multiple class funds would be subject to fewer disclosure requirements and lower costs than under the exemptive orders. Any additional time required to comply with the rule's written plan requirement should be minimal because multiple class funds already would have to commit material class differences to writing in order to enter into distribution or service agreements, or to disclose their terms. The prospectus disclosure should impose little burden, and in fact requires less disclosure than currently required for multiple class funds. The disclosure is similar to that presently required for master-feeder funds, and thus should impose little or no additional burden on those funds.

The amendment to rule 12b–1 should not impose any additional costs because it essentially would incorporate in the rule existing requirements in the exemptive orders for multiple class funds.

### **IV. Regulatory Flexibility Act Analysis**

A summary of the Initial Regulatory Flexibility Analysis, which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis, a copy of which may be obtained by writing to Karrie McMillan, Esq., Division of Investment Management, Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W. 20549.

### V. Statutory Authority

The Commission is adopting rule 18f-3 under the authority in sections 6(c), 18(i), and 38(a) of the Investment Company Act [15 U.S.C. §§6(c), 18(i), and 37(a)], and the amendment to rule 12b-1 under section 12(b) of the Investment Company Act [15 U.S.C. §12(b)]. The Commission is adopting the amendments to Form N-1A under sections 6, 7(a), 10 and 19(a) of the Securities Act [15 U.S.C. 77g(a), 77j, and 77s(a)], and sections 8(b), 24(a), and 38(a) of the Investment Company Act [15 U.S.C. §§ 80a-8(b), 24(a), and 37(a)], and the amendments to Form N-14 under sections 6, 7, 8, 10 and 19(a) of the Securities Act [15 U.S.C. 77f, 77h, 77j and 77s(a)] and sections 14(a), 14(c) and 23(a) of the Exchange Act of 1934 [15 U.S.C. 78n(a), 78n(c) and 78w].

## VI. Text of Adopted Rule and Rule and Form Amendments

### List of Subjects in 17 CFR Parts 239, 270, and 274

Investment Companies, Reporting and record keeping requirements, Securities.

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

### PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1, *et seq.*, 80a–37, 80a–39 unless otherwise noted;

\* \* \* \* \* \* 2. Section 270.12b-1 is amended by adding paragraph (g) to read as follows:

# § 270.12b–1 Distribution of shares by registered open-end management investment company.

(g) If a plan covers more than one class of shares, the provisions of the plan must be severable for each class, and whenever this section provides for any action to be taken with respect to a plan, that action must be taken separately for each class, *provided*, *however*, that under § 270.18f–3(e)(2), any shareholder vote on a plan of a target class must also require a vote of any purchase class.

3. By adding § 270.18f–3 to read as follows:

#### § 270.18f–3 Multiple class companies.

Notwithstanding sections 18(f)(1) and 18(i) of the Act (15 U.S.C. 80a–18(f)(1) and (i), respectively), a registered openend management investment company or series or class thereof established in accordance with section 18(f)(2) of the Act (15 U.S.C. 80a–18(f)(2)) whose shares are registered on Form N–1A [§§ 239.15A and 274.11A of this chapter] ("company") may issue more than one class of voting stock, *provided* that:

(a) Each class:

(1)(i) Shall have a different arrangement for shareholder services or the distribution of securities or both, and shall pay all of the expenses of that arrangement;

(ii) May pay a different share of other expenses, not including advisory or custodial fees or other expenses related to the management of the company's assets, if these expenses are actually incurred in a different amount by that class, or if the class receives services of a different kind or to a different degree than other classes; and

(iii) May pay a different advisory fee to the extent that any difference in amount paid is the result of the application of the same performance fee provisions in the advisory contract of the company to the different investment performance of each class; (2) Shall have exclusive voting rights on any matter submitted to shareholders that relates solely to its arrangement;

(3) Shall have separate voting rights on any matter submitted to shareholders in which the interests of one class differ from the interests of any other class; and

(4) Shall have in all other respects the same rights and obligations as each other class.

(b) Expenses may be waived or reimbursed by the company's adviser, underwriter, or any other provider of services to the company.

(c) Income, realized and unrealized capital gains and losses, and expenses of the company not allocated to a particular class pursuant to paragraph (a) of this section:

(1) Except as permitted in paragraph (c)(2) of this section, shall be allocated to each class on the basis of the net asset value of that class in relation to the net asset value of the company; or

(2) For companies operating under § 270.2a–7 (including the provision allowing the calculation of net assets on an amortized cost basis), and for other companies declaring distributions of net investment income daily that maintain the same net asset value per share in each class, may be allocated:

(i) To each share without regard to class, *provided* that the company has received undertakings from its adviser, underwriter or any other provider of services to the company, agreeing to waive or reimburse the company for payments to such service provider by one or more classes, as allocated under paragraph (a)(1) of this section, to the extent necessary to assure that all classes of the company maintain the same net asset value per share; or

(ii) On the basis of relative net assets (settled shares). For purposes of this section, "relative net assets (settled shares)" are net assets valued in accordance with generally accepted accounting principles but excluding the value of subscriptions receivable, in relation to the net assets of the company.

(d) Any payments made under paragraph (a) of this section shall be made pursuant to a written plan setting forth the separate arrangement and expense allocation of each class, and any related conversion features or exchange privileges. Before the first issuance of a share of any class in reliance upon this section, and before any material amendment of a plan, a majority of the directors of the company, and a majority of the directors who are not interested persons of the company, shall find that the plan as proposed to be adopted or amended, including the expense allocation, is in