

jurisdiction of courts in the United States in the absence of the Executing Firm's consent. Accordingly, neither the courts of the United States nor the Commission's reparations program may be available as a forum for resolution of any disagreements you may have with the Executing Firm, and your recourse may be limited to actions outside the United States.

- Unless you object within five (5) days, by giving notice as provided in your customer agreement after receipt of this disclosure, [FCM] will assume your consent to the aforementioned conditions.

(c) *Exemption for foreign futures and options brokers.* Any person not located in the United States, its territories or possessions, who is otherwise required in accordance with this part to be registered with the Commission as a futures commission merchant or as an introducing broker will be exempt from such registration, notwithstanding that such person accepts orders for foreign futures and foreign options transactions from authorized customers of a registered futures commission merchant that meets the requirements of paragraph (b)(1) of this section, provided, that:

(1) The orders are executed for or on behalf of the foreign futures and options customer omnibus account of a registered futures commission merchant;

(2) The person does not solicit or accept any money, securities or property (or extend credit in lieu thereof) directly from any U.S. foreign futures and options customer to margin, guarantee or secure any trades or contracts that result or may result therefrom; and

(3) The person is a foreign futures and options broker, as defined by § 30.1(e).

(d) *Exemption for foreign futures and options brokers carrying a foreign futures and options customer omnibus account.* Any person not located in the United States, its territories or possessions, who is otherwise required in accordance with this part to be registered with the Commission as a futures commission merchant will be exempt from such registration, notwithstanding that such person:

(1) Carries the foreign futures and options customer omnibus account of a futures commission merchant that meets the requirements of paragraph (b)(1) of this section;

(2) Accepts orders for foreign futures and foreign options transactions from authorized customers for the execution of the trades for or on behalf of the foreign futures and options customer omnibus account of a registered futures commission merchant either directly or pursuant to a give-up arrangement; and

(3) The person is a foreign futures and options broker, as defined by § 30.1(e).

Dated: July 27, 2000.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00-19444 Filed 8-1-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 231, and 271

[Release Nos. 33-7877; IC-24582; File No. S7-14-00]

RIN 3235-AH93

Exemption From Section 101(c)(1) of the Electronic Signatures in Global and National Commerce Act for Registered Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Interim final rule with request for comments.

SUMMARY: The Securities and Exchange Commission is adopting, as an interim final rule, rule 160 under the Securities Act of 1933 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 is clarifying its interpretation on the responsibility of registered investment companies for hyperlinks to third-party web sites from their advertisements or sales literature.

DATES: *Effective Date:* October 1, 2000, except for the amendments to parts 231 and 271, which are effective July 27, 2000.

Comment Date: We are publishing interim final regulations, rather than a notice of proposed rulemaking, for the reasons given below in the section entitled "Waiver of Proposed Rulemaking and Request for Comments." We will, however, consider any comments received on or before September 1, 2000, and will revise rule 160 if necessary.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G.

Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549-0609.

Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-14-00; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. 20549-0102. Electronically submitted comment letters will be posted on the Commission's Internet site (<http://www.sec.gov>).¹

FOR FURTHER INFORMATION CONTACT:

Maura S. McNulty, Senior Counsel, or Kimberly Dopkin Rasevic, Assistant Director, (202) 942-0721, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549-0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting rule 160 [17 CFR 230.160] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act") as an interim final rule pursuant to Section 104(d)(2) of the Electronic Signatures Act.

I. Exemption from Consumer Consent Requirements of the Electronic Signatures Act

A. Discussion

We are adopting, as an interim final rule, rule 160 under the Securities Act to exempt from the consumer consent requirements of the Electronic Signatures Act prospectuses of registered investment companies ("funds") that are used for the sole purpose of permitting supplemental sales literature to be provided to prospective investors. The rule implements Section 104(d)(2) of the Electronic Signatures Act, which directs the Commission to provide this exemption within 30 days after the date of enactment.² Rule 160, consistent with Commission interpretations of existing law, permits a fund to provide its prospectus and supplemental sales literature on its web site or by other electronic means without first obtaining

¹ We do not edit personal, identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

