

1(b)(2)(iv), and 31a-1(b)(9);<sup>8</sup> and (v) preserves permanently, the first two years in an easily accessible place, all books and records required to be made under these rules.

Rule 2a-7 contains certain collection of information requirements. An unregistered money market fund that complies with rule 2a-7 would be subject to these collection of information requirements. In addition, the recordkeeping requirements under rule 31 with which the acquiring fund reasonably believes the unregistered money market fund complies are collections of information for the unregistered money market fund. By allowing funds to invest in registered and unregistered money market funds, rule 12d1-1 is intended to provide funds greater options for cash management. In order for a registered fund to rely on the exemption to invest in an unregistered money market fund, the unregistered money market fund must comply with certain collection of information requirements for registered money market funds. These requirements are intended to ensure that the unregistered money market fund has established procedures for collecting the information necessary to make adequate credit reviews of securities in its portfolio, as well as other recordkeeping requirements that will assist the acquiring fund in overseeing the unregistered money market fund (and Commission staff in its examination of the unregistered money market fund's adviser).

Commission staff estimates that registered funds currently invest in 40 unregistered money market funds in excess of the statutory limits under an exemptive order issued by the Commission, and will invest in approximately 6 new unregistered money market funds each year.<sup>9</sup> Staff estimates that each of these unregistered money market funds spends 1220 hours to perform the record of credit risk analysis and other determinations annually, and in the first year after the rule's adoption, each will spend 21 hours to implement the board procedures.<sup>10</sup> Finally, Commission staff

estimates that 10 unregistered money market funds spends 4.5 hours to review and amend procedures annually. The estimated total of annual responses under rule 12d1-1 is 57,131.<sup>11</sup>

Commission staff estimates that in addition to the costs described in section 12, unregistered money market funds will incur costs to preserve records, as required under rule 2a-7. These costs will vary significantly for individual funds, depending on the amount of assets under fund management and whether the fund preserves its records in a storage facility in hard copy or has developed and maintains a computer system to create and preserve compliance records. In its Rule 2a-7 submission, Commission staff estimated that the amount an individual money market fund may spend ranged from \$100 per year to \$300,000. We have no reason to believe the range would be different for unregistered money market funds. As noted before, we have no information on the amount of assets managed by unregistered money market funds. Accordingly, Commission staff has estimated that an unregistered money market fund in which registered funds would invest in reliance on rule 12d1-1 would have, on average, \$376.4 million in assets under management.<sup>12</sup> Based on a cost of \$0.0000005 per dollar of assets under management for medium-sized funds, the staff estimates compliance with rule 2-7 would cost these types of unregistered money market funds \$8000 annually.<sup>13</sup> Commission staff estimates that unregistered money market funds will not incur any capital costs to create computer programs for maintaining and preserving compliance records for rule 2a-7.<sup>14</sup>

The collections of information required for unregistered money market funds by rule 12d1-1 are necessary in order for acquiring funds to be able to obtain the benefits described above.

<sup>11</sup> This estimate is based on the following calculation:  $(40 \times 1220) + (6 \times 1220) + (40 \times 21) + (6 \times 21) + (10 \times 4.5) = 57,131$ .

<sup>12</sup> This estimate is based on the average of assets under management of medium-sized registered money market funds (\$50 million to \$999 million).

<sup>13</sup> This estimate was based on the following calculation: 46 unregistered money market funds  $\times$  \$357.7 million in assets under management  $\times$  \$0.0000005 = \$8227. The estimate of cost per dollar of assets is the same as that used for medium-sized funds in the Rule 2a-7 submission.

<sup>14</sup> This estimate is based on information Commission staff obtained in its survey for the Rule 2a-7 submission. Of the funds surveyed, no medium-sized funds incurred this type of capital cost. The funds either maintained record systems using a program the fund would be likely to have in the ordinary course of business (such as Excel) or the records were maintained by the fund's custodian.

Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov); and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312, or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: August 30, 2006.

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-27475; 812-12420]

### Delaware Investments Dividend and Income Fund, Inc., et al., Notice of Intention To Rescind an Order

September 1, 2006.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of the Commission's intention to rescind an order pursuant to section 38(a) of the Investment Company Act of 1940 ("Act").

**SUMMARY:** On April 15, 2002, the Commission issued an order on an application filed by Delaware Investments Dividend and Income Fund, Inc. and Delaware Investments Global Dividend and Income Fund (together, the "Applicants") under section 6(c) of the Act granting an exemption from section 19(b) of the Act and rule 19b-1 under the Act (the "Application").<sup>1</sup> On August 31, 2006, the Commission issued an order finding, among other things, that Delaware Service Company, Inc. ("DSC") caused and aided and abetted the Applicants' violations of section 19(a) of the Act and rule 19a-1 under the Act and violated

<sup>8</sup> See 17 CFR 270.31a-1(b)(2)(ii), 17 CFR 270.31a-1(b)(2)(iv), 17 CFR 270.31a-1(b)(9).

<sup>9</sup> This estimate is based on the number of applications filed with the Commission in 2005. This estimate may be understated because applicants generally do not identify the name or number of unregistered money market funds in which registered funds intend to invest, and each application also applies to unregistered money market funds to be organized in the future.

<sup>10</sup> The Commission adopted rule 12d1-1 on June 20, 2006. See Fund of Funds Investments, Investment Company Act Release No. 27399 (June 20, 2006).

