appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection shall be done in accordance with Fokker Service Bulletin SBF100–27–029, dated January 29, 1991. The modification shall be done in accordance with Fokker Service Bulletin SBF100–27–032, dated September 20, 1991; and Fokker Service Bulletin Change Notification SBF100–27–032/01, dated October 19, 1991 (for Fokker Service Bulletin SBF100–27–032, dated September 20, 1991). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 14, 1993.

Issued in Renton, Washington, on March 16, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–8671 Filed 4–13–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–04–AD; Amendment 39–8529; AD 93–06–04]

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes. This action requires revising the Airplane Flight Manual (AFM) to prohibit use of autoland in known lightning conditions. This action also requires modifying the wire assembly breakouts located at the aft pressure bulkhead and at the aft spar of the horizontal stabilizer center box. This amendment is prompted by an analysis conducted by the manufacturer, which revealed that certain wire assembly breakouts have not been properly bonded to the couplers. The actions specified in this AD are intended to prevent electrical arcing in the fuel system components and/or flight control computers in the event of a lightning strike.

DATES: Effective April 29, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 29, 1993.

Comments for inclusion in the Rules Docket must be received on or before June 14, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–04–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Vakili, Aerospace Engineer, Los Angeles ACO, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5262; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: Analysis conducted by the manufacturer revealed that all seventeen wire assembly breakouts located on the aft pressure bulkhead and the aft spar of the horizontal stabilizer center box of certain McDonnell Douglas Model MD–11 and MD–11F series airplanes have not been properly bonded during manufacture of the couplers. The overbraid wires must be bonded at the couplers in order to provide proper protection in the event of a lightning strike. The overbraid shields the wire assembly breakouts, thus preventing electrical arcing. If electrical arcing occurs in the flight control computers during utilization of autoland, a dual autoland disconnect may occur.

Improperly bonded wire assembly breakouts, if not corrected, could result in electrical arcing in the fuel system components and/or flight control computers in the event of a lightning strike.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A24–48, dated February 17, 1993, that describes procedures for modifying the wire assembly breakouts at station Y=2007.000 on the aft pressure bulkhead and at station Y=2122.881 on the aft spar of the horizontal stabilizer center box. This modification entails bonding the overbraid wires to the pressure feedthrough and coupler, thus protecting the wire assemblies in the event of a lightning strike.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 and MD–11F series airplanes of the same type design, this AD is being issued to prevent electrical arcing in the fuel system components and/or flight control computers in the event of a lightning strike. This AD requires revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit use of autoland in known lightning conditions. This action also requires modifying the wire assembly breakouts located at the aft pressure bulkhead and at the aft spar of the horizontal stabilizer center box. After the modification is accomplished, the AFM revision may be removed. The modification is required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–04–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–06–04 McDonnell Douglas: Amendment 39–8529. Docket 93–NM–04–AD.

Applicability: Model MD–11 and MD–11F airplanes; as listed in McDonnell Douglas Alert Service Bulletin A24–48, dated February 17, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent electrical arcing in the fuel system components and/or flight control computers in the event of a lightning strike, accomplish the following:

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"*Autoland*

Do not conduct autoland in known lightning conditions. A dual autoland disconnect may occur."

(b) Within 60 days after the effective date of this AD, modify the seventeen wire assembly breakouts located at the aft pressure bulkhead and at the aft spar of the horizontal stabilizer center box, in accordance with McDonnell Douglas Alert Service Bulletin A24–48, dated February 17, 1993. Accomplishment of this modification constitutes terminating action for paragraph (a) of this AD; after the modification is accomplished, the AFM revision may be removed.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modification shall be done in accordance with McDonnell Douglas Alert Service Bulletin A24–48, dated February 17, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 29, 1993.

Issued in Renton, Washington, on March 26, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–8672 Filed 4–13–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–120–AD; Amendment 39–8538; AD 93–07–06]

Airworthiness Directives; de Havilland, Inc., Model DHC–8–100 and DHC–8–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland, Inc., Model DHC–8–100 and –300 series airplanes, that requires inspection of the inboard flaps for free play and roller rattle; re-rigging of the inboard flap system; and, for certain airplanes, repetitive inspections of significant structural items in the vicinity of the re-rigged inner flap. This amendment is prompted by results of tests conducted by the manufacturer which revealed that flap loads may not be evenly distributed to the flap ballscrews. The actions specified by this AD are intended to prevent reduced controllability of the airplane.

DATES: Effective on May 14, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 14 1993.

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Danko Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE–173, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York; telephone (516) 791–6427; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain de Havilland, Inc., Model DHC–8–100 and –300 series airplanes was published in the Federal Register on August 27, 1992 (57 FR 38793). That action proposed to require inspection of the inboard flaps for free play and roller rattle; re-rigging of the inboard flap system; and, for certain airplanes, repetitive inspections of significant structural items in the vicinity of the re-rigged inner flap.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requests that the threshold for flap re-rigging required by paragraph (b) of the notice be increased from the proposed 1,000 hours time-in-service to 3,000 hours time-in-service or one year after the effective date of the AD. The commenter states that, at the time the service information cited in the notice was released, the airplane maintenance manual was also revised to ensure equal loading of both inboard and outboard flap actuators. The commenter indicates that its entire fleet was inspected for roller rattle and free play on the inboard flaps, and that no discrepancies were found. The commenter notes that it initiated a campaign to re-rig the flaps, but discontinued its campaign after re-rigging eight airplanes, since the work being performed was redundant to that being accomplished during scheduled maintenance. The commenter states that the inboard flaps are removed to replace rollers and other components during "C-check" maintenance, and that those actions often result in rigging the flap actuator. The commenter asserts that, given the high likelihood that flap re-rigging has already been accomplished during regularly scheduled maintenance, a relaxed compliance interval for re-rigging would be justified. The commenter adds that the Canadian AD relative to this subject provided for a compliance interval of six months for re-rigging non-discrepant flap systems. The commenter notes that the compliance interval proposed in the notice is consistent with a four-month time period. The commenter does not believe that an increased compliance interval of 3,000 hours time-in-service or one year would have an adverse impact on the short- or long-term functioning of the system.

The FAA concurs with the commenter's request to extend the compliance interval for flap re-rigging to 3,000 hours time-in-service or one year after the effective date of the AD. Based on results of a safety assessment, the FAA finds that the compliance time proposed by the commenter would adequately ensure safety, provided that the inspection for free play and roller rattle required by paragraph (a) of this AD is accomplished and that no discrepancies are found. The FAA has revised paragraph (b) of the final rule accordingly.

One commenter implies that the FAA should delete the requirement for repetitive inspections of structurally significant items (SSI) proposed in paragraph (c)(1) of the notice. The commenter states that, although the inspection proposed in paragraph (a) of the notice would disclose evidence of free play and roller rattle, the inspection would not provide any information with regard to the life of the airplane. The commenter concludes that a requirement to inspect SSI's for the life of the airplane based upon the results of the inspection proposed in paragraph (a) is unreasonable and may not be realistic in light of the stress the structure has experienced.

The FAA does not concur. Inspections of SSI's were developed during certification of the type design of these airplanes, independent of any inspections contained in this AD action. This AD requires early commencement of inspections of SSI's for certain airplanes if the results of the inspection required by paragraph (a) of this AD disclose discrepancies. In this case, the FAA considers a reduced compliance threshold for inspections of SSI's to be prudent in order to address the possibility that cracks or other damage may begin sooner than anticipated originally. No additional inspections of SSI's have been imposed by this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 80 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $44,000, or $550 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-07-06 De Havilland, Inc.: Amendment 39-8538. Docket 92-NM-120-AD.

Applicability: Model DHC-8-100 and DHC-8-300 series airplanes; serial numbers 3 through 216, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, inspect the inboard flaps for free play and roller rattle, in accordance with the Accomplishment Instructions, Paragraph A., of de Havilland Service Bulletin S.B. 8-27-53, dated May 11, 1990.

Note: Evidence of free play and roller rattle, as defined in the service bulletin, is a desirable condition.

(b) If free play and roller rattle are found as a result of the inspection required by paragraph (a) of this AD: Within 3,000 hours time-in-service or one year after the effective date of this AD, whichever occurs first, re-rig the flap system, in accordance with the Accomplishment Instructions, Paragraph B., of de Havilland Service Bulletin S.B. 8-27-53, dated May 11, 1990. After accomplishment of this procedure, no further action is required by this AD.

(c) If free play and roller rattle are not found as a result of the inspection required by paragraph (a) of this AD: Within 250 hours time-in-service after the effective date of this AD, re-rig the flap system, in accordance with the Accomplishment Instructions, Paragraph B., of de Havilland Service Bulletin S.B. 8-27-53, dated May 11, 1990.

(1) If the airplane has accumulated more than 5,000 landings when the flap system is re-rigged in accordance with this paragraph: Within 250 hours time-in-service after the effective date of this AD, begin repetitive inspections of the structurally significant items (SSI) in the vicinity of the re-rigged inner flap (identified in the following table) and repeat at the intervals specified in the applicable FAA-approved maintenance program.

Airplane	Maintenance program	DHC SSI task identification No.
DHC-8 Series 100, All Models.	DHC-8 Series 100 Maintenance Program PSM 1-8-7, Part 2, Airworthiness Limitations Listings.	WF01, WF02, WF03, WF05, WF06, WF07, WF08, WF09, WF10, WF28, WF29, WF30, and WF31.
DHC-8 Series 300, Model 301.	DHC-8 Series 300 Maintenance Program PSM 1-83-27, Part 2, Airworthiness Limitations Listings.	WF01, WF02, WF03, WF05, WF06, WF07, WF08, WF09, WF10, WF28, WF29, WF30, and WF31.

(2) If the airplane has accumulated 5,000 or fewer landings when the flap system is re-rigged in accordance with this paragraph, no further action is required by this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and re-rig shall be done in accordance with de Havilland Service Bulletin S.B. 8-27-53, dated May 11, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 14, 1993.

