Act's provisions.²⁶

C. Effective Date

The amendments to the Commission's forms are effective immediately, in accordance with the Administrative Procedure Act, which permits rules to become effective less than 30 days after publication as “provided by the agency for good cause found and published with the rule.”²⁷ The Commission finds that good cause exists for immediate effectiveness in light of the statutory requirement that the Commission prescribe regulations not later than 120 days after the date of the enactment of the Sudan Divestment Act.²⁸

D. Transition Period

We solicited comment on whether our amendments should address divestments that occur after the enactment of the Sudan Divestment Act and before the effective date of our amendments. As suggested by a commenter,²⁹ the Rule permits a registered investment company that makes a divestment in accordance with the Sudan Divestment Act between December 31, 2007 (the date of enactment), and [Insert date of publication in the Federal Register] (the effective date of the form amendments), and that filed a Form N-CSR or Form N-SAR after the divestment but before [Insert date of publication in the Federal Register], to disclose the divestment on an amendment to that Form N-CSR or Form N-SAR filed no later than [Insert date that is 10 business days after the

²⁶ Item 6(b) of Form N-CSR; Item 133 of Form N-SAR.

²⁷ 5 U.S.C. 553(d)(3).

²⁸ Section 4(b) of the Sudan Divestment Act.

²⁹ ICI letter at 3.

date of publication in the Federal Register]. This provision will permit registered investment companies, and their employees, officers, directors, and investment advisers, to rely on the Sudan Divestment Act’s limitation on actions for divestments that occurred after enactment but before the effective date of our form amendments. The period between [Insert date of publication in the Federal Register], the effective date of our form amendments, and [Insert date that is 10 business days after the date of publication in the Federal Register], the latest permitted transition filing date, should provide registered investment companies with a reasonable opportunity to review the form amendments and make any necessary filing.

II. PAPERWORK REDUCTION ACT

The form amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).³⁰ The titles for the collections of information are “Form N-CSR under the Investment Company Act of 1940 and Securities Exchange Act of 1934, Certified Shareholder Report,” and “Form N-SAR under the Investment Company Act of 1940, Semi-Annual Report for Registered Investment Companies.” We published notice soliciting comments on the collection of information requirements in the release proposing the amendments³¹ and submitted the proposed collections of information to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. We received no comments on the collection of information requirements. OMB has approved the collections of information.

³⁰ 44 U.S.C. 3501 et seq.

³¹ See Proposing Release, supra note 9, 73 FR at 8978.

Form N-CSR (OMB Control No. 3235-0570) under the Exchange Act and the Investment Company Act³² is used by registered management investment companies filing certified shareholder reports. Form N-SAR (OMB Control No. 3235-0330) under the Exchange Act and the Investment Company Act³³ is used by registered investment companies to file periodic reports with the Commission. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

A. Summary of Amendments

The Sudan Divestment Act, enacted on December 31, 2007, requires the Commission to prescribe regulations not later than 120 days after enactment that require disclosure by each registered investment company that divests itself of securities in accordance with the Act.³⁴ The Sudan Divestment Act states that these rules shall require this disclosure to be included in the next periodic report filed under Section 30 of the Investment Company Act following the divestment.³⁵

To implement the Sudan Divestment Act, we are requiring each registered investment company that divests securities in accordance with the Sudan Divestment Act to disclose the divestment on the next Form N-CSR or Form N-SAR that it files following the divestment. Management investment companies will provide the disclosure on Form N-CSR, and unit investment trusts will provide the disclosure on

³² 17 CFR 249.331 and 17 CFR 274.128.

³³ 17 CFR 249.330 and 17 CFR 274.101.

³⁴ Section 4(b) of the Sudan Divestment Act.

³⁵ Id.

Form N-SAR.³⁶ We are requiring disclosure of information that will identify the securities divested and the magnitude of the divestment. This includes the issuer's name; exchange ticker symbol; CUSIP number; total number of shares or, for debt securities, principal amount divested; and dates that the securities were divested.³⁷ In addition, if the registered investment company continues to hold any securities of the divested issuer, it is required to disclose the exchange ticker symbol; CUSIP number; and total number of shares or, for debt securities, principal amount of such securities, held on the date of filing.³⁸ Compliance with the form amendments is necessary to obtain the benefit of the limitation on civil, criminal, and administrative actions provided in the Sudan Divestment Act. The information provided will not be kept confidential.

