actions, such as those above an oral reprimand, before the actions are taken to determine whether any of the factors of retaliation are present.

The factors of retaliation are as follows:

• Protected activity—Has the individual against whom the action is being taken engaged in a protected activity?

• Adverse action—Is an adverse employment action being proposed?

• Licensee or contractor knowledge of protected activity—Such knowledge can be attributed to other than the individual's direct supervisor.

• Relationship between the adverse action and the protected activity—Is there evidence that the adverse action is being proposed because of the protected activity?

Senior management review of such employment actions should ensure that programs or processes are being followed to ensure actions are well-founded and nonretaliatory. In addition, the review should ensure that the proposed action comports with normal practice within the limits allowed by the defined process and is consistent with actions taken previously. The review should assess whether the supervisor requesting the action exhibits any sign of unnecessary urgency. The employee's prior performance assessments and the proposed action should be consistent or inconsistencies should be justified and documented.

Finally, an assessment should be done to determine what, if any, effect the employment action may have on the SCWE. If management determines that the action, despite its legitimacy, could be perceived as retaliatory by the workforce, mitigating actions should be considered to minimize potential chilling effects on raising safety issues.

Such mitigating actions may include (1) the use of holding periods during which the proposed employment action is held in abeyance while further evaluations are completed; (2) communicating with the workforce about the action being taken, with appropriate consideration of privacy rights; (3) reiterating the SCWE policy; and (4) explaining the action to the affected employee(s) and clearly articulating the nonretaliatory basis for the action. After an employment action is taken, management should initiate a review of the facts and, if warranted, reconsider the action that was taken. If retaliation is alleged, the licensee should assure that the appropriate level of senior management is involved in efforts to minimize a potential chilling effect that the employment action may have on raising safety issues.

Definitions

Adverse action—An action initiated by the employer that detrimentally affects the employee's terms, conditions, or privileges of employment. Such actions include but are not limited to termination, demotion, denial of a promotion, lower performance appraisal, transfer to a less desirable job, and denial of access.

Alternative dispute resolution (ADR)—Refers to a number of processes, such as mediation and facilitated dialogues, that can be used to assist parties in resolving disputes.

Corrective action program (CAP)—A formal system for issues that may require remedial action that are raised by employees that tracks issues from their identification through evaluation and resolution. The issues are usually prioritized according to the relative safety significance.

Differing professional opinion (DPO)—A formal alternative process which provides an avenue of appeal for an employee to disagree with a position taken by management.

Employee concerns program (ECP)—An alternative process to line management and the CAP for employees to seek an impartial review of safety concerns. Many ECPs handle a variety of concerns and may act as brokers seeking resolution on behalf of the employees.

Hostile work environment—An intentional discriminatory work environment that is either pervasive and regular or acute but severe and detrimentally affects the employee because of protected activity.

Memorandum of understanding (MOU)—A written agreement which describes how organizations, offices, or agencies will cooperate on matters of mutual interest and responsibility.

Performance indicators (PI)—A series of predetermined measured items which usually provide managers with insight into what may be occurring within an organization and give an early sign of problems that, if acted upon, could relieve stress within an organization.

Protected activity—Includes initiating or testifying in an NRC or DOL proceeding regarding issues under the NRC's jurisdiction, documenting nuclear safety concerns, the internal or external expression of nuclear safety concerns, and refusing to engage in any practice made illegal under the Atomic Energy Act or the Energy Reorganization Act if the employee has identified the alleged illegality to the employer.

Safety conscious work environment (SCWE)—An environment in which employees are encouraged to raise safety concerns both to their own management and to the NRC without fear of retaliation.

Dated at Rockville, Maryland, this 7th day of October, 2004.

For the Nuclear Regulatory Commission.

Francis M. Costello,

Acting Chief, Operating Reactor Improvements, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Approval of Existing Information Collection: Rule 17a–8, SEC File No. 270–225, OMB Control No. 3235–0235.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension and approval of the existing collection of information discussed below.

Rule 17a–8 [17 CFR 270.17a–8] under the Investment Company Act of 1940 (the ''Act'') is entitled ''Mergers of affiliated companies.'' Rule 17a–8 exempts certain mergers and similar business combinations (''mergers'') of affiliated registered investment companies (''funds'') from section 17(a) prohibitions on purchases and sales between a fund and its affiliates. The rule requires fund directors to consider certain issues and to record their findings in board minutes. The rule requires the directors of any fund merging with an unregistered entity to approve procedures for the valuation of assets received from that entity. These procedures must provide for the preparation of a report by an independent evaluator that sets forth the fair value of each such asset for which market quotations are not readily available. The rule also requires a fund being acquired to obtain approval of the merger transaction by a majority of its outstanding voting securities, except in certain situations, and requires any surviving fund to preserve written records describing the merger and its

terms for six years after the merger (the first two in an easily accessible place).

The average annual burden of meeting the requirements of rule 17a–8 is estimated to be 7 hours for each fund. The Commission staff estimates that each year approximately 600 funds rely on the rule. The estimated total average annual burden for all respondents therefore is 4,200 hours.

