

The MONITOR

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Archives:

SEC

NASD

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Miscellaneous

Text of Sarbanes-Oxley Bill. See http://www.senate.gov/flbanking/pss/acctfrm/conf_rpt.pdf.

Proposed Rule: Custody of Funds or Securities of Clients by Investment Advisers. See <http://www.sec.gov/rules/proposed/ia-2044.htm>.

Final Rule: Investment Company Mergers. See <http://www.sec.gov/rules/final/ic-25666.htm>.

SEC Proposes Changes in Investment Adviser Custody Rules; Adopts Changes in Fund Merger Regulations; Proposes Exemptions for Standardized Options; Adopts Changes to Privacy Act Systems of Records. See <http://www.sec.gov/news/press/2002-107.htm>

NASD has prepared a template for an Anti Money Laundering (AML) Program that small firms can use in preparing their AML program required by the USA PATRIOT

Act. The template is available at http://www.nasdr.com/aml_template.asp.

Proposed Rule: Customer Identification Programs for Mutual Funds. See <http://www.sec.gov/rules/proposed/ic-25657.htm>

Proposed Rule: Customer Identification Programs for Broker-Dealers. See <http://www.sec.gov/rules/proposed/34-46192.htm>

Keynote Address by Lori Richards, SEC Staff: Furthering Good Compliance: Current Areas of Focus in SEC Examinations. See <http://www.sec.gov/news/speech/spch548.htm>.

Speech by SEC Staff: Money Laundering: Life After the Patriot Act by Lori Richards. See <http://www.sec.gov/news/speech/spch555.htm>.

SEC Staff Reviewing "B" Filings — *Keith J. Rudolf*

Investment companies file with the SEC post-effective amendments ("PEAs") to their registration statements, including changes to their prospectuses and statements of additional information, under rule 485 under the Securities Act of 1933. PEAs that make material changes, such as adding a new series, are filed under paragraph (a) of rule 485. Changes in a fund's registration statement made in these "A" filings become effective only after a period of 60-75 days, or even longer in some cases, allowing time for the staff to review the proposed changes, comment on them, and request changes in or additions to the disclosures. The staff usually has at least some comments on disclosure issues, and these sometimes can be controversial.

PEAs that make only non-material changes are filed under paragraph (b) of Rule 485, and become effective immediately upon filing. Every fund makes at least one annual "B" filing, within 120 days after the end of its fiscal year, to update its financial statements and performance information. Many funds make other "B" filings over the course of the year to reflect other non-material changes in their prospectuses or statements of additional information.



Those killer B's

PEAs filed under paragraph (b) of rule 485 are limited to certain kinds of routine changes described in the rule, and other changes the fund's counsel certifies are "non-material" and, accordingly, are not normally reviewed at all by the SEC staff. The SEC can punish abuse by prohibiting a fund from making further filings under paragraph (b) of rule 485, requiring that all PEAs be "A" filings.

In a surprising development, the SEC staff now is reviewing and commenting on at least some funds' annual update "B" filings, requesting changes in the funds' prospectuses, even though they're already in print and have been distributed to shareholders. In the case of which we're aware, the fund hadn't made an "A" filing in several years and, while there had been

no major changes in the fund's operations or its prospectus language over the period, some of the prospectus disclosures were no longer up to date with the SEC staff's views, which had changed over time.¹

As surprising as it may be to receive staff comments on a "B" filing, the good news is that, in the case of which we're aware, the SEC staff didn't require the fund immediately to file another PEA and reprint its prospectus. Instead, although the staff did request a prompt response showing how the fund intended to change its prospectus disclosures, the staff agreed the fund could defer actually incorporating the changes in its prospectus until there was some other reason to re-print the prospectus—most likely in connection with the fund's next regular annual update PEA.

¹ Fund complexes that add new funds or make other material changes in their prospectuses will have their disclosures periodically reviewed by the staff in an "A" filing. Even though the staff's comments will be limited just to the issues involving the new fund described in the "A" filing, those comments often relate to disclosure questions that are common to other funds in the complex, and the fund complex can update the prospectuses of those other funds to reflect the staff's current views in a later "B" filing.