

**NEW RULES APPLICABLE TO REGISTERED INVESTMENT COMPANIES
INCLUDING CEO/CFO CERTIFICATIONS
AND REPORTING OF TRADES BY INSIDERS**

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The Securities and Exchange Commission issued final rules on August 29, 2002 for the senior officer certifications required by Section 302 of the Sarbanes-Oxley Act of 2002 (the "Act") and for the establishment of "disclosure controls and procedures" by registered investment companies that file reports under the Securities Exchange Act of 1934, as amended. Virtually all registered open-end and closed-end management investment companies file reports under the Exchange Act and are, therefore, subject to these requirements. The certification rules¹ apply to all Form N-SARs filed after August 29, 2002.

The SEC also issued proposed rule amendments on August 30, 2002,² which would implement the intent of Section 302 with respect to registered investment companies generally by imposing new reporting, control and certification requirements on all registered investment companies, including those not currently required to file reports under the Exchange Act.

In addition, on August 27, 2002, the SEC adopted final rules to implement the accelerated two business day filing deadline for Form 4 effected by Section 403 of the Act and to establish a slightly later filing deadline for certain transactions for which the SEC determined that the two day period is not feasible. The new rules³ became effective on August 29, 2002.

¹ The final rules are described in SEC Release Nos. 33-8124, 34-46427 and IC-25722 (the "302 Release").

² The proposed rule amendments are described in SEC Release Nos. 34-46441 and IC-25723 (the "Proposing Release").

³ The final rules are described in Release Nos. 34-46421, 35-27563 and IC-25720 (the "Section 16 Release").

Furthermore, on August 16, 2002, the New York Stock Exchange publicly filed with the SEC its proposed new listing standards regarding corporate governance and disclosure (the "New NYSE Standards").

This memorandum summarizes the applicability of these newly adopted and proposed SEC rules and the New NYSE Standards to registered investment companies. This memorandum supplements our more general 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"), our August 29, 2002 memorandum entitled "*SEC Adopts Accelerated Section 16 Reporting Rules Under the Sarbanes-Oxley Act of 2002*" (the "August 29th Memorandum") and our August 23, 2002 memorandum entitled "*NYSE Board of Directors Approves New Corporate Governance and Disclosure Standards*" (the "August 23rd Memorandum"). These additional memoranda are available upon request or at our website: www.simpsonthacher.com.⁴

THE 302 CERTIFICATIONS

Statutory Background

Section 302 of the Act requires the SEC to adopt final rules requiring that CEOs and CFOs of issuers provide certifications in each periodic report filed or submitted under either Section 13(a) or 15(d) of the Exchange Act⁵ (the "302 Certifications"). Pursuant to Section 30 of the Investment Company Act of 1940, as amended, and the

⁴ We have also prepared additional memoranda on the Act and the New NYSE Standards, including "*Sarbanes-Oxley Act of 2002: CEO/CFO Certifications, Corporate Responsibility and Accounting Reform*," dated July 31, 2002; "*Sarbanes-Oxley Act of 2002: Supplemental Memorandum No. 1*," dated August 8, 2002; "*Sarbanes-Oxley Act of 2002 Supplemental Memorandum No. 2: The Insider Lending Provisions*," dated August 9, 2002; "*Sarbanes-Oxley Act of 2002 Supplemental Memorandum No. 3: Registered Investment Companies*," dated August 9, 2002; and "*Report of the New York Stock Exchange Corporate Accountability and Listing Standards Committee*," dated June 11, 2002. Additional copies of any of these memoranda are available upon request or at our website: www.simpsonthacher.com.

⁵ Section 13(a) of the Exchange Act requires every issuer of a security registered pursuant to Section 12 of the Exchange Act to file such annual and quarterly reports as prescribed by the SEC. Section 15(d) of the Exchange Act requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act of 1933 to file such periodic reports as may be required pursuant to Section 13 of the Exchange Act in respect of a security registered pursuant to Section 12 of the Exchange Act.

rules thereunder, registered investment companies satisfy their Exchange Act reporting requirements by filing annual and semi-annual reports on Form N-SAR.