Issued in Renton, Washington, on April 7, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-8673 Filed 4-13-93; 8:45 am]

BILLING CODE 4910-13-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 240, 270, and 274

[Release Nos. 33-6990, 34-32116, IC-19399, File No. S7-27-92]

RIN 3235-AF50

Repurchase Offers by Closed-End Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rules and amendments to rules.

SUMMARY: The Commission is adopting a new rule under the Investment Company Act of 1940 (the "Act"), a new form under the Act, and a new rule and related amendments to certain rules under the Securities Exchange Act of 1934. The Commission also is publishing a new staff guideline and amendments to an existing staff guideline for the preparation of Form N-2, the registration form used by closed-end management investment companies. Under the new rule, closed-end management investment companies may repurchase their common stock at periodic intervals at net asset value; and closed-end management investment companies, whether or not making periodic repurchase offers, may make discretionary repurchase offers at net asset value not more frequently than once every two years. The new staff guideline and guideline changes would provide specific guidance for investment companies making repurchase offers under the rule. The provisions for periodic repurchase offers are intended to allow certain closed-end companies to offer investors a limited ability to resell their shares in a manner that traditionally has been available only to open-end company shareholders. The provisions for discretionary repurchase offers are intended to permit closed-end funds to make repurchase offers for their shares with an exemption from some of the requirements of the rules under the Exchange Act.

EFFECTIVE DATE: May 14, 1993.

FOR FURTHER INFORMATION CONTACT: Robert G. Bagnall, Special Counsel, (202) 272-3042, or Diane C. Blizzard, Assistant Director, (202) 272–2048, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is adopting rule 23c–3 under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Act"). The adoption of rule 23c–3 implements part of the recommendations made in Chapter 11 of the report published last year by the Division of Investment Management ("Division"), Protecting Investors: A Half Century of Investment Company Regulation.[1] The Commission also is adopting Form N–23c–3 under the Act to serve as a cover sheet for certain filings required by rule 23c–3. In addition, the Commission is adopting amendments to rules 10b–6 [17 CFR 240.10b–6] and 13e–4 [17 CFR 240.13e–4] under the Securities Exchange Act of 1934 [15 U.S.C. 78a–78*ll*] (the "Exchange Act") to provide exemptions from those rules for repurchase offers pursuant to rule 23c–3, and new rule 14e–6 thereunder, which would exempt repurchase offers pursuant to rule 23c–3 from rules 14e–1 and 14e–2 [17 CFR 240.14e–1 and .14e–2]. The Commission also is publishing a new staff guideline, and amendments to an existing staff guideline, for the preparation of Form N–2 [17 CFR 239.14 and 274.11a–1].

In a companion release, the Commission today is proposing a rule amendment and a new rule under the Securities Act of 1933 (the "Securities Act") to permit funds that make periodic repurchase offers under rule 23c–3 to offer their common stock on a continuous or delayed basis, and to obtain automatic effectiveness for post-effective amendments to their registration statements and for new registration statements filed to register additional securities.[2]

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EXECUTIVE SUMMARY

The Commission today is adopting rule 23c–3 with certain modifications from the rule as proposed in July 1992 and published in the **Federal Register** August 6, 1992 (57 FR 34701). Rule 23c–3 allows closed-end management investment companies (including business development companies) to make repurchase offers to shareholders at net asset value, either at periodic intervals pursuant to a fundamental policy, or on a discretionary basis not more frequently than once every two years. Funds could make periodic repurchase offers every three, six, or twelve months. Funds making such offers must send shareholders a notification containing specified information at least twenty-one, and no more than forty-two days before each periodic deadline for submitting repurchase requests. That deadline would occur up to fourteen days in advance of the date on which a fund would determine the applicable net asset value and repurchase the shares; payment of repurchase proceeds must occur within seven days after repurchase. The dates of the repurchase request deadlines and latest possible date for computing net asset value must be matters of fundamental policy, changeable only by shareholder vote.

Rule 14e–6 and new paragraph (h)(7) of rule 13e–4 exempt repurchase offers pursuant to rule 23c–3 from certain tender offer regulations, including the filing requirements of rule 13e–4. New paragraph (h) of rule 10b–6 exempts repurchases pursuant to rule 23c–3 from rule 10b–6.

I. Background

Traditionally, shareholders of closed-end management investment companies have resold their common stock in different ways than shareholders of open-end companies. Unlike open-end shares, shares of closed-end funds are not redeemable by the issuer at net asset value and usually are traded in secondary markets, either on exchanges or over the counter. The market price of closed-end shares often can be at a significant discount from the net asset value of the shares.

While most resales of closed-end shares have been conducted through secondary market trades, some closed-end funds have made repurchase offers directly to shareholders pursuant to section 23(c)(2).[3] These repurchase offers are issuer tender offers and currently must comply with the requirements of the tender offer rules under the Securities Exchange Act, including rules 13e–4 and 14e–1. To the extent that a closed-end company making a repurchase offer is engaged in an offering of its shares, it also must obtain relief from rule 10b–6 under the Exchange Act, which generally prohibits persons involved in a securities distribution from bidding for or purchasing those shares and certain related securities until after their participation in the distribution is complete.

Redemptions of open-end shares are subject to section 22(e) of the Act which provides, subject to certain exceptions, that registered open-end companies may not suspend the right of redemption, and must pay redemption proceeds

[1] Division of Investment Management, SEC, Repurchases and Redemptions of Investment Company Shares, Protecting Investors: A Half Century of Investment Company Regulation (1992) [hereinafter the Protecting Investors report].

[2] Continuous or Delayed Offerings by Certain Closed-End Management Investment Companies, Automatic Effectiveness of Certain Registration Statements and Post-Effective Amendments, Securities Act Release No. 6989 (Apr. 7, 1993).

[3] 15 U.S.C. 80a–23(c)(2). Section 23 imposes certain requirements on the pricing, sale, and repurchase of shares of closed-end investment companies.

within seven days.[4] Rule 22c–1 requires open-end companies to compute net asset value daily and requires shares to be redeemed at the net asset value computed after receipt of a redemption request or of an order to purchase or sell the shares.[5]

Because open-end securities are redeemable, and closed-end are not, section 18 of the Act limits the use of leverage by closed-end and open-end investment companies in different ways.[6] Because of the difference in redeemability, there also are different requirements for the liquidity of open-end and closed-end company assets. The Commission has stated that, to raise sufficient cash to meet redemptions in a timely manner, open-end companies should maintain a high degree of liquidity by holding no more than fifteen percent of their assets in assets that cannot be sold in seven days at approximately the price used in determining net asset value (the "seven day standard").[7] This requirement ensures that portfolio securities can be sold and the proceeds used to meet redemptions in a timely manner. Closed-end companies are not subject to a liquidity standard.

Some recent developments have indicated that investors may not be able to satisfy their investment objectives with funds employing the traditional procedures for redeeming open-end shares and reselling closed-end shares. The liquidity standards for open-end companies have the effect of requiring funds that invest substantially in less liquid assets to register as closed-end funds. Closed-end companies, however, attract much less investment than open-end companies, and their shares often trade at a discount to net asset value. Sponsors have considered and tried various techniques for responding to, or attempting to forestall, those discounts. Those techniques have included conversion to open-end status, and periodic tender offers at net asset value. Both techniques have had certain disadvantages.

On July 28, 1992, the Commission proposed rule 23c–3.[8] Proposed rule 23c–3 would have permitted closed-end management investment companies to make periodic repurchase offers to shareholders at net asset value. Funds could have made such offers every three, six, twelve, twenty-four, or thirty-six months. The proposed rule generally would have required funds making such offers to send shareholders a notification containing specified information at least twenty business days in advance of each periodic deadline for submitting repurchase requests. Funds would have paid repurchase proceeds using the net asset value computed on the next business day after a repurchase deadline and would have been required to make payment within seven days after the deadline. The dates of those deadlines and the frequency of such offers would have been matters of fundamental policy, changeable only by shareholder vote.

Proposed rule 14e–6 and the proposed amendment to Exchange Act rule 13e–4[9] would have exempted repurchase offers under rule 23c–3 from certain tender offer provisions, including the filing requirements of rule 13e–4. Another proposed amendment would have exempted such repurchase offers from rule 10b–6.[10]

At the same time, the Commission proposed rule 22e–3. Rule 22e–3 would provide an exemption from the prohibition in section 22(e) of the Act on suspending the right of redemption of redeemable securities or postponing the payment of redemption proceeds for more than seven days after the tender of securities for redemption. Under the proposed rule, open-end management investment companies and certain insurance company separate accounts would be able to take up to thirty-one days to pay redemption proceeds; the thirty-one day redemption period would begin with the date of tender for open-end funds making rolling redemptions ("extended payment funds"), and with specified redemption deadlines for open-end funds redeeming at periodic intervals ("interval funds"). Certain corresponding changes to the rules governing registered separate accounts would permit the use of rule 22e–3 by registered separate accounts, whether organized as open-end management companies or as unit investment trusts.[11]

In the proposing release, the Commission also published for comment new Guidelines to Forms N–1A, N–2, N–3, and N–4. These guides would indicate to registrants where specific disclosure may be needed concerning the proposed repurchase and redemption procedures.

II. Discussion

The Commission received nineteen comment letters addressing proposed rule 23c–3.[12] All but three supported the general goal of providing procedures for periodic repurchase offers. Most, however, suggested changes to specific aspects of the proposal. The Commission is adopting rule 23c–3 with the same general structure and requirements as proposed, but also with modifications to several specific provisions to reflect many of the comments received.