² Electronic Signatures in Global and National Commerce Act, Pub. L. 106-229, § 104(d)(2).

an investor's consent to the electronic format of the prospectus.³

The Electronic Signatures Act

On June 30, 2000, President Clinton signed the Electronic Signatures Act into law. The Electronic Signatures Act is designed to facilitate the use of electronic records and signatures in interstate or foreign commerce.⁴ Among other things, the Act provides that if a statute or regulation requires that information relating to a transaction in interstate commerce be provided to a consumer in writing, the use of an electronic record to provide the information satisfies the "writing" requirement if the consumer consent requirements of the Electronic Signatures Act are met.⁵

Section 104(d)(2) of the Electronic Signatures Act directs the Commission to issue a regulation or order, within 30 days after the date of enactment, exempting from the Act's consumer consent requirements "any records that are required to be provided in order to allow advertising, sales literature, or other information concerning a security issued by [a registered] investment company * * * to be excluded from the definition of a prospectus under section 2(a)(10)(A) of the Securities Act * * *." The purpose of this exemption is "to clarify that documents, such as sales literature, that appear on the same [w]eb site as, or which are hyperlinked to, the final prospectus required to be delivered under the federal securities laws, can continue to be accessed on a [w]eb site as they are today under [Commission] guidance for electronic delivery."⁶

Section 5(b)(1) and Section 2(a)(10)(a) of the Securities Act

Section 5(b)(1) of the Securities Act prohibits the use of interstate commerce to transmit any "prospectus" relating to a security with respect to which a registration statement has been filed unless the prospectus meets the requirements of Section 10 of the Securities Act.⁷ "Prospectus" is broadly defined in Section 2(a)(10) of the Securities Act to include any advertisement or communication, "written or by radio or television, which offers any security for sale."⁸ Because

the term "offer" is defined and interpreted broadly under the Securities Act, written or broadcast communications that relate to a security or that aid in the selling effort with respect to a security generally must be in the form of a Section 10 prospectus to comply with Section 5(b)(1).⁹

There is a limited exception to the general requirement that written or broadcast offers after the filing of a registration statement must be in the form of a Section 10 prospectus. So-called "supplemental sales literature" may be used after the effective date of a registration statement if it is preceded or accompanied by a prospectus that meets the requirements of Section 10(a) of the Securities Act ("statutory prospectus").¹⁰ Many investment companies, particularly mutual funds, continuously offer and sell their shares, and are continuously subject to the restrictions on communications imposed by Section 5(b)(1).¹¹ As a result, investment companies frequently rely on the "supplemental sales literature" exception.

Rule 160

Commission interpretations of existing law permit a fund to provide its supplemental sales literature on its web site or by other electronic means without first obtaining an investor's consent to receive in electronic form the statutory prospectus that is required to precede or accompany the supplemental sales literature.¹² Rule 160 would clarify that a fund may continue this practice after the effective date of the Electronic Signatures Act. Specifically, the rule would provide that a prospectus for an investment company registered under the Investment Company Act of 1940 that is sent or given for the sole purpose of permitting a communication not to be deemed a prospectus under Section 2(a)(10)(a) of the Securities Act is exempt from the consumer consent requirements of the Electronic Signatures Act. We remind funds, however, that we do not consider supplemental sales literature that is

electronically delivered to have been preceded or accompanied by an electronic statutory prospectus unless investors are provided with reasonably comparable access to both the prospectus and the supplemental sales literature.¹³

The exemption provided by rule 160 is not available when a fund prospectus is provided to an investor for a purpose other than, or in addition to, permitting the fund's supplemental sales literature not to be deemed a prospectus under Section 2(a)(10)(a) of the Securities Act. For example, if an investor who views a fund's prospectus and supplemental sales literature on its web site subsequently purchases shares of the fund, rule 160 will not apply to the delivery of the prospectus that is required in connection with the purchase.¹⁴

Today we express no view regarding how the Electronic Signatures Act affects the federal securities laws. We are continuing to consider the implications of the Electronic Signatures Act on securities transactions.