The SEC has taken two actions to implement the requirements of Section 302 with respect to registered investment companies. First, the SEC has issued new final Investment Company Act Rule 30a-2, which sets forth the specifics of the Section 302 certification obligations for registered investment companies. Second, the SEC has issued proposed rules designed to implement the intent of Section 302 with respect to registered investment companies generally. The proposed rules would impose new reporting, control and certification requirements on all registered investment companies, not just those currently required to file reports under the Exchange Act.

Form N-SAR Certifications

New Investment Company Act Rule 30a-2 requires each Form N-SAR filed by a registered management investment company (most open-end and closed-end funds)⁶ after August 29, 2002 to include a 302 Certification. However, 302 Certifications in Form N-SARs filed for fiscal periods that ended *on or before August 29, 2002* are not required to include the statements regarding “disclosure controls and procedures” and “internal controls.” The statements are not required with respect to these periods because of concern that issuers would not have had sufficient time to comply with the newly issued procedural requirements. Each principal executive officer and principal financial officer of the investment company (or persons performing similar functions) at the time of filing must sign the 302 Certification included with the Form N-SAR.

⁶ Unit investment trusts, small business investment companies, business development companies and face-amount certificate companies are subject to different 302 Certification requirements. Unit investment trusts and small business investment companies are not required to provide shareholders with reports containing their financial statements, nor are they required to report financial information based on their financial statements on Form N-SAR. Therefore, the 302 Certification of a unit investment trust or a small business investment company is not required to include a statement that the financial information in the report and the financial statements on which it is based are a fair presentation of the company's results of operations. In addition, because a unit investment trust has no corporate management structure and hence will not have a principal executive officer or principal financial officer, the trust's 302 Certifications should be signed by personnel of the sponsor, trustee, depositor or custodian who perform functions similar to those of a principal executive officer and principal financial officer on behalf of the trust.

Business development companies and face-amount certificate companies file Forms 10-K and 10-Q and are therefore required to comply with the 302 Certification requirements applicable to those forms, which are discussed in detail in our September 6th Memorandum.

The 302 Certification must be in the exact form specified by the SEC. No wording changes will be permitted in the certification, no matter how inconsequential the change might seem. The certification may not be signed on behalf of the certifying officer pursuant to a power of attorney or other form of confirming authority.

Registered investment companies that are required to file reports under the Exchange Act are required 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*." The 302 Certification contains statements regarding the adequacy 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" encompass *all* information required to be disclosed in Exchange Act reports, while "internal controls" only address financial information reporting and assets. For further discussion of the requirements regarding "disclosure controls and procedures" and "internal controls," please refer to the discussion in our September 6th Memorandum under the caption "Preparing for the 302 Certification – Analysis of the Six 302 Certification Paragraphs."

The text of the required certification for Form N-SAR is set forth below:

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

1. I have reviewed this report on Form N-SAR 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 in order 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 information included in this report, and the financial statements on which the

financial information is based, 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 issuer as of, and for, the periods presented in the report;⁷

4. The 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) for the registrant and have:⁸
 - 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 fulfilling the equivalent function):

⁷ As noted above, the 302 Certification of a unit investment trust or small business investment company is not required to include this statement.

⁸ As noted above, the 302 Certification included in a Form N-SAR filed for a fiscal period ending on or before August 29, 2002 is not required to include the statements in paragraphs 4, 5 and 6, which relate to "disclosure controls and procedures" and "internal controls."

- 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]

In addition to the 302 Certifications, Form N-SAR must include the following information about the investment company's disclosure controls and procedures:

- the conclusions of the investment company's principal executive officer or officers and principal financial officer or officers about the effectiveness of the disclosure controls and procedures based on their evaluation of these controls and procedures as of a date within 90 days of the filing date of the Form N-SAR; and
- any significant changes in the investment company'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.