A. Terms of Repurchase Offers

Rule 23c–3 permits a closed-end fund to repurchase its common stock directly through repurchase offers to all security holders.[13] A fund making periodic repurchase offers pursuant to paragraph (b) (a "closed-end interval fund") would be required to make such offers pursuant to a fundamental policy specifying key terms of the fund's repurchase offers. Those terms include the intervals between repurchase request deadlines (which could be three, six, or twelve months); the scheduled repurchase request deadline dates; and the maximum lengths of time between a repurchase request deadline and the date on which the fund computes the net asset value applicable to the repurchase (repurchase pricing date). The repurchase pricing date could occur no more than fourteen days after the repurchase request deadline; the fund must make payment by seven days thereafter (the repurchase payment deadline). In effect, a fund would have up to fourteen days' advance notice of

[4] 15 U.S.C. 80a–22(e).

[5] 17 CFR 270.22c–1.

[6] In particular, open-end companies are subject to the requirements of Investment Company Act § 18(f)(1) [15 U.S.C. 80a–18(f)(1)].

[7] *See* Guide 4 to Form N–1A, Revision of Guidelines to Form N–1A, Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828.

[8] Periodic Repurchases by Closed-End Management Investment Companies; Redemptions by Open-End Management Investment Companies at Periodic Intervals or with Extended Payment, Securities Act Release No. 6948 (July 28, 1992), 57 FR 34701.

[9] 17 CFR 240.13e–4.

[10] 17 CFR 240.10b–6.

[11] The Commission is neither adopting nor withdrawing proposed rule 22e–3 at this time.

[12] The commenters were Alliance Capital Management Corporation; the Subcommittee on Investment Companies and Investment Advisers of American Bar Association's Section of Business Law ("ABA Subcommittee"); Brown & Wood; Davis Polk & Wardwell; Eaton Vance Management; Fidelity Investments; Hale and Dorr; the Investment Company Institute ("ICI"); Madeleine Johnson; Merril Lynch Asset Management, North American Securities Administrators Association, Inc. ("NASAA"); the Committee on Securities Regulation of the Association of the Bar of the City of New York ("New York Bar Committee"); Newgate Management Associates; Prudential Mutual Fund Management, Inc.; Quest Advisory Corp.; Ropes & Gray; Prof. William Ruckstuhl; David Schacher; and Phillip Smith.

[13] Paragraphs (b)(1) and (c) refer to repurchase offers for common stock. Proposed paragraph (b)(1) used the term "securities" but implicitly limited repurchase offers to common stock, as the limitations on senior securities in proposed paragraph (b)(9) made clear. The wording of paragraphs (b)(1) and (c) as adopted clarifies this limitation.

the amount shareholders wish repurchased; the fund would have up to seven days after that in which to pay repurchase proceeds—just as open-end companies or closed-end companies making issuer tender offers now have seven days in which to make payment. A repurchase offer could be made for any amount of shares that is at least five percent, but no more than twenty-five percent, of the amount outstanding on the repurchase request deadline. If an offer is oversubscribed, the fund must prorate the repurchase, subject to limited exceptions.

1. Fundamental Policy Regarding Repurchase Offers

Paragraph (b)(2)(i) requires a closed-end interval fund to make repurchases pursuant to a fundamental policy, changeable only by vote of a majority of the outstanding voting securities,[14] specifying that the fund will make repurchase offers, and certain terms of those offers. Those terms include the intervals between repurchase request deadlines, the schedule of the repurchase request deadline dates, and the timing of repurchase pricing dates.

Paragraph (b)(2)(i)(B) retains from the proposal the requirement that the frequency of periodic intervals be a matter of fundamental policy.[15] Many commenters suggested that funds should be free to make offers more frequently than at the intervals selected in their fundamental policies, if the funds disclose these policies and notify shareholders in advance of any changes. Permitting funds to adjust their request deadlines, however, would in effect allow funds to shorten or lengthen their interval without consulting shareholders. Moreover, since paragraph (c) of the rule permits closed-end interval funds to make limited discretionary repurchase offers in addition to periodic repurchase offers pursuant to paragraph (b), there does not appear to be a need for such flexibility.[16] Accordingly, this requirement is unchanged.

The requirement that the policy specify the dates of repurchase request deadlines also is unchanged from the proposed rule.[17] In the proposing release the Commission requested comment on whether the dates of repurchase request deadlines should be non-fundamental, thus allowing the board of directors to adjust the dates without obtaining a shareholder vote. Some commenters argued that matters such as repurchase request deadlines should be non-fundamental and that it would be sufficient to notify shareholders of changes by mail or newspaper publication; they argued that because these procedures are new, it can be expected that adjustments will be necessary, and it would be expensive to have shareholders meetings for each adjustment. The Commission has concluded, however, that the repurchase request deadline should remain a matter of fundamental policy in order to provide investors with predictability.

The final rule adds the requirement in subparagraph (D) that the policy specify the latest possible day on which it will determine the price for repurchases; because paragraph (a)(4) specifies that the repurchase payment deadline is seven days after the repurchase pricing date, this fundamental policy in effect sets the latest possible deadline for paying repurchase proceeds. These steps of the repurchase procedures are new with the modification of the rule to permit funds to take up to twenty-one days to pay repurchase proceeds.[18]

As proposed, rule 23c–3 would have required all funds relying on the rule to specify, as a matter of fundamental policy, their minimum and maximum repurchase amounts—the minimum and maximum amounts that they could offer to repurchase. These amounts could not be less than five or more than twenty-five percent of the outstanding securities. In light of the maximum and minimum limits on the size of repurchase offers, it does not appear necessary to require that a fund also specify such limits in its repurchase policy; and this requirement has been deleted. Accordingly, the minimum and maximum limits have been moved to paragraph (a)(3), the definition of "repurchase offer amount."

a. *Suspending or postponing offers.* Paragraph (b)(3)(i) provides that a fund may suspend or postpone a scheduled repurchase offer in certain limited circumstances when repurchases would have severe consequences for shareholders or the fund. A fund may rely upon these exceptions with a vote of a majority of directors, including a majority of the independent directors. Subparagraph (A) provides an exception if a repurchase could affect a fund's tax status as a regulated investment company under Subchapter M of the Internal Revenue Code; and subparagraph (B) provides an exception if a repurchase would cause the fund's shares to be delisted from a national securities exchange. Subparagraphs (C) through (E) are based upon the clauses in section 22(e) of the Act providing when issuers of redeemable securities may suspend redemptions or postpone payment upon redemption; accordingly, these provisions are to be construed in conformity with interpretations of section 22(e).

This provision includes only one additional exception to those provided in the proposal: the exception in subparagraph (B) for circumstances that otherwise would cause the delisting of a fund's shares. Several commenters suggested that, given the importance of a secondary market to many investors, a fund should be able to suspend or postpone a repurchase offer if it would cause the fund's shares to be delisted.[19] This exception applies if a repurchase would cause a fund's shares to be delisted from an exchange or to cease to be quoted on NASDAQ.

Subparagraph (C) provides an exception for any period when the market where a fund's assets principally are traded is closed, or trading on such market is restricted. A commenter suggested that the exception in proposed subparagraph (b)(3)(ii) [subparagraph (b)(3)(i)(C) in the final rule] should be revised to replace the word "exchange" with the word "market."[20] This change accommodates funds investing primarily in securities traded over-the-counter, including on NASDAQ.

Commenters suggested that the rule also should provide for suspension or postponement when there is a premium or no or little discount in the secondary market price, or in the event of substantial adverse market developments.[21] An exception for a

[14] See section 2(a)(42) of the Act, 15 U.S.C. 80a–2(a)(42) (definition of the term "voting security").

[15] Paragraph (b)(2)(i)(B) requires that the policy specify the periodic intervals between repurchase request deadlines, while the proposal required that it specify the intervals between repurchase offers. This change recognizes that rule 23c–3 allows funds some leeway in the timing of sending out notifications of repurchase offers, while requiring predictability in the timing of the repurchase request deadlines.

[16] *See infra* section II.I.

[17] The term "repurchase deadline" in the proposed rule has been changed to "repurchase request deadline" in order to distinguish it from the "repurchase payment deadline," now defined in paragraph (a)(4).

[18] *See infra* section II.A.5.a for further discussion of these modifications.

[19] *See, e.g.*, Letter from Brown & Wood to Jonathan G. Katz, Secretary, SEC 7 (Nov. 3, 1992), File No. S7–27–92 [hereinafter Brown & Wood Comment Letter]; Letter from the Investment Company Institute to Jonathan G. Katz, Secretary, SEC 6 (Nov. 4, 1992), File No. S7–27–92 [hereinafter ICI Comment Letter].

[20] Letter from Ropes & Gray to Jonathan G. Katz, Secretary, SEC 8 (Nov. 4, 1992), File No. S7–27–92 [hereinafter Ropes & Gray Comment Letter]

[21] Letter from Davis Polk & Wardwell to Jonathan G. Katz, Secretary, SEC 3 (Nov. 4, 1992), File No.

Continued

premium or small discount would not be appropriate; the potential for repurchase offers may be the cause of that premium or small discount. Moreover, even if there were little or no discount at the time when a fund otherwise would make an offer, there is no assurance that the market price otherwise would not decline by the repurchase request deadline. An exception for substantial adverse market developments does not appear necessary; to the extent they materially impair a fund's ability to conduct a repurchase offer, to determine net asset value, or to pay repurchase proceeds, such exceptional events may justify suspension or postponement under subparagraph (D) or (E) and may be addressed on a case-by-case basis through Commission orders or Division no-action or interpretive positions under standards comparable to those under section 22(e).

