

**Significant IM Developments during Chairman Levitt's Tenure  
As of December 15, 2000**

**1993**

Under congressional direction to adopt rules to protect the domestic public utility subsidiaries of registered holding companies and their consumers from the risk of new ventures in exempt wholesale generators (EWGs) or foreign utility companies (FUCOs), the Commission, in 1993, adopted rules 53, 54 and 57 under the Public Utility Holding Company Act of 1935. Rule 53 creates a partial safe harbor with respect to the issue and sale of a security by a registered holding company to finance the acquisition of an EWG, or the guaranty by the parent of the securities of an EWG. Rule 54 provides that, in determining whether to approve the issue or sale of a security by a registered holding company for purposes other than the acquisition of an EWG or a FUCO, or other transactions by such registered holding company or its subsidiaries other than with respect to EWGs or FUCOs, the Commission will not consider the effect of the capitalization or earnings of any EWG or FUCO subsidiary on a registered system if the conditions of the safe harbor under rule 53 are satisfied.

**1994**

The Division prepared a detailed report of the personal investment activities of fund managers associated with thirty fund complexes, and conducted an analysis of the regulatory scheme that governs the investment activities of fund personnel generally. The report describes the Division's findings and contains recommendations designed to enhance the oversight of the personal investment activities of fund personnel and improve ethical standards throughout the fund industry (September 1994).

1994 saw the Commission phase-in and modernization EDGAR: (i) Commission adopts final EDGAR rules and phase-in schedules (Release 33-7122, December 19, 1994); (ii) Commission adopts rule to make mandatory the electronic filing of Form 13F reports (Release 34-40934 (January 12, 1999)(compliance date April 1, 1999); (iii) Commission adopts rules for the first stage of EDGAR modernization, allowing filers to submit most official filings in a restricted HTML format and unofficial copies of official filings in PDF format (Release 33-7684, May 17, 1999, effective June 28, 1999); and (iv) Commission adopts rules for next stage of EDGAR modernization, allowing the use of more HTML features (including graphics and expanded use of hyperlinks) and submission of filings via the Internet (Release 33-7855, April 24, 2000, (primary effective date May 30, 2000).

**1995**

The Commission by order permitted arrangements in which a mutual fund operates as a fund of funds by investing in other mutual funds in the same fund group.

T. Rowe Price Spectrum Fund, Inc., et al., Investment Company Act Release Nos. 21371 (Sept. 22, 1995) (notice) and 21425 (Oct. 18, 1995) (order); Vanguard STAR Fund, et al., Investment Company Act Release Nos. 21372 (Sept. 22, 1995) (notice) and 21426 (Oct. 18, 1995) (order). These and similar orders were codified in the amendments to the Investment Company Act made by the National Securities Markets Improvement Act of 1996 or NSMIA. Pursuant to specific authority granted by NSMIA, the Commission also by order permitted a fund of funds arrangement involving investment companies in different fund groups. Schwab Capital Trust, et al., Investment Company Act Release Nos. 24067 (Oct. 1, 1999) (notice) and 24113 (Oct. 27, 1999) (order).

The Commission permitted mutual funds that use a "multi-manager" structure in which the primary adviser selects and oversees subadvisers to enter into and materially amend subadvisory agreements without shareholder approval. Frank Russell Investment Company, et al., Investment Company Act Release Nos. 21108 (June 2, 1995) (notice) and 21169 (June 28, 1995) (order).

✓ Rulemaking Permitting the Imposition of Contingent Deferred Sales Loads (Feb. 23, 1995): Adopting rule 6c-10 under the Investment Company Act to permit the imposition of contingent deferred sales loads by open-end management investment companies.

✓ Rulemaking Permitting Investment Companies to Issue Multiple Classes of Shares (Feb. 23, 1995): Adopting rule 18f-3 under the Investment Company Act, which permits funds to issue multiple classes of shares without an exemptive order and sets forth requirements with respect to multi-class funds. Adopting corresponding amendments related to multiple classes to rule 12b-1. Adopting disclosure requirements applicable to multiple class and master-feeder funds.

In June 1995, the Division issued a report, *The Regulation of Public Utility Holding Companies*, which describes the results of the staff's study of the regulatory framework of the Public Utility Holding Company Act in light of recent developments in the gas and electric utility industry. The primary recommendation of the report is that Congress repeal the Public Utility Holding Company Act conditioned upon the enactment of provisions: (i) to ensure state regulators and the Federal Energy Regulatory Commission access to books and records of companies in multi-state, public utility systems; and (ii) provide for federal audit authority and oversight of affiliate transactions. The report also includes legislative and administrative proposals intended to update and streamline the regulatory structure governing public utility holding companies.