Analysis of the 302 Certifications

The 302 Certification for registered investment companies contains statements regarding the conduct of the certifying officer, the adequacy of the periodic report and the existence and quality of “disclosure controls and procedures” and “internal controls.” With certain exceptions discussed below, the certification statements for registered investment companies are identical to those required of other types of issuers. Our September 6th Memorandum contains a detailed analysis of and recommended compliance procedures for the certification statements for issuers other than registered investment companies under the caption “Preparing for the 302 Certification – Analysis of the Six 302 Certification Paragraphs.”⁹ 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. We set forth below an analysis of the elements of the 302 Certifications under new Rule 30a-2 that apply uniquely to investment companies.

Certification as to underlying financial statements and changes in net assets and cash flows: The signing officer is required to certify that, based on his or her knowledge, “the financial information included in the report, and the financial statements on which the financial information is based, 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 investment company as of, and for, the periods presented in the report.” (Emphasis added.) Form N-SAR does not contain an investment company's financial statements. However, the financial information contained in Form N-SAR is based on financial statements as of the same date contained in the investment company's annual and semi-annual reports to shareholders. As a result, Rule 30a-2 requires the signing officer to certify to the underlying financial statements as well as the financial information included in the Form N-SAR.

Rule 30a-2 also adds an explicit reference to changes in net assets and cash flows, although no such reference is included in Section 302 of the Act. The SEC believes that

⁹ The 302 Certifications for issuers other than registered investment companies can be found in new Exchange Act Rules 13a-14 and 15d-14.

it is consistent with Congressional intent to include this information within the concept of a “fair presentation” of an investment company's results of operations.

Establishing and maintaining “disclosure controls and procedures:” The definition of “disclosure controls and procedures” under Rule 30a-2 incorporates the same definition contained in new Exchange Act Rules 13a-14 and 15d-14. Our September 6th Memorandum contains a detailed discussion of the procedures a certifying officer should undertake to ensure he or she is adequately informed regarding the financial condition of an issuer. With respect to registered investment companies, however, the SEC has recognized that the disclosure controls and procedures for each fund in a series fund or family of funds may be the same. Therefore, a single evaluation of the effectiveness of disclosure controls and procedures for a series or family may be used in multiple certifications, as long as the evaluation has been performed within 90 days of the date of the Form N-SAR in which the certification is included. For fund complexes where there are multiple fiscal year ends, this requirement will likely require an ongoing evaluation. This process may also require more frequent meetings of the funds’ audit committees.

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 for 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.”

SEC’s Proposed Amendments

Summary

In addition to new Rule 30a-2 regarding 302 Certifications by registered investment companies that file reports under Section 13(a) or 15(d) of the Exchange Act, the SEC has also proposed rule amendments to implement the intent of Section 302 of

the Act with respect to all registered investment companies. The proposed amendments would:

- require registered management investment companies to file certified shareholder reports with the SEC on a new Form N-CSR. These certified shareholder reports would consist of a copy of any required shareholder report, information regarding the company's disclosure controls and procedures, and the certifications required by Section 302;
- require all registered investment companies¹⁰ to maintain, and regularly evaluate, disclosure controls and procedures designed to ensure that the information required in all its disclosure documents is collected, processed and disclosed on a timely basis; and
- uniformly apply to all registered investment companies,¹⁰ including those not currently required to file periodic reports under the Exchange Act, the requirement to include a certification of their principal executive and financial officers in their reports on Form N-SAR.

If the proposed amendments are adopted, the SEC intends to require compliance 30 days after their publication in the Federal Register. Comments on the proposed amendments should be received by the SEC by October 16, 2002. We would be pleased to assist in the preparation of comment letters.

Shareholder Reports and Form N-CSR

The SEC is proposing to amend Investment Company Act Rule 30b2-1, which currently requires a registered investment company to file copies of reports to shareholders with the SEC. The proposed amendment would require a registered management investment company to file new Form N-CSR, containing (1) a copy of any shareholder report required under Rule 30e-1 (annual and semi-annual reports), (2) additional information regarding officers' conclusions about and any changes made to disclosure controls and procedures (similar to that required in newly amended Form N-SAR), and (3) a 302 Certification in the form prescribed by the SEC (similar to the 302

¹⁰ As a result, unit investment trusts, small business investment companies and the few management investment companies that are not required to file Exchange Act reports would become subject to these requirements.