New subparagraph (ii) of paragraph (b)(3) prescribes procedures to be followed when an offer is suspended or postponed under paragraph (b)(3)(i). If an offer is suspended or postponed, the fund must notify shareholders promptly. If the fund renews the offer, the fund must send a new notification of the offer as postponed to shareholders pursuant to the requirements of paragraph (b)(4).

b. *Funds currently making periodic repurchase offers.* New paragraph (b)(2)(iii) permits funds that already make periodic repurchase offers for their shares to treat their existing repurchase practices as a fundamental policy for purposes of paragraph (b)(2)(i). Thus, these funds should be able to make periodic repurchase offers under rule 23c–3 without a shareholder vote. Commenters had suggested that the rule include such a grandparent clause.[22] They argued that these funds' shareholders already are aware of the funds' repurchase policies, and that the expense of a shareholder vote would serve no interest of the shareholders. To make clear that a fund is electing to treat its prior repurchase offers as part of a policy within paragraph (b)(2)(i) of rule 23c–3, a fund's board of directors must adopt a resolution so stating and specifying the fund's policies pursuant to paragraphs (b)(2)(i) (A) through (D); the interval specified in the policy must conform to the actual frequency of the fund's prior repurchase offers. After the adoption of that resolution, pursuant to paragraph (b)(2)(i) the fund may not change its policy without a majority vote of the outstanding voting securities.

2. Repurchase Offers to All Security Holders

Paragraphs (b) and (c) require that repurchase offers be made to all holders of the security that is the subject of a repurchase offer.[23] This requirement, which is unchanged from the proposal, is intended to protect against unfair discrimination. It also requires that an offer be open to all holders of the security, even those who purchase after the fund transmits the offer to security holders.

3. Amount of Repurchase Offers

a. *Maximum and minimum size of repurchase offers.* Paragraph (a)(3), the definition of "repurchase offer amount," provides that a repurchase offer amount may not be less than five percent, and may not exceed twenty-five percent, of the amount of common stock outstanding on the repurchase request deadline. The definition retains the five and twenty-five percent limits from the proposal, but the limits apply to the size of each repurchase offer, rather than to maximum and minimum repurchase amounts, which the proposal would have required funds to specify by fundamental policy.

One commenter thought that the twenty-five percent maximum limit provided a reasonable way to distinguish funds operating under rule 23c–3 from open-end funds.[24] Most commenters, however, criticized the proposed maximum limit as restrictive or unnecessary and argued that such a ceiling is not needed to preserve a distinction between open-end and closed-end funds.[25] Some commenters argued that investors would not be hurt by repurchases of a higher amount. The commenters did not, however, suggest any other percentages that would distinguish closed-end interval funds from issuers of redeemable securities within section 2(a)(32) of the Act.[26] Accordingly, the Commission has retained the twenty-five percent maximum limit. To the extent that a fund determines it is appropriate to make an offer to repurchase a higher amount, it may do so through a discretionary repurchase offer pursuant to paragraph (c). The potential for discretionary repurchase offers pursuant to paragraph (c) for up to 100 percent of a fund's common stock, especially in combination with periodic repurchase offers pursuant to paragraph (b), might under some circumstances raise a question whether a fund making repurchase offers under rule 23c–3 is an issuer of redeemable securities within section 2(a)(32). To resolve any ambiguity on that point, new paragraph (d) provides that funds making repurchase offers pursuant to rule 23c–3 shall not thereby deemed to be issuers of redeemable securities.

The five percent minimum limit is unchanged from the proposal. Commenters generally agreed that the five percent minimum is appropriate and is unlikely to prejudice any fund; some supported the five percent minimum but stated that it need not be stated as a fundamental policy. In the proposed rule, the five percent minimum appeared in the definition of "minimum repurchase offer amount;" like the maximum limit, it has been moved because the rule as adopted does not require that each fund specify a minimum or maximum repurchase offer amount in its repurchase policy under paragraph (b)(2).

b. *Repurchase offer amount.* The definition of "repurchase offer amount" in paragraph (a)(3) also provides that a fund's directors shall determine the amount of each repurchase offer. As proposed, this definition provided that a fund could delegate to its adviser the determination of the amount of each repurchase offer. Some commenters stated that delegation of this determination to the adviser is appropriate because the board of directors would retain supervision.[27] Other commenters, however, stated that delegation to the adviser is not appropriate because of the potential conflict between the adviser's and the

S7–27–92 (the board should be authorized to suspend offers if there is a substantial adverse development such as the October 1987 market crash or if there is a premium or little discount in the market price) [hereinafter Davis Polk Comment Letter]; Letter from the Committee on Securities Regulation of the Association of the Bar of the City of New York to Jonathan G. Katz, Secretary, SEC 7 (Nov. 30, 1992), File No. S7–27–92 (the board should be able to terminate a repurchase offer if, as a result of market declines such as the October 1987 market declines, it would not be in the best interest of shareholders to complete an offer) [hereinafter New York Bar Committee Comment Letter].

[22] *See, e.g.*, Brown & Wood Comment Letter, *supra* note 19, at 6–7; letter from Merrill Lynch Asset Management to Jonathan G. Katz, Secretary, SEC 4 (Nov. 30, 1992), File No. S7–27–92 [hereinafter Merrill Lynch Comment Letter].

[23] The one commenter to address this requirement supported it. Brown & Wood Comment Letter, *supra* note 19, at 7–8.

[24] Letter from Hale and Dorr to Jonathan G. Katz, Secretary, SEC 4 (Nov. 4, 1992), File No. S7–27–92 [hereinafter Hale and Dorr Comment Letter].

[25] *See, e.g.*, Letter from the Subcommittee on Investment Companies and Investment Advisers of the American Bar Association's Section on Business Law to Jonathan G. Katz, Secretary, SEC 9 (Nov. 2, 1992), File No. S7–27–92 [hereinafter ABA Subcommittee Comment Letter]; ICI Comment Letter, *supra* note 19, at 7–8.

[26] 15 U.S.C. 80a–2(a)(32).

[27] *See, e.g.*, Brown & Wood Comment Letter, *supra* note 19, at 9; Hale and Dorr Comment Letter, *supra* note 24, at 5.

shareholders' potentially differing interests in the amount to be repurchased.[28] In addition, rule 23c–3 as adopted would not require funds to adopt fundamental policies specifying maximum and minimum repurchase offer amounts; this change decreases the advance certainty that investors would have concerning the size of repurchase offers. Accordingly, the Commission has revised this provision to require that the board of directors determine the repurchase offer amount in all repurchase offers under rule 23c–3.[29]

c. *Amount of securities repurchased.* Under rule 23c–3, a fund may take certain actions if security holders tender more than the repurchase offer amount. Paragraph (b)(5) requires a fund to repurchase pro rata if the amount tendered exceeds the repurchase offer amount. Paragraph (b)(5) also allows the fund to repurchase additional securities not exceeding two percent of the amount outstanding on the repurchase request deadline; beyond that two percent margin, the fund must repurchase pro rata. Paragraphs (b)(5) (i) and (ii), however, give the fund two optional exceptions to a strict pro rata repurchase: the fund may accept odd lot tenders of below 100 shares; and the fund may accept all-or-nothing tenders.[30]

The proposal would have limited the use of the two percent oversubscription allowance by providing that the total amount repurchased could not in any event exceed the maximum repurchase amount, which could not exceed twenty-five percent. As adopted, rule 23c–3 does not require funds to adopt maximum repurchase offer amounts as fundamental policy. In light of this change, paragraph (b)(5), as adopted here, does not limit the use of the oversubscription allowance.

Paragraph (b)(1) provides that a fund may not condition its obligation to repurchase shares upon the tender of any minimum amount of shares. One commenter suggested that rule 23c–3 should clarify that if shareholders tender less than the minimum percentage specified in a repurchase offer, the fund still is obligated to repurchase the shares tendered.[31] While it seems unlikely that a fund would set a floor for tenders in a repurchase offer intended to provide shareholder liquidity (rather than to gain control), rule 23c–3 as adopted clarifies that a fund is obligated to repurchase any amount of shares that may be tendered up to the repurchase offer amount.

4. Periodic Intervals

Paragraph (a)(1) defines the term "periodic interval" as an interval of three, six, or twelve months. As proposed, the definition also would have included intervals of twenty-four and thirty-six months. Some commenters suggested that the rule should limit the maximum interval to twelve months. For example, one commenter said that intervals over twelve months are confusing and produce minimal benefits.[32] Another commenter suggested that the rule should delete the 24 and 36 month intervals and instead allow discretionary repurchase offers.[33] The Commission agrees that longer intervals are likely to produce minimal benefits, especially since paragraph (c) of the rule as adopted permits closed-end funds to make discretionary repurchase offers. Accordingly, paragraph (a)(1) as revised omits the intervals of twenty-four and thirty-six months.

Some commenters suggested other changes. Several commenters said that the rule should incorporate the one and two month intervals from proposed rule 22e–3 instead of adopting that rule.[34] Another commenter proposed that the rule should permit other intervals (as long as in monthly increments, *e.g.* nine or fifteen months) as well as intervals greater than three years.[35] Two commenters suggested that the rule should permit any interval of three months or longer.[36] The rule as revised does not incorporate those suggestions. Longer monthly intervals would not be evenly divisible into one year and would not provide investors with any predictability. Shorter intervals such as one or two months are not compatible with the notification requirement in paragraph (b)(4); with shorter intervals, a fund would need to send out a notification for a repurchase offer before it had completed the previous offer.

a. *Timing of initial repurchase offer.* Paragraph (a)(7) prescribes a period in which a fund's initial repurchase offer must occur. The initial repurchase request deadline must occur no later than two intervals after the effective date of the fund's registration statement or the date of the shareholder vote adopting the fundamental policy prescribing the fund's intervals. Thus, for example, a new fund with a three month interval could schedule its initial repurchase request deadline as much as, but no later than, six months after the effective date of the registration statement; the same would be true for an existing closed-end fund that adopted a fundamental policy of quarterly repurchase offers, which could schedule its initial repurchase request deadline up to six months after the shareholder vote.[37]

The proposal contained no provision regarding the timing of a fund's initial repurchase offer. Some commenters, however, stated that a fund should be able to delay its initial offer for a specified period following the initial public offering; they argued that this delay would allow funds to implement investment programs fully before repurchasing securities.[38] In addition, this provision allows an existing fund to conduct a shareholder vote to adopt a fundamental repurchase policy without the constraint of being required to schedule the shareholder vote to occur one interval before the initial repurchase request date. Guide 10, as revised, requires prospectus disclosure, where applicable, of a fund's initial scheduled repurchase request deadline as part of the fund's disclosure concerning the timing of repurchase offers.