B. Procedural Matters

Waiver of Proposed Rulemaking and Request for Comments

Under the Administrative Procedure Act ("APA"), the Commission may issue a final rule without prior notice and comment upon a finding of good cause.¹⁵ We find that good cause exists for dispensing with the normal notice and comment requirements of the APA in connection with interim final rule 160.

Congress directed the Commission to issue, within 30 days after the date of enactment of the Electronic Signatures Act, a rule exempting from the consumer consent requirements of the Act fund prospectuses that are used for the purpose of permitting sales literature to be provided to prospective investors. It is impracticable for the Commission to comply with the normal notice and comment requirements within the mandated 30-day period. In making the determination that good cause exists for waiving notice and comment, we also note that rule 160 will make no changes to Commission

³ See Securities Act Release No. 7856 (April 28, 2000) [65 FR 25843 (May 4, 2000)], at 25847 (the "2000 Release"); Securities Act Release No. 7233 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)], at 53463 and 53465, Ex. 14, Ex. 15, Ex. 34, and Ex. 35.

⁴ Electronic Signatures Act preamble.

⁵ Electronic Signatures Act § 101(c)(1).

⁶ See 146 Cong. Rec. H4359 (daily ed. June 14, 2000) (statement of Rep. Dingell).

⁷ 15 U.S.C. 77e(b)(1).

⁸ 15 U.S.C. 77b(a)(10).

⁹ Section 2(a)(3) of the Securities Act defines the term "offer" to include "every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value." 15 U.S.C. 77b(a)(3).

¹⁰ Under Section 2(a)(10)(a) of the Securities Act, supplemental sales literature that is preceded or accompanied by a prospectus meeting the requirements of Section 10(a) is not considered to be a prospectus and therefore is not subject to Section 5(b)(1) of the Securities Act.

¹¹ 15 U.S.C. 77e(b)(1). A "mutual fund" is a managed open-end investment company that issues redeemable securities. Section 5(a)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-5(a)(1).

¹² See 2000 Release, *supra* note 3.

¹³ See 2000 Release, *supra* note 3, at 25846, n. 34.

¹⁴ See, e.g., Section 5(b)(2) of the Securities Act, 15 U.S.C. 77e(b)(2) (statutory prospectus must precede or accompany securities delivered by mail or in interstate commerce).

¹⁵ Under section 553(b)(3)(B) of the APA, the Commission may dispense with prior notice and comment when it finds, for good cause, that such notice and public comment are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B).

interpretations of existing law or industry practice. Thus, the Commission finds that the Congressional directive and the absence of any negative effect of the rule on any interested parties render observation of the normal notice and comment requirements under the APA impracticable and unnecessary.

Rule 160 will be effective October 1, 2000, the effective date for the consumer consent requirements of the Electronic Signatures Act. Although the Commission has dispensed with prior notice of proposed rulemaking, the Commission is interested in receiving written comments on the rule within 30 days after its publication in the **Federal Register**. The Commission will consider those comments and make changes to the rule if necessary.

Paperwork Reduction Act

This interim final rule does not contain a collection of information.

Cost/Benefit Analysis

The Commission is sensitive to the costs imposed by its rules. We anticipate that rule 160 will not impose any new regulatory costs on funds, since the rule would provide an exemption from the consumer consent requirements of the Electronic Signatures Act. Moreover, because the rule makes no changes to Commission interpretations of existing law or industry practice, it should not produce any new costs. However, we request that commenters address the costs and benefits of the rule, and provide supporting empirical data for any positions advanced.

Consideration of Burden on Promotion of Efficiency, Competition, and Capital Formation