Certification required to be filed with Form N-SAR). A copy of proposed Form N-CSR is attached to this memorandum as Exhibit A.

The SEC has also proposed a new Rule 30d-1 that would designate both reports on Form N-SAR and reports on Form N-CSR as periodic reports filed under Section 13(a) or 15(d) of the Exchange Act. As a result, management investment companies would be required to file 302 Certifications with both reports. The SEC has requested comments as to whether both certifications should be required, and whether Form N-SAR should be designated exclusively as an Investment Company Act filing without a 302 Certification requirement.¹¹

In addition, while the Proposing Release does not indicate such an intent, it would appear that if Rule 30d-1 is adopted, Form N-CSR would be a periodic report containing financial statements filed under Section 13(a) or 15(d) of the Exchange Act, and would, therefore, be required to be accompanied by the certification required by Section 906 of the Act, which is currently not required for investment companies.¹²

Form N-CSR would not be required for shareholder reports that are not required under Rule 30e-1, such as voluntary quarterly reports. The proposed amendment to

¹¹ If the certification requirement is removed from Form N-SAR, unit investment trusts and small business investment companies would have no certification requirement. The SEC is also considering, and has requested comments on, whether Form N-SAR should continue to be an Exchange Act reporting form (which would therefore include a 302 Certification requirement) for unit investment trusts and small business investment companies.

¹² 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 (the “906 Certifications”). 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) or 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.

The SEC has indicated that it will not be adopting rules regarding the 906 Certifications because Section 906 is a criminal statute and is not a part of the securities laws. As discussed in more detail in our August 9th Memorandum, it appears that Section 906 does not currently apply to registered investment companies because although Form N-SAR contains financial information in items 72 through 75, Form N-SAR does not include financial statements. For more information regarding the 906 Certifications (including our recommended form of 906 Certification), please see our July 31st Memorandum, our August 8th Memorandum and our September 6th Memorandum.

Rule 30b2-1 would continue to require that such reports, if prepared, be filed with the SEC 10 days after they are sent to shareholders.

Form N-CSR would be signed by the investment company, and on behalf of the investment company by its principal executive officer or officers and its principal financial officer or officers. The signature requirement for Form N-CSR is in addition to the signature requirement for the 302 Certification contained within the form.

Scope of Proposed Certification Requirement

The proposed certification requirement of Form N-CSR would extend to all information included in the shareholder report, not just the financial statements or financial information contained therein. This would include information included in the report on a voluntary basis and not required by statute or rule, such as, for example, Management's Discussion of Fund Performance of an open-end investment company. It would also include other required information, such as the information about an investment company's directors that must be presented in the annual report to shareholders of a management investment company. The SEC has requested comments on the scope of the certification requirement. In particular, the SEC has asked whether Form N-CSR should be required to contain only a portion of the report to shareholders, such as the financial statements.

Disclosure Controls and Procedures

The SEC has proposed new Rule 30a-3, which would apply the requirement to maintain disclosure controls and procedures to all registered investment companies, and would extend this requirement to all filings made by investment companies under the Securities Act of 1933 and the Exchange Act, as well as the Investment Company Act. Rule 30a-3 would require an investment company, under the supervision of its principal executive officers and principal financial officers, to evaluate its disclosure controls and procedures within 90 days prior to the filing of reports requiring certification under Rule 30a-2 (i.e., Form N-SAR and Form N-CSR). This evaluation would form the basis for the 302 Certifications in Form N-SAR and Form N-CSR.¹³ In

¹³ The SEC states in the Proposing Release its belief that "it is important that investment companies maintain effective disclosure controls and procedures with respect to the information required in filings under the Securities Act and the Investment Company Act as well as with respect to Exchange Act filings." However, there is no specific certification requirement relating to reports on forms other than Form N-SAR and Form N-CSR.

light of the fact that registered investment companies typically rely on third-party service providers for accounting and financial reporting services, this evaluation will require careful scrutiny of the controls in place at those service providers.