<sup>1</sup> Delaware Investments Dividend and Income Fund, Inc., et al., Investment Company Act Release Nos. 25465 (Mar. 18, 2002) (notice) and 25524 (Apr. 15, 2002) ("Exemptive Order").

section 34(b) of the Act by making a material misrepresentation to the Commission in the Application ("Order Finding Violations").<sup>2</sup> The Commission is issuing this notice of the Commission's intention to rescind the Exemptive Order on the basis of the Order Finding Violations.

*Hearing or Notification of Hearing:* An order rescinding the Exemptive Order will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary. Hearing requests should be received by the Commission by 5:30 p.m. on September 25, 2006. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 100 F Street, NE., Washington, DC 20549-1090.

**FOR FURTHER INFORMATION CONTACT:** Nadya B. Roytblat, Assistant Director, at 202-551-6821 (Division of Investment Management, Office of Investment Company Regulation).

### Background

1. Each Applicant is a closed-end investment company registered under the Act. The Exemptive Order granted each Applicant relief from section 19(b) of the Act and rule 19b-1 under the Act so that the Applicant may make up to twelve distributions of long-term capital gains in any one taxable year in accordance with the Applicants' distribution policy with respect to its common stock. Section 19(b) and rule 19b-1 generally limit to one the number of distributions of long-term capital gains that a registered investment company may make each year. The Exemptive Order was issued pursuant to the Commission's authority set forth in section 6(c) of the Act which provides, in relevant part, that the Commission, by order upon application, may exempt any person from any provision of the Act or any rule under the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. DSC, a Delaware corporation, provides accounting and administrative services to the Applicants. According to the Order Finding Violations, DSC was

responsible for determining the amount and composition of the Applicants' distributions to shareholders; providing the Applicants' transfer agent, dividend disbursing agent, and custodian with information necessary to effect payment of dividends and distributions; and preparing and filing all reports and notices required by the Federal securities laws and regulations, including any notices required by section 19(a) of the Act.

3. Section 19(a) of the Act and rule 19a-1 under the Act make it unlawful for a registered investment company to pay any dividend or make any distribution in the nature of a dividend payment, wholly or partly, from any source other than net income unless such payment is accompanied by a written statement which adequately discloses the source of such payment ("section 19(a) notice"). According to the Order Finding Violations, from January 2000 through March 2004, the Applicants, among others, made distributions to their common shareholders that, in large part, were a return of the shareholders' capital, and none of the distributions was accompanied by the required section 19(a) notice. Thus, during the relevant time period, the Applicants failed to provide the section 19(a) notices required by the Act. The Order Finding Violations found that DSC caused and aided and abetted the Applicants' violations of section 19(a) and rule 19a-1.

4. The Order Finding Violations also found that the Exemptive Order was granted, in part, on the basis of a representation in the Application that the Applicants were providing the required 19(a) notices to their shareholders, but that the representation was an untrue statement of a material fact. The Application was prepared by DSC on behalf of the Applicants. The Order Finding Violations thus found that DSC violated section 34(b) of the Act. Section 34(b) of the Act, in relevant part, makes it unlawful for any person to make any untrue statement of a material fact in any application filed pursuant to the Act.

### Legal Analysis

Section 38(a) of the Act states, in relevant part, that the Commission shall have authority to rescind an order as is necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in the Act. The Commission issues orders under section 6(c) of the Act, such as the Exemptive Order, based on the representations, and subject to the terms and conditions, contained in the applications seeking

the orders. If an application contains an untrue statement of a material fact, the Commission cannot properly exercise its power to make the findings required by section 6(c) of the Act.<sup>3</sup> The Commission therefore believes that it is necessary and appropriate to the exercise of the powers conferred upon the Commission in section 6(c) of the Act to rescind the Exemptive Order on the basis of the Order Finding Violations.

By the Commission.

**Nancy M. Morris,**  
*Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54396]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Declaration of Effectiveness of the Philadelphia Stock Exchange Fingerprinting Plan

August 31, 2006.

On July 17, 2006, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission") a fingerprint plan ("Plan") pursuant to Rule 17f-2(c)<sup>1</sup> under the Securities Exchange Act of 1934 ("Act").<sup>2</sup> A copy of the Plan is attached as Exhibit A.

The Phlx believes that the Plan will facilitate compliance by Exchange members with Section 17(f)(2) of the Act and Rule 17f-2 thereunder by providing a facility for the fingerprints of directors, partners, officers and employees of Exchange members to be submitted to the Attorney General of the United States and processed electronically.

Under the Plan, all persons who are seeking registration with the Phlx or are currently registered with the Phlx submit fingerprint cards or fingerprint results to the NASD, which then forwards the fingerprints to the Federal Bureau of Investigation ("FBI") (the fingerprint processing arm of the Attorney General). The FBI identifies submitted fingerprints, retrieves relevant criminal history information, and returns fingerprint reports to the NASD. Phlx members will be able to

<sup>3</sup> The Commission also reiterates that any exemption provided by an order issued under the Act is available only to a person that complies with the terms and conditions set forth in the application based on which the exemption was granted.

<sup>1</sup> 17 CFR 240.17f-2(c).

<sup>2</sup> 15 U.S.C. 78a et seq.

<sup>2</sup> In the Matter of Delaware Service Company Inc., Release No. IC-27473, Administrative Proceeding File No. 3-12403 (August 31, 2006).