B. Reporting and Cost Burden Estimates

The compliance burden estimates for the collections of information are based on several assumptions. The compliance burden for the amendments to Form N-CSR and Form N-SAR will be the reporting burden of collecting information necessary to make the disclosures under new Item 6(b) of Form N-CSR and new Item 133 of Form N-SAR. We estimate that the new collections of information will result in an increase of one-half burden hour per filing. Further, we believe that the number of registered investment companies that hold securities in companies conducting or directly investing in certain business operations in Sudan, and that will divest from these securities in accordance with the Sudan Divestment Act, will be relatively small. We estimate that approximately 15% of all registered investment company portfolios have an objective of investing

³⁶ Item 6(b) of Form N-CSR; Item 133 of Form N-SAR.

³⁷ Item 6(b)(1)-(5) of Form N-CSR; Item 133.A.-E. of Form N-SAR.

³⁸ Item 6(b)(6) of Form N-CSR; Item 133.F. of Form N-SAR.

internationally.³⁹ Based on a conservative assumption that each of these portfolios will make a divestment in accordance with the Sudan Divestment Act prior to each filing it makes on Form N-CSR or Form N-SAR, we estimate that approximately 15% of the filings on Form N-CSR and Form N-SAR will include disclosures of divestments in accordance with the Sudan Divestment Act.

Based on a burden hour estimate of one-half hour per filing for each respondent that makes disclosures under the amendments, we estimate that registered management investment companies filing Form N-CSR will incur approximately 510 annual burden hours,⁴⁰ and unit investment trusts will incur approximately 10 annual burden hours,⁴¹ to comply with the form amendments.

The total annual burden hours for Form N-CSR, revised to include the burden hours expected from the form amendments, are estimated to be 138,662.5 burden hours, an increase of 510 burden hours from the current annual burden of 138,152.5 hours. The total annual burden hours for Form N-SAR, revised to include the burden hours expected from the form amendments, are estimated to be 107,213 burden hours, an increase of 10 burden hours from the current annual burden of 107,203 hours.

III. COST/BENEFIT ANALYSIS

The Commission is sensitive to the costs and benefits imposed by its rules. Our amendments to Form N-CSR and Form N-SAR require each registered investment

³⁹ This estimate is based on analysis done by the Division of Investment Management staff of publicly available data.

⁴⁰ 6,743 annual and semi-annual filings on Form N-CSR x 15% of filings on Form N-CSR x ½ burden hour = approximately 510 total burden hours (rounded to the nearest 10).

⁴¹ 90 filings on Form N-SAR x 15% of filings on Form N-SAR x ½ burden hour = approximately 10 total burden hours (rounded to the nearest 10).

company that divests securities in accordance with the Sudan Divestment Act to disclose the divestment on the next Form N-CSR or Form N-SAR that it files following the divestment. In the release proposing form amendments under the Sudan Divestment Act, we requested comments on our cost/benefit analysis. We received no comments in response.

A. Benefits

In adopting these form amendments, we are implementing the Sudan Divestment Act’s mandate for rulemaking by the Commission. The amendments meet the Sudan Divestment Act’s directive that the Commission “prescribe regulations, in the public interest and for the protection of investors, to require disclosure by each registered investment company that divests itself of securities in accordance with section 13(c) of the Investment Company Act of 1940.”⁴² Disclosure under the form amendments will make applicable to a registered investment company, and its employees, officers, directors, and investment advisers, the limitation on actions provided by the Sudan Divestment Act. The amendments also will make important information about divestments in accordance with the Sudan Divestment Act available to investors, including information identifying the securities divested, the dates of divestment, and any securities of the issuer that the registered investment company continues to hold.

B. Costs

While the form amendments may lead to some additional costs for registered investment companies, we believe that these costs should be minimal. We are requiring each registered investment company that divests securities in accordance with the Sudan

⁴² Section 4(b) of the Sudan Divestment Act.