In June of 1995, the Commission amended rule 52 under the Public Utility Holding Company Act, which exempts certain financing transactions involving the securities of the public utility subsidiaries of a registered public utility holding company from the requirement of prior Commission approval under the Public Utility Holding Company Act. As amended, the rule exempts certain additional types of securities, and exempts the issuance and sale of certain types of securities of nonutility subsidiaries of a

registered holding company in connection with routine financing transactions. The Commission also amended rule 45(b)(4) under the Public Utility Holding Company Act to exempt from the requirement of prior Commission authorization under section 12(b) of the Act and rule 45(a) all capital contributions and open account advances by a parent company to its subsidiary company. These amendments were adopted with the intent to eliminate unnecessary regulatory and paperwork burdens associated with seeking Commission approval for routine financings by registered holding companies and their subsidiary companies.

## 1996

In 1996, NSMIA was passed and the Commission promulgated implementing rules, including initial rulemaking under 203A of the Investment Advisers Act, but also the later provision for multi-state advisers, whereby certain smaller advisers are required to register with the states, rather than the Commission.

✓ Rulemaking Regarding Use of Investment Company Assets to Pay for Distribution of Fund Shares (Sept. 9, 1996): Adopting a technical amendment to rule 12b-1 under the Investment Company Act to provide that a plan to use fund assets to pay for the distribution of fund shares adopted prior to a fund's initial public offering does not have to be approved by fund shareholders.

✓ Rulemaking Regarding Money Market Funds (Mar. 21, 1996): Amending rule 2a-7 under the Investment Company Act to tighten the risk-limiting conditions of the rule applicable to tax exempt money market funds and thereby reduce the likelihood that a tax exempt fund would not be able to maintain a stable net asset value. Adopting rule 17a-9 under the Investment Company Act to permit a fund affiliate, without an exemptive order, to purchase from the fund securities that are no longer eligible securities. Amending prospectus disclosure requirements for tax-exempt money market funds. Publishing three new or revised staff guides to Forms N-1A and N-3.

## 1997

The Commission issued numerous orders permitting funds organized as open-end investment companies and unit investment trusts to operate as exchange traded funds or ETFs. For example, the Commission permitted the introduction of an ETF that tracks the performance of the Dow Jones Industrial Average. Diamonds Trust, et al., Investment Company Act Release Nos. 22927 (Dec. 5, 1997) (notice) and 22979 (Dec. 30, 1997) (order).

✓ Rulemaking Regarding Privately Offered Investment Companies (Apr. 3, 1997): Adopting rules to implement provisions of the National Securities Markets Improvement Act of 1996 related to private investment companies. The rules define certain terms for purposes of the new exclusion from regulation under the Investment Company Act for private investment companies whose investors are qualified

purchasers, address transition issues relating to existing private investment companies with 100 or fewer investors, and address other issues with respect to private investment companies.

In 1997 the Commission adopted rule 58 under the Public Utility Holding Company Act to permit registered holding companies, without the need of an application, to invest up to the greater of 15 percent of consolidated capitalization or \$50 million in certain energy-related companies that were previously found to be functionally related to the business of registered public utility systems. The rule identifies several energy-related businesses, including energy management services, the development of energy conservation and storage technologies, and the production and sale of thermal energy products. Rule 58 codifies prior orders and permits investment of a type that the Commission, in previous instances, has found to satisfy the standards of the Public Utility Holding Company Act. Rule 58 thus reduces regulatory burdens and delays. Conforming amendments were made to rules 45 and 52.

## **1998**

The Commission by order permitted a new type of fund that operates as an open-end interval fund that redeems its shares at monthly intervals rather than daily. Emerging Markets Growth Fund, Inc., Investment Company Act Release Nos. 23433 (Sept. 11, 1998) (notice) and 23481 (Oct. 7, 1998) (order).

The Commission adopted amendments to Form N-1A, the form used by mutual funds to register under the Investment Company Act and to offer their shares under the Securities Act of 1933. The amendments improved fund prospectus disclosure and promoted more effective communication of information about funds to investors. The amendments focused the disclosure in a fund's prospectus on essential information about the fund that assisted investors in deciding whether to invest in the fund. The amendments also minimized prospectus disclosure about technical, legal, and operational matters that generally are common to all funds (March 1998).

The Commission adopted Rule 498 that permits a mutual fund to offer investors a new disclosure document called a "profile," which summarizes key information about the fund, including the fund's investment strategies, risks, performance, and fees, in a concise, standardized format. A fund that offers a profile will be able to give investors a choice of the amount of information that they wish to consider before making a decision about investing in the fund; investors will have the option of purchasing the fund's shares after reviewing the information in the profile or after requesting and reviewing the fund's prospectus (and other information). An investor deciding to purchase fund shares based on the information in a profile will receive the fund's prospectus with the confirmation of purchase (March 1998).