This estimate represents an increase of 3,600 hours from the prior estimate of 600 hours. The increase results from an increase in the estimated average annual hour burden of meeting the requirements of 17a–8.

The average cost burden of preparing a report by an independent evaluator in a merger with an unregistered entity is estimated to be $15,000. The average net cost burden of obtaining approval of a merger transaction by a majority of a fund's outstanding voting securities is estimated to be $50,000. The Commission staff estimates that each year approximately 10 mergers with unregistered entities occur and approximately 15 funds hold shareholder votes that would not otherwise have held a shareholder vote to comply with state law. The total annual cost burden of meeting these requirements is estimated to be $900,000.

The estimates of average burden hours and average cost burdens are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study. 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.

General comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; or e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 8, 2004.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17f–4, SEC File No. 270–232, OMB Control No. 3235–0225.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension and approval of the collection of information discussed below.

Section 17(f) of the Investment Company Act of 1940 (the ''Act'') [1] permits registered management investment companies and their custodians to deposit the securities they own in a system for the central handling of securities (''securities depositories''), subject to rules adopted by the Securities and Exchange Commission (''Commission''). Rule 17f–4 under the Act specifies the conditions for the use of securities depositories by funds [2] and custodians.

The Commission adopted rule 17f–4 in 1978 to reflect the custody practice and commercial law of that time. In particular, the rule was designed to be compatible with the 1978 revisions to Article 8 of the Uniform Commercial Code (''UCC'') (''Prior Article 8'').[3] Custody practices have changed substantially since 1978, and the drafters of the UCC approved major amendments to Article 8 in 1994 to reflect these changes (''Revised Article 8'').[4] While Prior Article 8 reflected expectations that depository practice would involve registering investors' interests in securities on the issuer's own books, Revised Article 8 recognizes that under current practice, an investor usually maintains its securities through an account with a broker-dealer, bank or other financial institution (''securities intermediary'').[5] Revised Article 8 has significantly clarified the legal rights and duties that apply in indirect holding arrangements, and every State has enacted Revised Article 8 into law.

On February 13, 2003, the Commission adopted amendments to reflect the recent changes in custody practices and commercial law.[6] The amendments updated and simplified the rule, and substantially eased rule 17f–4's reporting, recordkeeping, and other compliance requirements. Most prominently, the amended rule eliminated the confirmation, segregation, and earmarking requirements.[7] In place of these detailed requirements, amended rule 17f–4 required funds to modify their contracts with their custodians or securities depositories to add two provisions. First, a fund's custodian must be obligated, at a minimum, to exercise due care in accordance with reasonable commercial standards in discharging its duty as a ''securities intermediary'' to obtain and thereafter maintain financial assets.[8] Second, the custodian must provide, promptly upon request by the fund, such reports as are available about the internal accounting controls and financial strength of the custodian.[9]

The Commission staff estimates that 4,866 respondents (including 4,711 active registered investment companies, 130 custodians, and 25 possible securities depositories) are subject to the requirements in rule 17f–4. The rule is

[1] 15 U.S.C. 80a.

[2] As amended in 2003, rule 17f–4 permits any registered investment company, including a unit investment trust or a face-amount certificate company, to use a security depository. *See* Custody of Investment Company Assets With a Securities Depository, Investment Company Act Release No. 25934 (Feb. 13, 2003) [68 FR 8438 (Feb. 20, 2003)]. The term ''fund'' is used in this Notice to mean all registered investment companies.

[3] Article 8 of the UCC governs the ownership and transfer of investment securities. *See* Uniform Commercial Code, 1978 Official Text with Comments, Article 8, Investment Securities (West 1978) (''Prior Article 8''); Use of Depository Systems by Registered Management Companies, Investment Company Act Release No. 10053 (Dec. 8, 1977) [42 FR 63722 (Dec. 19, 1977)] at nn. 4–7, 9, 12 and accompany text (citing provisions of Prior Article 8).

[4] *See* Uniform Commercial Code, Revised Article 8—Investment Securities (With conforming and Miscellaneous Amendments to Articles 1, 4, 5, 9, and 10) (1994 Official Text with Comments) (''Revised Article 8''), Prefatory Note at I.B., C., and D.

[5] Revised Article 8, *supra* note 3, section 8–102(a)(14) and Prefatory Note at III.A. (defining a ''securities intermediary'').

[6] *See supra* note 2.

[7] Previously, the custodian was required to send the fund a written confirmation of each transfer of securities to or from the fund's account with the custodian (the ''confirmation requirement''). The custodian also had to maintain the fund's securities in a depository account for the custodian's customers that is separate from the depository account for the custodian's own securities (the ''segregation requirement'') and had to identify on the custodian's records a portion of the total customer securities as attributed to the fund (the ''earmarking requirement''). Revised Article 8 made these custodial compliance requirements unnecessary to protect fund assets.

[8] Rule 17f–4(a)(1). This provision simply incorporates into the rule the standard of care provided for by section 504(c) of Revised Article 8 when the parties have not agreed to a standard.

[9] If a fund deals directly with a depository, similar requirements apply to the depository.