

201101-1205-001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Employment and Training Administration (ETA).

*Type of Review:* New Collection (Request for a new OMB Control Number).

*Title of Collection:* Evaluation of the Adult and Dislocated Worker Program in the Workforce Investment Act.

*OMB Reference Number:* 201101-1205-001.

*Affected Public:* Individuals or Households; State, Local, and Tribal Governments.

*Total Estimated Number of Respondents:* 69,350.

*Total Estimated Number of Responses:* 70,430.

*Total Estimated Annual Burden Hours:* 34,133.

*Total Estimated Annual Other Costs Burden:* \$0.

Dated: July 12, 2011.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2011-18008 Filed 7-15-11; 8:45 am]

**BILLING CODE 4510-FN-P**

## MERIT SYSTEMS PROTECTION BOARD

### Public Availability of the Merit Systems Protection Board's FY 2010 Service Contract Inventory

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Notice.

**SUMMARY:** The Merit Systems Protection Board (MSPB) is publishing this notice to advise the public of the availability

of its FY 2010 Service Contract Inventory as required by Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111-117). This inventory provides information on service contract actions over \$25,000 awarded in FY 2010. The inventory was developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). The OFPP's guidance is available at: <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf>. The MSPB's inventory is posted on its Web site at <http://www.mspb.gov/contact/contracting.htm>.

#### FOR FURTHER INFORMATION CONTACT:

Veronica Bullock, Merit Systems Protection Board, Office of Financial and Administrative Management, 1615 M Street, NW., Washington, DC 20419; telephone 202-254-4406; e-mail [veronica.bullock@mspb.gov](mailto:veronica.bullock@mspb.gov).

**William D. Spencer,**

*Clerk of the Board.*

[FR Doc. 2011-17976 Filed 7-15-11; 8:45 am]

**BILLING CODE 7400-01-P**

## POSTAL REGULATORY COMMISSION

[Docket No. R2010-4R; Order No. 757]

### Rate Adjustment Remand

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a proceeding to address the causation standard in exigent rate adjustments. This notice provides information on legal developments associated with this proceeding, addresses preliminary procedural matters, and invites public comment.

**DATES:** *Comments are due:* July 25, 2011; *reply comments are due:* August 1, 2011.

**ADDRESSES:** Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (<http://www.prc.gov>) or by directly accessing the Commission's Filing Online system at <https://www.prc.gov/prc-pages/filing-online/login.aspx>. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

#### FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel,

at 202-789-6820 (case-related information) or [DocketAdmins@prc.gov](mailto:DocketAdmins@prc.gov) (electronic filing assistance).

#### SUPPLEMENTARY INFORMATION:

*Regulatory History:* 75 FR 40853 (July 14, 2010).

On May 24, 2011, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *United States Postal Service v. Postal Regulatory Commission*, 640 F.3d 1263 (D.C. Cir. 2011). The court denied in part and granted in part a Postal Service petition for review of the Commission's September 30, 2010 order denying a Postal Service request for an exigent rate adjustment under 39 U.S.C. 3622(d)(1)(E).<sup>1</sup> 640 F.3d at 1268.

On July 11, 2011, the court issued its mandate remanding the case to the Commission. The Commission is issuing this order to promptly establish procedures for receiving initial and reply comments that address the causation standard applicable to exigent rate adjustment requests submitted under 39 U.S.C. 3622(d)(1)(E).<sup>2</sup>

*Background.* On July 6, 2010, the Postal Service filed a request for an exigent rate adjustment pursuant to 39 U.S.C. 3622(d)(1)(E).<sup>3</sup> This was the first such request filed by the Postal Service. The Exigent Request alleged that "extraordinary or exceptional circumstances" had occurred—namely, the recent recession and related declines in mail volume—and that the Postal Service was entitled to an exigent rate adjustment. *Id.* at 6.

After holding public hearings and considering initial and reply comments filed by the Postal Service and other interested persons, the Commission issued Order No. 547 denying the Postal Service's Exigent Request. The Commission analyzed the plain meaning of "due to" in section 3622(d)(1)(E), interpreting the phrase as requiring that a "proposed adjustment \* \* \* be causally related to the alleged extraordinary or exceptional circumstance." Order No. 547 at 54. The Commission found that the recent recession and its impact on postal

<sup>1</sup> Order Denying Request for Exigent Rate Adjustments, September 30, 2010 (Order No. 547).

<sup>2</sup> Section 3622(d)(1)(E) provides in relevant part as follows:

"[R]ates may be adjusted on an expedited basis due to either extraordinary or exceptional circumstances, provided that the Commission determines \* \* \* that such adjustment is reasonable and equitable and necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States." (emphasis added).

