monitor for conflicts of interest among classes and take any action necessary to eliminate conflicts.

Paragraph (d) as adopted requires the board to approve a plan initially and before any material change. The Commission is not requiring annual approval of the board, which was proposed. Many commenters objected to the annual review requirement and argued that it runs counter to the Commission's recent elimination of certain annual review requirements.⁴⁶

Paragraph (d) as adopted does not require the board to approve the initial adoption of a plan if the plan merely reproduces without change a fund's existing multiple class structure that the board has approved under an existing exemptive order. One commenter requested that the Commission amend the rule to clarify that board approval is not required for existing classes that intend to rely on the rule if the board has already approved a multiple class structure under an order.⁴⁷ Although the rule as adopted does not require a vote of the board of directors under these circumstances, a fund with an existing order that seeks to rely on rule 18f-3 must create a plan setting forth the fund's current separate arrangements, expense allocation procedures and exchange and conversion privileges 48 and file a copy of the plan with the Commission as an exhibit to the fund's registration statement under new Item 24(b)(18). These plans create a cohesive structure for monitoring the operation of the class system, rather than having procedures scattered among exemptive orders and their amendments, prospectuses and internal guidelines, and the formulation of a plan from these source materials should not impose a significant burden.

Finally, the rule text as adopted omits the proposed requirement that boards find that plans are "fair." This change recognizes that the term was not a condition of the exemptive applications, and that the requirement that a board find a plan to be in the best interests of each class individually and of the fund as a whole provides the same protection as a separate fairness requirement.

B. Rule 12b-1

The Commission is adopting new paragraph (g) of rule 12b–1 substantially as proposed. It provides that if a plan covers more than one class of shares, the provisions of the plan must be severable for each class, and any action taken on the plan must be taken separately for each class. The board would be required to make the finding, separately for each class, that a distribution plan presents a "reasonable likelihood of benefit" to the company and its shareholders. Similarly, the amendment requires shareholder approval by the outstanding voting securities of each separate class when rule 12b-1 requires that a plan for the distribution of securities be approved by a majority of the fund's outstanding voting securities. Paragraph (g) also contains a cross-reference to rule 18f-3 to address the limited exception that under paragraph (e)(2) of that rule, any shareholder vote on the rule 12b-1 plan of a target class would also require a separate vote of any purchase class.49

C. Disclosure

The Commission is adopting disclosure requirements for registration statements of master-feeder and multiple class funds with substantial modifications from the proposal, and is not adopting any disclosure requirements for advertisements and sales literature.⁵⁰ New Item 6(h) provides that multiple class and masterfeeder funds should describe the salient features of the multiple class or masterfeeder structure. Feeder funds should also disclose the circumstances under which the feeder fund could no longer invest in the master fund, and the consequences to shareholders of such an event. Item 6(h) also requires prospectuses used in connection with a public offering to disclose that there are other classes or other feeder funds that invest in the same master fund, and to include a telephone number investors

⁵⁰ In view of commenters' objections and recent industry initiatives, the Commission also is not imposing standardized class designations upon multiple class funds. *See* Memorandum of the ICI, Board of Governors Adopts Voluntary Nomenclature Standards of Multiple Class Funds (May 16, 1994); Jeff Kelly, *A Fine Mess*, Morningstar Mutual Funds, Nov. 25, 1994, at S1; ICI Comment Letter, *supra* note 11, at 19. can call to obtain additional information about other classes or feeder funds available through their sales representative.⁵¹ These provisions should give funds flexibility in drafting disclosure while making available to investors the means to obtain additional information about other classes or feeder funds investing in the same master fund. These disclosure requirements are consistent with the Commission's goals of promoting prospectus simplification and the use of plain language.⁵²

Funds must provide more extensive prospectus disclosure about other classes or feeder funds only in two cases. First, under new staff Guide 34 to Form N-1A, if a prospectus offers more than one class or feeder fund, it must discuss briefly the differences between the classes or feeder funds, and arrange the fee table to facilitate a comparison by shareholders of the different fee structures.53 Second, under new General Instruction I to Form N-1A, if a fund is offering a class that will or may convert or be exchanged into other classes of the same fund, the prospectus must provide disclosure about the other classes.

The Commission is not adopting most of the proposed disclosure requirements; nearly all commenters expressed strong opposition to the extent and the details of these requirements.⁵⁴ As discussed in more detail below, commenters argued, among other things, that the proposed requirements would have imposed liability burdens and logistical difficulties on some funds.

The Commission recognizes that the complexity of distribution charge

⁵² See, e.g., Arthur Levitt, Chairman, SEC, Taking the Mystery Out of the Marketplace: The SEC's Consumer Education Campaign, remarks before the National Press Club (Oct. 13, 1994).

⁵³ Funds may either use one fee table with separate and clearly labeled columns for each class or feeder fund, or may prepare separate fee tables for each class or feeder offered.

⁴⁶ *E.g.*, ABA Comment Letter, *supra* note 17, at 4; Federated Investors Comment Letter, *supra* note 15, at 2; Hale and Dorr Comment Letter, *supra* note 42, at 4–5; ICI Comment Letter, *supra* note 11, at 23; Letter from Dechert Price & Rhoades to Jonathan G. Katz, Secretary, SEC 2 (Feb. 22, 1994). *See* Proposing Release at 21 n. 48, 58 FR at 68080 n.48, for a discussion of recent Commission actions to reduce the burdens on boards of directors.

⁴⁷ ICI Comment Letter, *supra* note 11, at 23.

⁴⁸ Board approval of the plan is required, though, if it contains any material deviations from current practice.

 $^{^{49}}$ In light of the adoption of new paragraph (e)(3) of rule 18f–3, the Commission has modified rule 12b–1(g) from the proposal to limit the cross-reference to paragraph (e)(2). Whereas conversions under paragraph (e)(2) will occur if shareholders remain in a class for a specified period of time, conversions under paragraph (e)(3) will not occur except upon the happening of a specified contingency that is dependent upon the shareholder. Therefore, a vote of the class of shares that may convert is not required.

⁵¹This disclosure requirement was proposed as part of Instruction 1 to Item 2(a) of Form N–1A Multiple class funds must comply with the disclosure requirements adopted today regardless of whether they rely on rule 18f-3 or continue to operate under and comply with all of the terms (including disclosure-related conditions) of an existing exemptive order. The disclosure requirements adopted today also do not alter feeder funds' existing disclosure obligations. Letter from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC, to Registrants (Feb. 22, 1993), Comment II.H (hereinafter "1993 Generic Disclosure Comment Letter''). New Instruction 4A to Item 2(a) of Form N–1A codifies the requirement that the expenses of both the master fund and the feeder fund be reflected in a single fee table.

⁵⁴ A few commenters, however, supported requiring disclosure about other classes or feeder funds. *See, e.g.,* Hale and Dorr Comment Letter, *supra* note 42, at 8; Dechert Price Comment Letter, *supra* note 46, at 3.