Divestment Act to disclose the divestment on the next Form N-CSR or Form N-SAR that it files following the divestment. Registered investment companies retain records of securities transactions that, we believe, will permit them to readily identify and disclose, for divestments made in accordance with the Sudan Divestment Act, the securities divested, the dates of divestment, and any securities of the issuer retained by the investment company. Further, to ease the burden of information collection and disclosure, we have included an instruction in Form N-CSR and Form N-SAR stating that a registered investment company that divests securities in accordance with the Sudan Divestment Act during the period that begins on the fifth business day before the date of filing a Form N-CSR or Form N-SAR and ends on the date of filing may disclose the divestment in either that filing or an amendment thereto that is filed not later than five business days after the date of filing the Form N-CSR or Form N-SAR.⁴³ We believe that this flexibility⁴⁴ may lessen the compliance burdens associated with reporting divestments that occur shortly before a registered investment company files a Form N-CSR or Form N-SAR.

For purposes of the PRA, we estimate that it will take approximately 510 annual burden hours⁴⁴ to comply with the amendments to Form N-CSR and approximately 10 annual burden hours⁴⁵ to comply with the amendments to Form N-SAR, for an aggregate of approximately 520 total annual burden hours to comply with the form amendments. We estimate that this additional burden will equal total costs of approximately \$145,000

⁴³ Instruction 2. to Item 6(b) of Form N-CSR; Instructions to Item 133 of Form N-SAR.

⁴⁴ See supra note 40.

⁴⁵ See supra note 41.

annually.⁴⁶ We believe that the incremental costs of disclosing divestments in accordance with the Sudan Divestment Act on Form N-CSR and Form N-SAR are justified by the fact that such disclosures will make applicable to a registered investment company, and its employees, officers, directors, and investment advisers, the limitation on actions provided by the Sudan Divestment Act. These disclosures also will make important information about divestments in accordance with the Sudan Divestment Act available to investors, including information identifying the securities divested, the dates of divestment, and any securities of the issuer that the registered investment company continues to hold.

IV. CONSIDERATION OF BURDEN ON COMPETITION; PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION

Section 23(a)(2) of the Exchange Act⁴⁷ requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule will have on competition. Section 23(a)(2) also prohibits us from adopting any rule that will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 2(c) of the Investment Company Act,⁴⁸ Section 2(b) of the

⁴⁶ This cost increase is estimated by multiplying the total annual hour burden (520 hours) by the estimated hourly wage rate of \$279.50 and rounding to the nearest 1,000. The estimated wage figure is based on published rates for compliance attorneys and senior programmers, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding effective hourly rates of \$270 and \$289, respectively. See Securities Industry Association, Report on Management & Professional Earnings in the Securities Industry 2007 (Sept. 2007). The estimated wage rate is further based on the estimate that attorneys and programmers would divide time equally, resulting in a weighted wage rate of \$279.50 (($\$270 \times .50$) + ($\$289 \times .50$)).

⁴⁷ 15 U.S.C. 78w(a)(2).

⁴⁸ 15 U.S.C. 80a-2(c).

Securities Act of 1933,⁴⁹ and Section 3(f) of the Exchange Act⁵⁰ require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In the release proposing form amendments under the Sudan Divestment Act, we requested comments on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation and whether they would impose a burden on competition. We received no comments in response.

The form amendments implement the Sudan Divestment Act's requirement that we prescribe regulations not later than 120 days after enactment that require disclosure by each registered investment company that divests itself of securities in accordance with the Act. Disclosure provided in response to the amendments will make applicable to a registered investment company, and its employees, officers, directors, and investment advisers, the limitation on actions provided by the Sudan Divestment Act. These disclosures also will make important information about divestments in accordance with the Sudan Divestment Act available to investors, including information identifying the securities divested, the dates of divestment, and any securities of the issuer that the registered investment company continues to hold.

These amendments may improve efficiency. Disclosure provided in response to the amendments could increase efficiency at registered investment companies by making applicable to a registered investment company, and its employees, officers, directors, and

⁴⁹ 15 U.S.C. 77b(b).

⁵⁰ 15 U.S.C. 78c(f).

investment advisers, the limitation on actions provided by the Sudan Divestment Act. These disclosures also could promote efficiency because they make important information about divestments in accordance with the Sudan Divestment Act available to investors, including information identifying the securities divested, the dates of divestment, and any securities of the issuer that the registered investment company continues to hold. Making such information available to investors may enable them to make more informed investment decisions.

The amendments may promote competition. We anticipate that our form amendments may promote competition because they may make it easier for registered investment companies to choose whether or not to offer portfolios that include holdings in companies that conduct or directly invest in certain business operations in Sudan. Thus, the form amendments may facilitate competition by making it easier for registered investment companies to offer different types of portfolios that appeal to different investors. We do not anticipate that the amendments will impose a measurable burden on competition. We also do not anticipate that the form amendments will have a significant impact on capital formation.