<sup>3</sup> Exigent Request of the United States Postal Service, July 6, 2010 (Exigent Request).

volumes qualified as an “extraordinary or exceptional” circumstance. *Id.* at 50. However, it ruled that the Postal Service had failed to demonstrate that the proposed rate adjustments were “due to” the “extraordinary or exceptional” circumstance, as required by section 3622(d)(1)(E), because it did not show how the rate increases related to exigent circumstances that purportedly gave rise to them. *Id.* at 53, 60. Accordingly, the Commission denied the requested exigent rate adjustment. *Id.* at 87.

*The court’s opinion.* On appeal, the court affirmed the Commission’s conclusion that the plain meaning of the words “due to” in section 3622(d)(1)(E) requires a causal relationship between the amount of the requested adjustment and the impact of the extraordinary or exceptional circumstances.<sup>4</sup> The court confirmed that, “under the plain meaning of [section 3622(d)(1)(E)], a rate may be ‘adjusted on an expedited basis’ only *because of* ‘extraordinary or exceptional circumstances.’” *Id.* (emphasis in original).

The court nevertheless concluded that the plain meaning of the “due to” phrase does not adequately express how close the relationship between the proposed adjustment and the exigent circumstance must be.<sup>5</sup> In the court’s view, the “due to” phrase in section 3622(d)(1)(E) is ambiguous because the phrase can mean “due *in part* to” as well as “due *only* to.” *Id.* (emphasis in original).

Because the phrase “due to” is ambiguous as a standard of causation, the court held that the Commission could not properly reject the Exigent Request based on a plain meaning interpretation of the phrase.<sup>6</sup> Thus, it granted the Postal Service’s petition in part and remanded the case to the Commission to satisfy its obligation “to fill the statutory gap by determining how closely the amount of the adjustments must match the amount of the revenue lost as a result of the exigent circumstances.” *Id.*

*The Commission’s response.* As directed by the court, the Commission will proceed to apply its expertise and

interpret the phrase “due to” to determine how closely the amount of an exigent rate adjustment must match the amount of revenue lost as a result of an exigent circumstance. *Id.*; see *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984).

The Commission establishes Docket No. R2010–4R to consider issues on remand. Docket Nos. R2010–4 and R2010–4R are part of the same proceeding. The Commission shall consider all documents filed to date in Docket No. R2010–4 as part of the record in Docket No. R2010–4R.

To ensure that the Postal Service and other interested persons have an opportunity to make their views known regarding the proper interpretation of “due to” as the standard of causation in 39 U.S.C. 3622(d)(1)(E), the Commission hereby provides for submission of initial and reply comments on this topic. Initial comments are due no later than July 25, 2011. Reply comments are due no later than August 1, 2011. All comments and other documents related to issues on remand must be filed under Docket No. R2010–4R.

*It is ordered:*

1. The Commission establishes Docket No. R2010–4R to consider issues on remand.

2. James Waclawski will continue to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Initial comments addressing the proper interpretation of “due to” as a standard of causation in 39 U.S.C. 3622(d)(1)(E) are due no later than July 25, 2011.

4. Reply comments addressing matters raised in initial comments are due no later than August 1, 2011.

5. All comments and other documents related to issues on remand must be filed under Docket No. R2010–4R.

6. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2011–17924 Filed 7–15–11; 8:45 am]

**BILLING CODE 7710–FW–P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29723; File No. 812–13143]

### HighMark Funds and HighMark Capital Management, Inc.; Notice of Application

July 12, 2011.

**AGENCY:** Securities and Exchange Commission (“Commission”).

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

#### SUMMARY OF THE APPLICATION:

Applicants request an order that would permit them to enter into and materially amend sub-advisory agreements without shareholder approval.

**APPLICANTS:** HighMark Funds and HighMark Capital Management, Inc. (“HMCM”).

**DATES: Filing Dates:** The application was filed on December 14, 2004, and amended on February 17, 2010, and January 14, 2011. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 5, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. 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, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: HighMark Funds, 350 California Street, Suite 1600, San Francisco, California 94104; HMCM, 350 California Street, San Francisco, California 94104.

#### FOR FURTHER INFORMATION CONTACT:

Lewis B. Reich, Senior Counsel, at (202) 551–6919, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

<sup>4</sup> 640 F.3d at 1267 (“[W]e agree with the Commission that the plain meaning of ‘due to’ mandates a causal relationship between the amount of a requested adjustment and the exigent circumstances’ impact on the Postal Service.”).

<sup>5</sup> *Id.* at 1268 (“[A]lthough ‘due to’ has a plain meaning regarding causal connection *vel non*, \* \* \* it has no similar plain meaning regarding the closeness of the causal connection.”).

<sup>6</sup> *Id.* The court rejected the Commission’s plain meaning interpretation as “requiring that the Postal Service match the amount of the proposed adjustments *precisely* to the amount of revenue lost as a result of the exigent circumstances.” *Id.* (emphasis in original).