5. Timing of Repurchase Offers

a. *Repurchase pricing date and repurchase payment deadline.* Rule 23c–3 would give funds up to fourteen days' advance notice of the amount shareholders wish to have repurchased. Specifically, the "repurchase pricing

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[28] *See, e.g.*, ICI Comment Letter, *supra* note 19, at 9; letter from North American Securities Administrators Association, Inc. to Jonathan G. Katz, Secretary, SEC 4–5 (Nov. 18, 1992), File No. S7–27–92 [hereinafter NASAA Comment Letter].

[29] *See also infra* paragraph II.D for a discussion of the requirements concerning the independence of the board of directors.

[30] The pro rata provision, including the exceptions, is based upon paragraph (f)(3) of rule 13e–4.

[31] Ropes & Gray Comment Letter *supra* note 20, at 4.

[32] ICI Comment Letter, *supra* note 19, at 10–11.

[33] ABA Subcommittee Comment Letter, *supra* note 25, at 10.

[34] *See, e.g.*, ABA Subcommittee Comment Letter, *supra* note 25, at 5; Merrill Lynch Comment Letter, *supra* note 22, at 5.

[35] Davis Polk Comment Letter, *supra* note 21, at 5.

[36] Ropes & Gray Comment Letter, *supra* note 20, at 4; New York Bar Committee Comment Letter, *supra* note 21, at 5–6.

[37] This provision would not permit a fund relying on the grandparent clause in paragraph (b)(2)(iii) to delay its first repurchase offer after the board vote adopting a repurchase policy. The provision for initial repurchase offers in paragraph (a)(7) refers to the first repurchase request deadline after the effective date of the fund's registration statement or a shareholder vote adopting the fundamental policy specifying the fund's periodic interval, whichever is later. The first repurchase request deadline after the effective date would already have occurred; and there would be no shareholder vote on the periodic interval at the time of the board resolution.

[38] *See, e.g.* ABA Subcommittee Comment Letter, *supra* note 25, at 10 (proposing that funds should be able to delay initial repurchase offer for up to two years); Ropes & Gray Comment Letter, *supra* note 20, at 4.

date," which is defined in paragraph (a)(5), normally could occur up to fourteen days after the repurchase request deadline (it could occur later than the fourteenth day if the fourteenth day were not a business day). A fund relying on rule 23c–3 must pay repurchase proceeds to shareholders within seven days after the repurchase occurs; the definition of repurchase payment deadline in paragraph (a)(4) of the final rule requires that payment occur within seven days after the repurchase pricing date.

Those definitions and their content represent a significant change from the proposal.[39] Paragraph (b)(1) of the proposed rule required payment within seven days after the repurchase request deadline; the applicable price for repurchases was the net asset value computed on the next business day after the repurchase request deadline. With one exception,[40] however, all commenters suggested that funds should have up to a month to pay repurchase proceeds, as under proposed rule 22e–3.[41] They argued that this longer period would allow funds to invest in less liquid securities and that the proposed liquidity standard, which was keyed to the seven day payment period, was too restrictive and would disrupt portfolio management.

The revised pricing and payment provisions respond to those concerns by allowing funds a period of up to three weeks to pay repurchase proceeds and by requiring pricing seven days before that payment deadline. The longer period for repayment, while not as long as the thirty-one days provided in proposed rule 22e–3, would allow funds greater flexibility to manage portfolio assets after receiving repurchase requests. For that reason also, the liquidity standards in paragraph (b)(10) as adopted reflect the longer period that a fund could use to come up with the money to pay repurchase proceeds.[42]

Shareholders who tender their shares for repurchase will bear the risk or receive the benefit of any market changes during the period between the repurchase request deadline and the repurchase pricing date. Investment companies relying on rule 23c–3 will be expected to disclose this risk clearly in their prospectuses. Accordingly, Guide 10 as published here provides guidance to registrants concerning the disclosure of this risk.

The delay between the repurchase request deadline and the repurchase pricing date may require funds to consider carefully the proper accounting treatment of repurchase requests. The current accounting for a redemption by an open-end company is clear. Because a redemption meets the accounting definition of a liability,[43] the fund accounts for a redemption as a liability on the day the redemption is received. This is accounted for by transferring the redemption amount from capital in its books and records to a liability account. When to account for a repurchase request as a liability of a closed-end interval fund may be determined differently. Until the date that a shareholder may no longer rescind or modify the right to redeem (the repurchase request deadline), it is unlikely that a repurchase request should be treated as a liability. When, however, the payment by the fund is probable and reasonably estimable, the repurchase amount should be accounted for as a liability. This may be as of a date prior to the repurchase pricing date.

b. *Optional Earlier Repurchase Pricing and Payment.* Under paragraph (b)(2)(i)(D), a closed-end interval fund must specify in its fundamental repurchase policy the latest repurchase pricing date that the fund may use. The definition of repurchase pricing date in paragraph (a)(5) gives funds the option of pricing and paying repurchase proceeds earlier without a shareholder vote. A fund may use this option if the fund pays repurchase proceeds within seven days after the earlier repurchase pricing date, and using the earlier repurchase pricing date is not likely to result in significant dilution of either the shares that are tendered or those that are not.

This provision allows funds to determine net asset value earlier and pay repurchase proceeds promptly thereafter when the amount of a fund's liquid assets in relation to the amount of repurchase requests permits prompt payment. For example, if shareholders were to tender four percent of the outstanding shares as of the repurchase request deadline, while the fund had six percent of assets in cash, cash equivalents, or other assets that readily could be converted to cash, a fund could determine net asset value on the next business day and pay shareholders within seven days thereafter; there would be no need to sell less liquid assets and no dilution of the remaining shareholders. The combination of the option for early pricing with the ability to take up to fourteen days to price gives funds the flexibility to respond to a variety of portfolio conditions and accommodates two competing concerns: the desirability of determining net asset value and paying repurchase proceeds as soon as possible after the repurchase request deadline; and the mandate in section 23(c)(3) to avoid unfair discrimination against any shareholders, such as dilution of the interests of non-tendering shareholders.

This provision was not part of the proposed rule, which required pricing on the next business day after the repurchase request deadline and hence had no room to move the pricing date earlier. Several comments on rule 22e–3, however, which did allow pricing up to twenty-four days after the deadline for redemption requests, urged the Commission to allow funds to adjust the pricing date as long as they gave notice to shareholders of the date to be used.[44] One suggested that the fundamental policy should specify a maximum payment period and that funds should have the option of paying earlier.[45]

c. *Permissible Dates of Repurchase Deadlines.* The definition of "repurchase request deadline" in paragraph (a)(7) does not restrict the days of the month when a fund could schedule repurchase request deadlines. As proposed, the definition would have restricted those deadlines to the first or last calendar or business day, or the fifteenth calendar day or the next business day, of the month. The proposing release stated that the restrictions were intended to provide some consistency among the practices of different funds making periodic repurchase offers; upon further consideration, it does not appear that this requirement is necessary. Moreover, commenters uniformly expressed the view that the repurchase request deadlines should not be limited to three possible days a month. Some argued that concentrating all repurchases on

[39] The definitions and their wording are based upon the definitions of "redemption pricing date" and "redemption payment date" in proposed rule 22e–3.

[40] New York Bar Committee Comment Letter, *supra* note 21, at 10.

[41] *See, e.g.*, ABA Subcommittee Comment Letter, *supra* note 25, at 10–12, 17–18; ICI Comment Letter, *supra* note 19, at 10.

[42] *See infra* section II.C for a discussion of the liquidity standard.

[43] Statement of Financial Accounting Concepts No. 6 ("CON6") published by the Financial Accounting Standards Board defines certain elements of financial statements, including liabilities. CON6, at paragraph 35, defines liabilities as: "* * * probable future sacrifices of economic benefits arising from present obligations of a particular entity to transfer assets or provide services to other entities in the future as a result of a past transaction" (footnote omitted).

[44] *See, e.g.*, ICI Comment Letter, *supra* note 19, at 23; letter from Fidelity Investments to Jonathan G. Katz, Secretary, SEC 6–7 (Nov. 3, 1992), File No. S7–27–92 (hereinafter Fidelity Comment Letter).

[45] See letter from Prudential Mutual Fund Management to Jonathan G. Katz, Secretary, SEC 13–14 (Nov. 2, 1992), File No. S7–27–92 (hereinafter Prudential Comment Letter).

the same dates runs the risk of disrupting the market for the assets in which a fund invests.[46] One commenter argued that such calendar limitations restrict a fund's ability to purchase assets synchronized with the fund's repurchase schedule.[47] In light of the concerns over market disruption and scheduling, paragraph (a)(7) has been modified to remove the limitation on the permissible dates.

d. *Withdrawal and modification of repurchase requests.*—Paragraph (b)(6) requires funds to permit shareholders to withdraw or modify their repurchase requests until the repurchase request deadline and prohibits withdrawal or modification thereafter. Some commenters argued that this provision is restrictive because funds might sell portfolio assets in reliance upon repurchase requests received before the repurchase request deadline. Because, under rule 23c–3 as adopted, funds would have up to twenty-one days after the repurchase request deadline to pay repurchase proceeds, withdrawal or modification should not pose a problem. Accordingly, paragraph (b)(6) remains substantially as proposed.[48]

6. Notification to Shareholders

a. *Notification requirement.* Paragraph (b)(4)(i) requires a fund making a repurchase offer under rule 23c–3 to send shareholders a notification containing specified information at least twenty-one days, and no more than forty-two days, before the repurchase request deadline. This provision is modified only slightly from the proposal.