V. FINAL REGULATORY FLEXIBILITY ANALYSIS

This Final Regulatory Flexibility Analysis ("Analysis") has been prepared in accordance with the Regulatory Flexibility Act.⁵¹ It relates to the Commission's form amendments under the Exchange Act and the Investment Company Act that require each registered investment company that divests securities in accordance with the Sudan Divestment Act to disclose the divestment on the next Form N-CSR or Form N-SAR that

⁵¹ 5 U.S.C. 601 *et seq.*

it files following the divestment. We published in the release proposing these amendments an Initial Regulatory Flexibility Analysis ("IRFA"), which we prepared in accordance with the Regulatory Flexibility Act.

A. Need for the Form Amendments

The purpose of the form amendments is to implement the Sudan Divestment Act's requirement that the Commission adopt rules requiring disclosure of divestments made in accordance with the Act. Disclosure provided in response to the amendments will make applicable to a registered investment company, and its employees, officers, directors, and investment advisers, the limitation on actions provided by the Sudan Divestment Act. These disclosures also will make important information about divestments in accordance with the Sudan Divestment Act available to investors, including information identifying the securities divested, the dates of divestment, and any securities of the issuer that the registered investment company continues to hold.

B. Significant Issues Raised by Public Comment

In the IRFA for the proposed amendments, we requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposed amendments, the likely impact of the proposal on small entities, the nature of any impact, and providing any empirical data supporting the extent of the impact.⁵² We received no comment letters addressing the IRFA.

C. Small Entities Subject to the Rule

The form amendments will affect registered investment companies that are small entities. For purposes of the Regulatory Flexibility Act, an investment company is a

⁵² See Proposing Release, supra note 9, 73 FR at 8981.

small entity if it, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year.⁵³ Approximately 160 registered investment companies currently meet this definition.⁵⁴

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The amendments to Form N-CSR and Form N-SAR require each registered investment company that divests securities in accordance with the Sudan Divestment Act to disclose the divestment on the next Form N-CSR or Form N-SAR that it files following the divestment.

For purposes of the PRA, we estimate that it will take approximately 510 annual burden hours to comply with the amendments to Form N-CSR and approximately 10 annual burden hours to comply with the amendments to Form N-SAR, for an aggregate of approximately 520 total annual burden hours to comply with the form amendments. We estimate that this additional burden will equal total costs of approximately \$145,000 annually.

E. Agency Action to Minimize the Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the amendments, the Commission considered the following alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

⁵³ 17 CFR 270.0-10.

⁵⁴ This estimate is based on analysis by the Division of Investment Management staff of publicly available data.

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the amendments for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the amendments, or any part thereof, for small entities.

The Commission believes that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection or the requirements of the Sudan Divestment Act. Disclosure provided in response to the amendments will make applicable to a registered investment company, and its employees, officers, directors, and investment advisers, the limitation on actions provided by the Sudan Divestment Act. These disclosures also will make important information about divestments in accordance with the Sudan Divestment Act available to investors, including information identifying the securities divested, the dates of divestment, and any securities of the issuer that the registered investment company continues to hold. Different disclosure requirements or different timetables for registered investment companies that are small entities would not be consistent with the requirements of the Sudan Divestment Act. Finally, in this rulemaking, we do not consider using performance rather than design standards to be consistent with the statutory requirement that we adopt rules for the protection of investors.

We have endeavored through the amendments to minimize the regulatory burden on all registered investment companies, including small entities, while meeting the requirements of the Sudan Divestment Act. Small entities should benefit from the Commission's reasoned approach to the amendments to the same degree as other registered investment companies.

VI. STATUTORY AUTHORITY

The Commission is adopting amendments to Form N-SAR and Form N-CSR pursuant to authority set forth in Sections 10(b), 13, 15(d), 23(a), and 36 of the Exchange Act [15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm], and Sections 8, 13(c), 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a-8, 80a-13(c), 80a-24(a), 80a-29, and 80a-37].

List of Subjects

17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

TEXT OF FORM AMENDMENTS

For the reasons set out in the preamble, the Commission amends Title 17, Chapter II, of the Code of Federal Regulations as follows.

PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934

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

Authority: 15 U.S.C. 78a et seq., 7202, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

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

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

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