The SEC has requested comments on the proposed extension of the disclosure controls and procedures requirements to all registered investment companies and to filings made under the Securities Act and the Investment Company Act.

Uniform Application of Certification Requirements

The SEC has proposed amending the instructions to Form N-SAR to require all registered investment companies to include a 302 Certification, regardless of whether they are subject to Section 13(a) or 15(d) of the Exchange Act.¹⁴ Proposed Form N-CSR would apply to all registered investment companies. The SEC states in the Proposing Release that it believes it is important that the certification requirements apply consistently to all registered investment companies. The SEC has requested comments on the proposed uniform application of the certification requirements.

ACCELERATED SECTION 16 REPORTING RULES

Section 16(a) of the Exchange Act provides that officers, directors and principal shareholders of a company with equity securities registered pursuant to Section 12 of the Exchange Act must report changes in their beneficial ownership of the company's equity securities on Form 4. Section 30(h) of the Investment Company Act subjects closed-end investment companies to Section 16(a) of the Exchange Act and expands the list of reporting persons to include the fund's investment adviser and the directors, certain officers and affiliates of the investment adviser.

The Act amended Section 16(a) of the Exchange Act effective August 29, 2002 to require Form 4 to be filed before the end of the second business day following the day on which the reportable transaction is executed (generally the trade date), except for cases in which the SEC determines that this reporting deadline is not feasible. Prior to this amendment, these reports were generally required to be filed by the 10th day after

¹⁴ As amended by the 302 Release, Form N-SAR requires the 302 Certification only if the investment company is filing the form under Section 13(a) or 15(d) of the Exchange Act.

the close of the calendar month during which the change occurred. The accelerated Form 4 filing requirement will place significant burdens on insiders to obtain accurate information quickly and prepare and file timely reports. For a typical broker transaction, a Form 4 will be due before the settlement date of the transaction and generally before the insider will have received a mailed confirmation from the broker. The SEC has adopted amended Section 16 rules and forms to implement the accelerated filing deadline effected by the Act and to establish two narrowly defined types of transactions for which the SEC determined that the two day period is not feasible.

Under the new rules, the two business day Form 4 filing due date is calculated differently for only two narrowly defined types of transactions, which are generally not applicable to registered investment companies. These two cases are the following transactions, with respect to which the SEC has determined that the two day period is not feasible and where objective criteria prevent the insider from controlling (and in some cases even knowing) the trade date:

- transactions pursuant to a contract, instruction or written plan¹⁵ that satisfies the affirmative defense conditions of Rule 10b5-1(c) where the insider does not select the date of execution; and
- “discretionary transactions” pursuant to employee benefit plans (which involve intra-plan transfers of previously invested assets into or out of a plan issuer securities fund or cash-outs from a plan issuer securities fund) where again the insider does not select the date of execution.

In these cases, the date on which the executing broker, dealer or plan administrator notifies the insider of execution of the transaction is deemed to be the “date of execution” for purposes of the two business day Form 4 filing requirement. If, however, the notification date is later than three business days following the trade date of the transaction, then the “date of execution” is deemed to be the third business day following the trade date.

With one exception, which is generally not applicable to registered investment companies, the amendment of Section 16(a) effected by the Act only accelerates the time for filing Form 4, but does not change any existing exemptions from Section 16 of the Exchange Act or existing provisions for annual reporting on Form 5 of most types of

¹⁵ Including limit orders and transactions pursuant to employee benefit plans.

transactions that the SEC has determined are exempt from the “short-swing” liability provisions of Section 16(b) of the Exchange Act. As a result, transactions previously exempt from Section 16(a) reporting (such as acquisitions through reinvestment of dividends under dividend reinvestment plans) continue to be so exempt and transactions that were previously permitted to be deferred and reported annually on Form 5 (such as gifts and certain small acquisitions not exceeding \$10,000 in the aggregate) continue to be permitted to be deferred. The one exception to the foregoing is that accelerated reporting is necessary for officers’ and directors’ transactions with the issuer exempted from Section 16(b) liability by Rule 16b-3 that were previously reportable on Form 5 (such as stock option grants). The new rules require these transactions now to be reported on Form 4 under the accelerated filing deadlines.