Some commenters supported the proposed notification requirement, or a stronger requirement.[49] Several other commenters, on the other hand, criticized the notification requirement as costly. They suggested that in many cases other forms of disclosure should be sufficient, including prospectus disclosure, disclosure in a fund's annual report, or advertising in a newspaper of general circulation such as the *Wall Street Journal*.[50]

Paragraph (b)(4)(i) retains the requirement of direct notification of shareholders essentially as proposed. Newspaper publication may be adequate in general corporate tender offers for cash, because the tight schedules under which such offers often take place would not allow for direct shareholder communications, especially where it was necessary for an intermediary to relay such communications to shareholders. For repurchase offers under rule 23c–3, however, especially periodic repurchase offers whose schedule is known well in advance, there is no comparable time pressure. Moreover, commenters did not provide any substantiation of any significant cost advantage favoring newspaper advertisements over direct communications; and the cost of transmitting such notifications can be reduced if funds send them to shareholders together with other communications such as periodic reports and use other means of economizing on costs of shareholder communications.[51] The flexibility funds have under the rule to adjust the timing of the notification and the freedom to select repurchase request deadlines on any day of the month should allow funds to coordinate the timing of notifications with the schedule of other mailings to shareholders such as semiannual reports, proxies, and other account mailings.

Paragraph (b)(4)(iii) is essentially unchanged from the proposal. It requires a fund to take certain steps to transmit a notification to the beneficial owners of the fund's securities.

b. *Required information.* Paragraph (b)(4)(i) requires that the notification disclose the basic terms of the repurchase offer. Those terms include: the existence of the repurchase offer; any repurchase fees; the repurchase offer amount; the dates of the repurchase request deadline, repurchase pricing date, and repurchase payment deadline, and the possibility of use of an earlier repurchase pricing date; the risk of fluctuation in net asset value between the repurchase request deadline and the repurchase pricing date; the procedures for requesting repurchase and the right to withdraw or modify repurchase requests until the repurchase request deadline; the procedures for pro rata repurchases; the circumstances in which a fund might suspend or postpone a repurchase offer; net asset value within the preceding seven days and information about means for shareholders to learn net asset value thereafter; and market price information, if the fund's shares are traded in a secondary market.

Most of those terms are retained from the proposed rule, but final paragraph (b)(4)(i) adds the requirement of information about withdrawal or modification under subparagraph (E), and of information about the fund's rights of suspension or postponement or a repurchase offer under subparagraph (G). In addition, the final rule modifies the requirement for the date on which the net asset value included in the notification is computed: the proposal specified the net asset value on the date of the notification; as modified, subparagraph (H) requires only net asset value computed within the preceding seven days. Since rule 23c–3 requires funds to compute net asset value at least weekly, in effect this provision would permit a fund to include the most recent regularly computed net asset value. These modifications are based upon the suggestions of commenters.[52]

c. *Exception from notification requirement.* Paragraph (b)(4)(i) as adopted requires that a fund send notifications to shareholders in all repurchase offers pursuant to rule 23c–3. The final rule eliminates one exception in proposed rule 23c–3 providing that no notification need be sent if a fund has a fundamental policy of making all repurchase offers in the same amount.[53] Several commenters criticized the proposed exception. One commenter stated that the proposed exception is "unfair" because it assumes

[46] *See, e.g.* Brown & Wood Comment Letter, *supra* note 19, at 12; Fidelity Comment Letter, *supra* note 44, at 3.

[47] *See* Davis Polk Comment Letter, *supra* note 21, at 3 (the payment dates of some securities such as GNMA certificates may not be synchronized with the three dates in the proposed rule).

[48] Paragraph (b)(10) as adopted does add the words "or modified." This change clarifies (as was implicit in the proposal) that a shareholder may withdraw one tender and submit another tender in a different amount.

[49] *See, e.g.* NASAA Comment Letter, *supra* note 28, at 5; New York Bar Committee Comment Letter, *supra* note 21, at 10. *See also* Letter from Prof. William Ruckstuhl to Jonathan G. Katz, Secretary, SEC 2 (Aug. 28, 1992), File No. S7–27–92 [hereinafter Ruckstuhl Comment Letter] (questioning whether brokers will cooperate in passing on notifications to shareholders, and stating that the rule should ensure actual notification, and should contain specific requirements to ensure that beneficial owners receive actual notification and can sue for damages if they have not received such notice in a prompt manner and have "suffered economic loss due to the lack of opportunity to sell back their shares").

[50] *See, e.g.*, ICI Comment Letter, *supra* note 19, at 10–12; Merrill Lynch Comment Letter, *supra* note 22, at 5.

[51] *See* Fidelity Comment Letter, *supra* note 44, at 5.

[52] *See* Ropes & Gray Comment Letter, *supra* note 20, at 5 (the rule should require net asset value and market prices only within five days of the mailing date; information as of the mailing date is not practicable); New York Bar Committee Comment Letter, *supra* note 21, at 10 (the notification should also disclose the circumstances that could lead to suspension, postponement, or termination of a repurchase offer, and should include a statement regarding the shareholders' right to withdraw tenders before the deadline); NASAA Comment Letter, *supra* note 28, at 5 (the notification should also disclose the total value of the fund's portfolio and should be coordinated with the dissemination of shareholder reports).

[53] The text of the proposed rule did not contain this exception, which was stated only in the text of the release. Thus, the final rule text does not differ in this respect from the text in the proposing release.

that shareholders will remember prospectus disclosure; the commenter argued investors cannot remember that disclosure and should receive information.[54] Another commenter argued that the exception might encourage fund managers to fix their repurchase policies even if fixed repurchase amounts would not be in the interests of shareholders.[55] Another stated that this exception would deny shareholders important information needed to decide whether to tender.[56] The final rule eliminates that proposed exception in order to ensure that all funds relying on rule 23c–3 provide information to shareholders that is pertinent to their decision whether or not to tender, and that the funds provide shareholders with any written materials that shareholders must complete or execute to effect a repurchase request.

d. *Length of notice period.* Paragraph (b)(4)(i) requires that the fund send the notification to shareholders at least twenty-one, but no more than forty-two, days before the repurchase request deadline. The twenty-one day minimum requirement is intended to ensure that shareholders receive notice far enough in advance to decide whether they want to tender their shares and to return their repurchase requests by the repurchase request deadline. The forty-two day maximum is intended to ensure that shareholders do not receive the notice so far in advance that they forget about the offer. Commenters generally supported the twenty business day minimum in the proposal as reasonable.[57] The proposing release requested comment whether the rule should add a maximum such as thirty business days; several commenters endorsed that idea.[58]

e. *Filing.* Paragraph (b)(4)(ii) requires funds to file three copies of the notification with the Commission. As adopted, paragraph (b)(4)(ii) adds the requirement that the copies of the notification filed with the Commission be accompanied by new Form N–23c–3, "Notification of Repurchase Offer." The Commission also is adopting Form N–23c–3. The form would apply to both periodic and discretionary repurchase offers and would require registrants to indicate the category of offer to which their notification pertains. In the rule as proposed, the information required to be provided on Form N–23c–3 would have been required to be provided on the copies of the notification.

7. Net Asset Value

a. *Net asset value as the repurchase price.* Rule 23c–3 requires all repurchases to be made at net asset value, subject to the imposition of a repurchase fee not exceeding two percent. This requirement is not modified from the proposal. Some commenters suggested that a fund's board of directors should have the authority to set a repurchase price at a level above the market price but below net asset value; they argued that the requirement to use net asset value unduly limits a fund's ability to respond to market conditions.[59] They noted also that section 23(c)(2) of the Act does not prohibit tender offers at prices below net asset value. Use of net asset value, however, is intended to preclude the recurrence of the abuses that were noted in the study conducted by the Commission that preceded the adoption of the Act.[60] The use of net asset value avoids the dilution to either the tendering or the remaining shareholders that would occur under the commenters' suggestion. Accordingly, paragraph (b)(1) of the rule as adopted retains the requirement to use net asset value. Paragraph (b)(1) also retains the two percent repurchase fee limit, which commenters supported.[61]

b. *Frequency and timing of computation.* Under paragraph (b)(7)(i) as under the proposal, closed-end interval funds generally must compute net asset value at least weekly, on such day and at such times as determined by the board of directors. One commenter stated that there is no reason to require weekly pricing other than to include the information in notifications to shareholders and to price repurchases; it suggested that the requirement should have exceptions (as under rule 22c–1) for weeks or days when the funds receive no orders to purchase or tender.[62] Several others, however, commented that weekly computations of net asset value generally should be sufficient and should not be burdensome.[63] Accordingly, paragraph (b)(7)(i), as adopted, retains the requirement of weekly computation of net asset value.

In addition, paragraph (b)(7)(ii) requires funds to compute net asset value daily during the five business days preceding the repurchase request deadline. This requirement was not in the proposed rule. Some commenters, however, stated that more frequent pricing should be required after the beginning of a repurchase offer.[64]

For funds that are making an offering of their shares, paragraph (b)(7)(iii) requires daily forward pricing, subject to certain exceptions based on those in rule 22c–1. Many commenters recommended that more frequent computation should be required for funds that offer their shares continuously.[65]

c. *Distribution financing.* The requirement that repurchases take place at net asset value and the limitation of repurchase fees to two percent implicitly preclude the imposition of contingent deferred sales loads (CDSLs). At present, several funds that consider repurchase offers periodically impose early withdrawal charges comparable to CDSLs. Several commenters suggested that closed-end funds should not be limited to front-end loads; they argued that closed-end interval funds should be able to impose CDSLs, as well as asset-based sales charges (ABSCs) comparable to rule 12b–1 fees. One commenter further suggested that if funds may charge CDSLs, they should be permitted to waive or reduce charges in a manner consistent with rule 22d–1 and should be required to include disclosure concerning CDSLs in notifications to shareholders.[66] Another commenter suggested that any CDSLs should be subject to limitations similar to those under the sales charge rule of the National Association of Securities Dealers, Inc. (NASD).[67]

The Commission is not proposing any rule provisions regarding the use of CDSLs or ABSCs by closed-end interval funds at present. Such consideration may be appropriate after the Commission considers whether to adopt proposed rule 6c–10, which would

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[54] Ruckstuhl Comment Letter, *supra* note 49, at 1.