Rule 160 is being issued as an interim final rule. In accordance with its responsibilities under Section 2(b) of the Securities Act, the Commission, in determining whether rule 160 is consistent with the public interest, has considered, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.¹⁶ Because the rule makes no changes to prior Commission interpretations of existing law or industry practice, it should not affect efficiency, competition, or capital formation. The Commission is, however, interested in receiving any comments

regarding rule 160's impact on efficiency, competition, and capital formation. We will consider those comments in making any changes to the rule if necessary. Likewise, for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,¹⁷ the Commission is interested in receiving information regarding the potential effect of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that rule 160 will not have a significant economic impact on a substantial number of small entities. Rule 160 provides an exemption from the consumer consent requirements of the Electronic Signatures Act, effective on the date the Act goes into effect. The rule will make no changes to Commission interpretations of existing law or industry practice. Moreover, all registered investment companies that are small entities will qualify for the exemptive relief provided by rule 160. Accordingly, the rule will not have a significant economic impact on a substantial number of small entities. We include the Certification in this release as Attachment A. Although rule 160 is being issued as an interim final rule, the Commission is interested in receiving written comments relating to the Certification. Commenters should describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

II. Clarification of Guidance on Responsibility for Hyperlinked Information

In the Commission's April release on the use of electronic media (the "2000 Release"), we expressed our view that when an issuer embeds a hyperlink to a web site within a document that is required to be filed or delivered under the federal securities laws, the issuer should always be deemed to be adopting the hyperlinked information for purposes of the antifraud provisions of the federal securities laws.¹⁸ We wish to clarify, effective immediately, that this

view does not extend to a mutual fund's responsibility for hyperlinks to third-party web sites from fund advertisements or sales literature.¹⁹

Mutual funds, unlike operating companies, are required to file their advertisements and sales literature with the Commission.²⁰ We do not believe, however, that it follows from this filing requirement that a mutual fund, unlike an operating company, should always be responsible for third-party information to which it establishes a hyperlink from an advertisement or sales literature, without regard to the specific facts and circumstances.

The issue of whether a fund should be deemed to have adopted information on a third-party web site to which a fund advertisement or sales literature is hyperlinked should be resolved by reference to the factors set forth in the 2000 Release, as applied to the specific facts and circumstances.²¹ In addition, when a fund is in registration, if the fund establishes a hyperlink from its web site to information that meets the definition of an "offer to sell," "offer for sale," or "offer" under Section 2(a)(3) of the Securities Act, a strong inference arises that the fund has adopted that information for purposes of Section 10(b) of the Securities Exchange Act of 1934 and rule 10b-5.²²

¹⁹ Our references to mutual fund advertisements and sales literature include rule 482 advertisements, 17 CFR 230.482, tombstone advertisements, 17 CFR 230.134, supplemental sales literature, 15 U.S.C. 77b(a)(10)(a), and generic advertisements, 17 CFR 230.135a.

See Letter dated June 19, 2000, from the Investment Company Institute ("ICI Letter") and Letter dated June 16, 2000, from Fidelity Investments ("Fidelity Letter"), available in SEC Public Reference File S7-11-00 (requesting clarification on responsibility of mutual funds for hyperlinks to third-party web sites from advertisements or sales literature).

²⁰ See Section 24(b) of the Investment Company Act, 15 U.S.C. 80a-24(b). Pursuant to rule 24b-3 under the Investment Company Act, funds generally satisfy this requirement by filing advertisements and sales literature with NASD Regulation, Inc. 17 CFR 270.24b-3.

The filing requirements of Section 24(b) apply to registered unit investment trusts and registered face-amount certificate companies, as well as to mutual funds. We have used the term "mutual fund" in this section for simplicity, but we also intend our statements about mutual funds to apply to registered unit investment trusts and registered face-amount certificate companies. Closed-end investment companies are not subject to Section 24(b), and they are not covered by our statements about mutual funds.

²¹ These factors include the context of the hyperlink, the presence or absence of precautions against investor confusion about the source of the information, and the presentation of hyperlinked information. See 2000 Release, *supra* note 3, at 25848-9. As we stated in the 2000 Release, these factors form a useful framework for analysis, but they are not intended to be exclusive or exhaustive.

²² See 2000 Release, *supra* note 3, at 25849.

¹⁶ Section 2(b) of the Securities Act, 15 U.S.C. 77b(b), requires the Commission, when determining whether a rule is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

¹⁷ Pub. L. No. 104-21, Title II, 110 Stat. 857 (1996).