The Act also provides that by July 30, 2003:

- Section 16 reports must be filed electronically;
- the SEC must provide each Section 16 report on a publicly accessible Internet site not later than the end of the business day following a filing; and
- the issuer (if it maintains a website) must provide each Section 16 report on the website not later than the end of the business day following a filing.

To encourage and facilitate electronic filing of Forms 4 and other Section 16 reports, the SEC has announced that it will accept EDGAR filings of reports that are not presented in the standard box format and omit the horizontal and vertical lines separating information items, so long as all required information is presented in the proper order.

The SEC stated in the Section 16 Release and in the open meeting at which the new rules were approved that it is proceeding expeditiously with rulemaking and systems programming to assure adoption of mandatory electronic filing and SEC website presentation as soon as possible.

For further discussion of the accelerated Section 16 reporting rules, please refer to our August 29th Memorandum.

NEW NYSE STANDARDS

Closed-end funds that are listed on the NYSE will also have to comply with certain of the New NYSE Standards in the form eventually approved by the SEC after a public comment period. While closed-end investment companies will be exempt from many of the new requirements, they will be required to comply with the standards for audit committees, which are proposed to be enhanced or expanded as follows:

- director's fees are the only compensation an audit committee member may receive from the fund;
- audit committees must be given increased authority and responsibilities, including the sole authority to hire and fire independent auditors, and to approve any significant non-audit relationship with the independent auditors;
- audit committees must have written charters specifying certain minimum responsibilities; and
- each listed fund must have an internal audit function.

The NYSE's Corporate Accountability and Listing Standards Committee had initially recommended that the chair of an audit committee have accounting or related financial management expertise, and that owners of 20% or more of a company's common stock may not, even if they were otherwise found to be independent, chair or be a voting member of the audit committee. However, the New NYSE Standards do not reflect these recommendations in view of the express provisions in the Sarbanes-Oxley Act that at least one member of the audit committee, but not necessarily the chair, qualify as a "financial expert," and that a member of an audit committee may not, except in such director's capacity as a member of the board or any of its committees, be an "affiliated person" of the investment company or any of its subsidiaries.

For a detailed discussion of the proposed New NYSE Standards, please refer to our August 23rd Memorandum.

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If you have any questions regarding the Sarbanes-Oxley Act, the New NYSE Standards and their application to registered investment companies, 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) or David E. Wohl (dwohl@stblaw.com, 212-455-7937) of our firm.

SIMPSON THACHER & BARTLETT

EXHIBIT A:
FORM N-CSR

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 and Section 13(a) or 15(d) of the Securities Exchange Act of 1934, filed pursuant to Rule 30b2-1(a) under the Investment Company Act of 1940 (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 Investment Company Act of 1940 (17 CFR 270.30e-1).

B. Application of General Rules and Regulations.

The General Rules and Regulations under the Investment Company Act of 1940 and the Securities Exchange Act of 1934 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 Investment Company Act of 1940 and Rules 12b-11 (17 CFR 240.12b-11) and 12b-12 (17 CFR 240.12b-12) under the Securities Exchange Act of 1934. 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 Securities Exchange Act of 1934 (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.

No items of the Form shall be answered by incorporating any information by reference.

E. 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 Investment Company Act of 1940 (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 Investment Company Act of 1940 (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 Securities Exchange Act of 1934 (17 CFR 240.12b-11) and Rule 8b-11 under the Investment Company Act of 1940 (17 CFR 270.8b-11) concerning manual signatures and signatures pursuant to powers of attorney.

Item 1. Shareholder Reports.

Include a copy of the report transmitted to stockholders pursuant to Rule 30e-1 under the Investment Company Act of 1940 (17 CFR 270.30e-1).

Item 2. 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 Investment Company Act of 1940 (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.

SIGNATURES

[See General Instruction E]

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.

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 in order 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 issuer as of, and for, the periods presented in the report;

4. The 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) 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 fulfilling the equivalent function):

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]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. The required certification must be in the exact form set forth above.