[55] Prudential Comment Letter, *supra* note 45, at 7.

[56] Ropes & Gray Comment Letter, *supra* note 20, at 7.

[57] *See, e.g.*, ICI Comment Letter, *supra* note 19, at 13.

[58] *See, e.g.*, New York Bar Committee Letter, *supra* note 21, at 6 (suggesting a thirty business day maximum; Ropes & Gray Comment Letter, *supra* note 20, at 5 (suggesting a forty-five business day maximum).

[59] *See, e.g.*, ABA Subcommittee Comment Letter, *supra* note 25, at 6–7; Letter from Rosenman & Colin, on behalf of Quest Advisory Corp., to Jonathan G. Katz, Secretary, SEC (Oct. 8, 1992) [hereinafter Quest Comment Letter].

[60] *See* Sec. Act Rel. 6948, *supra* note 8, at nn. 12–30 and accompanying text.

[61] *See, e.g.*, Brown & Wood Comment Letter, *supra* note 19, at 15; ICI Comment Letter, *supra* note 19, at 14.

[62] Ropes & Gray Comment Letter, *supra* note 20, at 6.

[63] *See, e.g.*, New York Bar Committee Comment Letter, *supra* note 21, at 10–11; Hale and Dorr Comment Letter, *supra* note 24, at 7.

[64] *See, e.g.*, Fidelity Comment Letter, *supra* note 44, at 4; Prudential Comment Letter, *supra* note 45, at 9.

[65] *See, e.g.*, ABA Subcommittee Comment Letter, *supra* note 25, at 18; Fidelity Comment Letter, *supra* note 44, at 4; ICI Comment Letter, *supra* note 19, at 14.

[66] Hale and Dorr Comment Letter, *supra* note 24, at 4.

[67] ICI Comment Letter, *supra* note 19, at 14 n.26.

permit the imposition of CDSLs by open-end companies, and has the opportunity to monitor the effects of the NASD sales charge rule upon distribution charges of open-end companies, which goes into effect in July of this year.[68]

B. Issuance of Senior Securities

Paragraph (b)(9) provides that closed-end interval funds may issue two categories of senior securities or other indebtedness. First, they may issue senior securities or other indebtedness maturing by the next repurchase pricing date. Because such senior securities or indebtedness would no longer be outstanding when the repurchase occurs, they should not trigger certain requirements of section 18 that otherwise might prevent a repurchase.[69] Second, funds may issue senior securities or other indebtedness whose terms provide for redemption or call of the securities, or repayment of the indebtedness, by the repurchase pricing date as necessary to permit repurchase. For example, a fund could issue callable preferred stock with mandatory partial or total redemption[70] when necessary to permit a fund to repurchase any amount of common stock that the board of directors may determine to repurchase. This provision is intended to provide shareholders with assurance that outstanding senior securities or other indebtedness will not prevent a fund from carrying out a scheduled repurchase offer.[71]

As proposed, paragraph (b)(9) would have limited funds relying on rule 23c–3 to borrowing with asset coverage of 300 percent; this requirement was the same as the open-end fund senior security standard, with the difference that eligible lenders were not limited to banks. One commenter supported the proposed restrictions on senior securities.[72] Otherwise, commenters criticized the proposed restrictions. One commented that if a one month payment period were permitted, funds would have greater ability to reduce senior securities if necessary to meet asset coverage requirements.[73] Another commenter stated that the rule should impose no restrictions on the issuance of senior securities by closed-end interval funds.[74] Several commenters suggested that funds should be able to issue senior securities, pursuant to the standard in section 18(a), so long as some amount of those senior securities is callable or will mature within the time period by which a fund must pay repurchase proceeds.[75] They argued that such senior securities would give funds the ability to reduce their outstanding senior securities or other indebtedness enough that asset coverage requirements would not preclude repurchases. Paragraph (b)(9) as adopted responds to those suggestions.

C. Liquidity

Paragraph (b)(10) imposes a liquidity standard on closed-end interval funds to ensure that funds can complete repurchase offers. Rule 23c–3 as proposed would have required certain percentages of a fund's assets to consist of assets that could be sold or disposed of in the ordinary course of business in seven days at approximately the price at which the fund valued the assets; this was derived from the seven-day standard applicable to open-end companies.[76] Instead of that standard, paragraph (b)(10) as adopted requires that a specified percentage of the portfolio consist of assets that can be sold or disposed of in the ordinary course of business, at approximately the price at which the fund has valued the investment, within the period within which the fund pays repurchase proceeds.[77] This modification corresponds to the changes in rule 23c–3 permitting funds operating under the rule to take up to twenty-one days to pay repurchase proceeds. In addition, paragraph (b)(10) as adopted counts as satisfying the liquidity requirement any asset that matures by the repurchase payment deadline. This latter category of assets is derived from a provision in the liquidity standard of proposed rule 22e–3.[78]

The standard requires that, from the time of the repurchase offer until the repurchase pricing date, a fund making a repurchase offer under rule 23c–3 must have assets satisfying the liquidity standard equal to at least 100 percent of the repurchase offer amount. The standard has been modified from the proposal in three respects. First, the rule eliminates the part of the proposed liquidity standard that would have required a closed-end interval fund to maintain at all times a certain percentage of its portfolio in assets satisfying the liquidity standard. Commenters criticized this provision as requiring a level of liquidity even when a repurchase offer was months away and there was no need for such liquidity. Second, the standard applies from the time a fund sends out the repurchase offer notification until the repurchase pricing date, while under the proposed rule the comparable part of the standard literally applied only when the fund sends out the notification. This application of the standard continuously during the repurchase offer, rather than just at one time, better effects the stated purpose of ensuring that the fund is in a position to carry out the repurchase offer. Third, the percentage has been reduced from the proposal: from 150 percent of the repurchase offer amount to 100 percent. The 100 percent requirement should still assure that a fund that makes a repurchase offer is in a position to carry out that offer.

Virtually all commenters criticized the proposed liquidity standard as overly restrictive. Some commented that the standard would deter funds from relying on rule 23c–3, since other closed-end funds are subject to no liquidity requirement.[79] Some questioned whether any liquidity standard is needed and that an adviser's ability to determine whether a fund's

[68] See Exemptions for Certain Registered Open-End Management Investment Companies to Impose Deferred Sales Loads, Investment Company Act Release No. 16619 (Nov. 2, 1988), 53 FR 45275 (proposing rule 6c–10); Exchange Act Release No. 30897 (July 7, 1992), 57 FR 30985 (approving changes to NASD sales charge rule to address asset-based sales charges).

[69] Under section 18, senior securities representing indebtedness and issued by a closed-end fund must have asset coverage of at least 300% after the issuance of such securities; and senior securities in the form of stock must have asset coverage of at least 200%. Asset coverage is defined in section 18(h). Section 18(a) requires that the terms of senior securities issued by closed-end funds prohibit repurchases of common stock if the repurchases would reduce asset coverage below the required levels.

[70] For other requirements applicable to the call or redemption of securities by a closed-end fund, see rule 23c–2 [17 CFR 270.23c–2].

[71] The senior security limitations of paragraph (b)(9) depend on whether the senior security matures or is callable by the latest possible repurchase pricing date set in the fundamental policy under paragraph (b)(2). Funds that consider using an earlier repurchase pricing date pursuant to paragraph (a)(5)(iii) may need to confirm that early repurchase will comply with the asset coverage requirements of section 18 even if no senior securities mature or are called. If early repurchase under those conditions did not comply with the asset coverage requirements, repurchase would be prohibited by section 18(a).

[72] New York Bar Committee Comment Letter, *supra* note 21, at 12.

[73] Davis Polk Comment Letter, *supra* note 21, at 7.

[74] Ropes & Gray Comment Letter, *supra* note 20, at 6.

[75] *See, e.g.*, ICI Comment Letter, *supra* note 19, at 15–16 (suggesting that an amount of senior securities equal to the maximum repurchase amount should be callable); Prudential Comment Letter, *supra* note 45, at 10–11.

[76] Sec. Act Rel. No. 6948, *supra* note 8, 57 FR 34712. *See supra* note 7 and accompanying text on the seven-day standard for open-end companies.

[77] This requirement means that individual assets must be saleable under those circumstances, and not necessarily that the entire specified percentage of a fund's portfolio be saleable within that period.

[78] Paragraph (c)(1)(ii).

[79] *See, e.g.*, Prudential Comment Letter, *supra* note 45, at 12.

assets are sufficiently liquid, together with a longer payment period should provide sufficient protections.[80] Another argued that review by directors should take the place of any liquidity standard.[81] Several commenters proposed alternative liquidity requirements, including suggestions that a liquidity standard should apply at different times,[82] as well as that the rule should impose lower percentages.[83] Commenters suggested that closed-end funds should have same ability as under 22e–3 to count maturing debt securities as liquid.[84] The liquidity standard as proposed would have limited a fund's ability to invest in less liquid securities. The modification of the period for paying repurchase proceeds, and hence of the liquidity requirement would permit funds to rely on rule 23c–3 while holding a less liquid portfolio than a conventional mutual fund or than many conventional closed-end funds.

As under the proposal, subparagraphs (ii) and (iii) of paragraph (b)(10) impose certain duties on the board of directors. Subparagraph (iii) as adopted requires the board of directors to review the liquidity of a fund's portfolio as the board deems necessary. As proposed, this provision would have required the board to conduct that review at least annually. The annual review requirement, however, appears

[80] *See, e.g.*, ABA Subcommittee Comment Letter, *supra* note 25; Merrill Lynch Comment Letter, *supra* note 22, at 7.

[81] Brown & Wood Comment Letter, *supra* note 19, at 20.