¹⁸ See 2000 Release, *supra* note 3, at 25847, n. 41 and 25849. In the 2000 Release, we indicated that an issuer could be liable for third-party information to which the issuer establishes a hyperlink under either an "entanglement" or "adoption" theory. *Id.* at 25848-9. Here, we discuss the "adoption" theory only.

A fund may hyperlink to third-party web sites for a variety of reasons in a variety of circumstances, including links to educational materials such as our Mutual Fund Cost Calculator and continuous links to independent third-party news and information sources.²³ We wish to encourage mutual funds to provide information to investors that will educate them and assist them in making informed investment decisions. We also wish to discourage funds from providing information to investors that is inaccurate or misleading. Both goals are furthered by considering all the facts and circumstances in determining whether a fund has adopted information on a third-party web site to which a fund advertisement or sales literature is hyperlinked.²⁴

III. Statutory Authority

The Commission is adopting rule 160 pursuant to authority set forth in Section 19(a) of the Securities Act [15 U.S.C. 77s(a)] and Section 104(d) of the Electronic Signatures Act.

List of Subjects

17 CFR Part 230

Advertising, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 231

Securities.

17 CFR Part 271

Investment companies, Securities.

Text of Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 is amended by adding the following citation:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z-3, 78c, 78d, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

²³ Securities and Exchange Commission, *The SEC Mutual Fund Cost Calculator* (last modified December 6, 1999) <<http://www.sec.gov/mfcc/mfcc-int.htm>>.

²⁴ Commenters on the 2000 Release have requested that we provide additional guidance for determining when a mutual fund is responsible for third-party information to which the fund establishes a hyperlink. See ICI Letter, *supra* note 19; Fidelity Letter, *supra* note 10. We have asked the Division of Investment Management to consider this suggestion.

Section 230.160 is also issued under Section 104(d) of the Electronic Signatures Act.

* * * * *

2. Section 230.160 is added to read as follows:

§ 230.160. Registered investment company exemption from Section 101(c)(1) of the Electronic Signatures in Global and National Commerce Act.

A prospectus for an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) that is sent or given for the sole purpose of permitting a communication not to be deemed a prospectus under section 2(a)(10)(a) of the Act (15 U.S.C. 77b(a)(10)(a)) shall be exempt from the requirements of section 101(c)(1) of the Electronic Signatures in Global and National Commerce Act.

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

3. Part 231 is amended by adding Release No. 33-7877 and the release date of July 27, 2000, to the list of interpretative releases.

PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

4. Part 271 is amended by adding Release No. IC-24582 and the release date of July 27, 2000, to the list of interpretative releases.

Dated: July 27, 2000.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

Note: Attachment A to the preamble will not appear in the Code of Federal Regulations.

Attachment A.—Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. Section 605(b), that rule 160 under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (Release No. 33-7877) would not have a significant economic impact on a substantial number of small entities. The rule would exempt from the consumer consent requirements of the Electronic Signatures in Global and National Commerce Act [Pub. L. No. 106-229] prospectuses of registered investment companies that are used for the sole purpose of permitting

supplemental sales literature to be provided to prospective investors.

The rule will make no changes to Commission interpretations of existing law or industry practice. Moreover, all registered investment companies that are small entities will qualify for the exemptive relief provided by rule 160. Accordingly, the rule will not have a significant economic impact on a substantial number of small entities.

Dated: July 24, 2000.

Arthur Levitt,
Chairman

[FR Doc. 00-19446 Filed 8-1-00; 8:45 am]

BILLING CODE 8010-01-U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 161, 250, and 284

[Docket Nos. RM98-10-005 and RM98-12-005; Order No. 637-B]

Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services

Issued July 26, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order denying requests for rehearing and providing clarification of Order No. 637-A [65 FR 35705, Jun. 5, 2000]. Order No. 637 revised Commission regulations to enhance the competitiveness and efficiency of the interstate pipeline grid. The rehearing and clarification requests addressed in the order principally relate to posting and bidding requirements for pre-arranged capacity release transactions and segmentation. The order also addresses requests related to penalties, reporting requirements, and the right of first refusal (ROFR).

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT: Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208-2294.

Robert A. Flanders, Office of Markets, Tariffs, and Rates Federal Energy Regulatory Commission, 888 First