## **1999**

### **Rulemaking Permitting Householding of Investment Company Disclosure Documents**

✓ (Nov. 4, 1999): Adopting rules to permit, under certain circumstances, the delivery of one prospectus or shareholder report to consenting investors who share an address.

### **Rulemaking Regarding Personal Investment Activities of Investment Company Personnel**

✓ (Aug. 20, 1999): Adopting amendments to rule 17j-1 under the Investment Company Act to improve the regulation of personal investment activities of investment company personnel by (i) requiring that a fund's board, including a majority of its independent directors, approve the fund's code and the code of any adviser or principal underwriter to the fund, and (ii) enhancing fund management's ability to monitor compliance with the rule. Companion amendments to disclosure forms under the Securities Act of 1933 and the Investment Company Act made information about funds' 17j-1 policies and codes available to the public.

The Commission unveiled the "Mutual Fund Cost Calculator," an Internet-based tool developed by the Commission that enables investors to easily estimate and compare fund costs and assess their impact (April 1999).

✓ The Commission proposed amendments to our rules and forms to improve the disclosure that investment companies provide about their directors. These proposed amendments are designed to enhance the independence and effectiveness of boards of directors of investment companies and to better enable investors to assess the independence of directors. The Commission also proposed amendments to certain exemptive rules under the Investment Company Act to require that, for investment companies that rely on those rules: independent directors constitute at least a majority of their board of directors; independent directors select and nominate other independent directors; and any legal counsel for the independent directors be an independent legal counsel (April 1999).

In 1999, the Commission issued a concept release seeking comments on various issues surrounding the acquisition of United States utilities by foreign companies that will register as holding companies following the transactions. The Commission sought comments on issues arising under the Public Utility Holding Company Act of 1935 with respect to foreign acquisitions of United States utilities.

## **2000**

The Commission approved the creation of the IARD – the Investment Adviser Registration Depository – to allow for the electronic filing for investment advisers, as well as amendments to Form ADV.

The Division of Investment Management conducted a study of mutual fund fees and expenses and prepared a report that describes trends in mutual fund fees between 1979 and 1999, identifies some of the major factors that influence the amount of fees charged,

and recommends future actions by the Commission in the areas of disclosure, mutual fund governance, and investor education. (The study has not been released yet, but is pending before the Commission.)

✓ Rulemaking Related to Investment Company Governance Rulemaking: Adopting and amending various rules and forms under the Investment Company Act in order to: (i) impose, as condition for certain kinds of exemptive relief, that a majority of a fund's directors be independent, that the independent directors nominate other independent directors, and that any legal counsel to the independent directors be independent; (ii) exempt funds with independent audit committees from the requirement that shareholders ratify the selection of a fund's independent public accountant; (iii) prohibit joint liability insurance policies from excluding coverage for lawsuits between a fund's independent directors and its adviser; (iv) provide a conditional exemption from disqualification as an independent director for an individual holding shares of an index fund investing in the fund's investment adviser, underwriter, or their controlling persons; and (v) enhance disclosure to investors about fund directors (pending before the Commission).

✓ Rulemaking Implementing Privacy Requirements Imposed by Gramm-Leach-Bliley Act (Regulation S-P) – June 22, 2000: Adopting rules to implement the privacy requirements of the Gramm-Leach-Bliley Act. The rules implement notice requirements and place restrictions on financial institutions' ability to disclose non-public personal information about their consumers and customers. Regulation S-P applies to registered investment companies, investment advisers, and broker-dealers. This rulemaking was developed in coordination with representatives of other offices within the Commission and other federal agencies.

The Commission proposed rule and form amendments under the Securities Act and the Investment Company Act to improve disclosure to investors of the effect of taxes on the performance of open-end investment companies. Under the proposed amendments, mutual funds would be required to disclose after-tax returns based on standardized formulas comparable to the formula currently used to calculate before-tax average annual total returns. The proposals also would require funds that include after-tax returns in advertisements and other sales materials to include standardized after-tax returns (March 2000).

The Commission adopted, as an interim final rule, Rule 160 under the Securities Act to exempt from the consumer consent requirements of the Electronic Signatures in Global and National Commerce Act ("Electronic Signatures Act") prospectuses of registered investment companies that are used for the sole purpose of permitting supplemental sales literature to be provided to prospective investors. Consistent with Commission interpretations of existing law, the rule permits a registered investment company to provide its prospectus and supplemental sales literature on its web site or by other electronic means without first obtaining investor consent to the electronic format of the

prospectus. The Commission also clarified its interpretation on the responsibility of registered investment companies for hyperlinks to third-party web sites from their advertisements or sales literature (July 2000).