[82] *See, e.g.*, Ropes & Gray Comment Letter, *supra* note 20, at 7 (the 150% requirement should apply only during the period between the notification and the repurchase deadline; and any continuous liquidity requirement should not apply during any period during which a fund could delay its first repurchase offer after the initial public offering); ICI Comment Letter, *supra* note 19, at 16–19 (any liquidity requirement should apply only at each repurchase deadline and should be a 31 day standard, applied to 85% of repurchase offer amount; if repurchase offers are fully subscribed, funds can borrow); Fidelity Comment Letter, *supra* note 44, at 5–6 (the standard should require (1) that a fund, at beginning of a repurchase offer, have potential to have sufficient cash by payment deadline to satisfy a reasonable estimate of the amount likely to be tendered; and (2) that the fund, seven days after the repurchase request deadline, must have liquid assets equal in value to the shares actually tendered; that a "reasonable estimate" would be based on the greater of the amount tendered in the most recent offer and the average number of shares tendered in the four preceding repurchase offers).

[83] *See Prudential Comment Letter,* supra note 45, at 12 (funds should be required to maintain assets equal to 85% of the repurchase offer amount in assets that are liquid by 7 day standard (or by 31 day standard if longer repayment permitted), or in assets that mature by the repurchase payment deadline).

[84] *See, e.g.*, Davis Polk Comment Letter, *supra* note 21, at 7; Ropes & Gray Comment Letter, *supra* note 20, at 7.

inconsistent with the Commission's recent proposal to delete annual review requirements in certain other rules under the Act.[85] Accordingly, that requirement has been deleted.

D. Independent Directors

Paragraph (b)(8) requires that a fund making repurchase offers under rule 23c–3 have a board with a majority of directors who are not interested persons of the fund and who are self-nominating. This requirement is intended to ensure that the board of directors provides independent decisions or scrutiny for actions or decisions that may involve a conflict of interest between the adviser and shareholders. This requirement is not changed from the rule as proposed. Certain commenters questioned the appropriateness of this requirement and the extent of any potential conflict between the fund and the adviser.[86] Some commenters implied that the proposed requirement was simply the implementation of the recommendation in the Protecting Investors report that investment company boards of directors include a majority of independent directors and that the independent directors be self-nominating.[87] As stated in the proposing release, however, the determination of the amount of each repurchase offer presents a potential conflict of interest between the investment adviser and shareholders: the investment adviser may be interested in making a small repurchase offer in order to retain maximum assets under management, while the shareholders may be interested in having a large repurchase offer made so that the fund will repurchase all shares that are tendered. This potential conflict is not present with other investment companies; for example, no such conflict exists for open-end companies, and proposed rule 22e–3 contains no comparable requirement. Under rule 23c–3 as adopted, the fund has greater latitude than under the proposal to set the repurchase offer amount. Accordingly, the independent director requirements of paragraph (b)(8) have been retained as proposed.

[85] Revision of Certain Annual Review Requirements of Investment Company Boards of Directors, Securities Act Release No. 6971 (Dec. 30, 1992), 58 FR 2999.

[86] *See, e.g.*, New York Bar Committee Comment Letter, *supra* note 21, at 8–9; Ropes & Gray Comment Letter, *supra* note 20, at 3–4, 8.

[87] *E.g.*, ICI Comment Letter, *supra* note 19, at 19. *See* Protecting Investors, *supra* note 1, Chapter 7, *Investment Company Governance*.

E. Offerings of Securities by Compani Making Periodic Repurchase Offers

Closed-end interval funds may offer additional shares in order to counter reductions in net assets caused by repurchases or in order to increase assets under management. In the proposing release, the Commission did not propose any new rules or rule changes to accommodate such offering but requested comment whether it should amend rule 415 under the Securities Act or adopt a post-effective amendment procedure comparable to rule 485 under the Securities Act.[88] All commenters that addressed the topic agreed that the Commission should amend the rules governing offerings by closed-end funds. They noted that exemption from rule 10b–6 does not obviate the need for changes to permit continuous or delayed offerings (including intermittent offerings). Accordingly, the Commission today is proposing a new rule and rule amendments to modify the offering and registration procedures available to closed-end interval funds.[89]

F. Disclosure Regarding Repurchase Offers

1. Staff Guide

When the Commission proposed rule 23c–3 regarding periodic repurchase offers by closed-end investment companies, it also published for comment a new staff Guide for Form N-2 (Guide 10), which is intended to assis registrants and their counsel in the preparation of registration statements for closed-end investment companies intending to make such repurchase offers. Several comments were received on the Guide, and, as a result, the Guid has been revised to reflect these comments as well as changes in the rul as adopted. In particular, changes have been made to reflect (1) the fact that the rule as adopted does not require the maximum and minimum amount of each repurchase offer to be specified as matters of fundamental policy, (2) the additional risks redeeming shareholders may face as a result of the extension of the maximum permissible repurchase period from seven days to twenty-one days, and (3) the requirement for disclosure of total return based upon ne asset value as well as current market price for registrants making periodic repurchase offers for their shares.[90] In

[88] 17 CFR 230.415, .485.

[89] Sec. Act Rel. 6989, *supra* note 2.

[90] One commenter recommended additional disclosure with respect to the illiquid nature of a closed-end interval fund's portfolio and the increased risk associated with an investment in such a fund. The Commission does not believe that

addition, several changes have been made in Guide 2 ("Issuer Repurchase of Securities") to reflect the adoption of procedures for discretionary repurchase offers by closed-end investment companies.

Guide 10 also provides instructions for the disclosure of "total investment return" as part of the Financial Highlights section in response to Item 4 of Form N–2. Guide 10 clarifies that a closed-end interval fund whose shares are publicly traded should calculate and disclose total investment return based on both the current market price of the fund's common stock and the net asset value thereof; a fund whose shares are not publicly traded should calculate total return only on the basis of its net asset value. The proposing release, which was published before the adoption of the amendments to Form N–2 requiring total investment return, requested comment on whether funds should be either permitted or required to provide total return information in their financial highlights based only on net asset values rather than on market price of the fund's shares. Commenters suggested various options permitting or requiring total return based on net asset value.[91] Guide 10, as published here, responds to those comments.

2. Terminology for Funds Operating Under Rule 23c–3

Rule 23c–3 does not include any requirement that funds operating under rule 23c–3 use any descriptive term to distinguish themselves from other investment companies. Some commenters suggested that closed-end funds operating under rule 23c–3 should be required to use a descriptive term (*e.g.* "periodic repurchase", "interval", or "closed-end interval") on prospectus cover, and in advertisements and sales literature.[92] Such terminology may not provide accurate information to the public about a new type of fund since the rule would encompass two types of funds that may operate differently: Funds that are exchange traded and use repurchase procedures as an incidental mechanism to enhance market price; and funds that are not exchange traded and whose repurchase offers provide the sole source of liquidity for shareholders. Therefore, the rule as adopted does not require the use of any specific term. The Commission, however, while not requiring the use of any specific term, believes that it would be deceptive and misleading for a closed-end fund to use any term or name implying that its securities are redeemable or that the fund is a mutual fund.[93]

3. Disclosure in the Annual Report

Paragraph (b)(2)(ii) requires a closed-end interval fund to include in its annual report to shareholders certain information about its repurchase offers. Subparagraph (A) requires the fund to disclose its fundamental repurchase policy under paragraph (b)(2)(i). Under subparagraph (B), the fund must include information about the repurchase offers during the year covered by the annual report, including the number of repurchase offers, the repurchase offer amount in each repurchase offer, the amount tendered in each repurchase offer, and the extent to which the fund relied upon the oversubscription allowance, prorated repurchases, or relied upon the exceptions to proration under paragraph (b)(5). This requirement, which was not included in the proposal, is intended to ensure that investors who purchase shares in a secondary market can have access to relatively current disclosure about a fund's repurchase procedures. Several commenters suggested that rule 23c–3 should ensure that information reaches investors who purchase in the secondary market through such means as requirements for filing documents with the Commission containing disclosure of changes in funds' procedures,[94] or through inclusion of a copy of a fund's repurchase policy in its annual report to shareholders.[95] Another commenter suggested that Form N–2 should require disclosure concerning a fund's experience with repurchase offers (including frequency, amount offered to repurchase, and the amount tendered); and that this disclosure should allow investors to assess the likelihood that their shares would be repurchased.[96] Paragraph (b)(2)(ii) as adopted requires such disclosure in the annual report.[97]

G. Amendment to Rule 10b–6

Rule 10b–6 under the Securities Exchange Act [17 CFR 240.10b–6] generally prohibits persons involved in a distribution of securities from bidding for or purchasing those securities and certain related securities until after their participation in the distribution is complete. New paragraph (h) of rule 10b–6 exempts repurchases pursuant to rule 23c–3 from that prohibition. The scope of the exemption would be broader than under the proposal because of the adoption of paragraph (c) of rule 23c–3, which provides for limited discretionary repurchase offers. Commenters on the proposal unanimously endorsed the proposed exemption from rule 10b–6, and several commenters specifically suggested that discretionary repurchase offers should come under the same exemption. They argued that investment company repurchases at net asset value do not involve the abuses that rule 10b–6 was intended to prevent. Accordingly, new paragraph (h) of rule 10b–6 continues to exempt repurchase offers pursuant to rule 23c–3.

H. Amendments to Tender Offer Rules

New paragraph (h)(7) of Exchange Act rule 13e–4 exempts repurchase offers pursuant to rule 23c–3 from the requirements of rule 13e–4 for issuer tender offers. In addition, new Exchange Act rule 14e–6 exempts such repurchase offers from rules 14e–1 and 14e–2. The scope of these exemptions would be broader than under the proposal because of the adoption of paragraph (c) of rule 23c–3, which provides for limited discretionary repurchase offers.[98] Commenters on the proposal

such additional disclosure is required. Unlike open-end funds, closed-end funds are not required to meet any liquidity requirement with respect to their portfolio investments. Closed-end interval funds, however, must comply with the minimum liquidity requirements of rule 23c–3(b)(10) and, as a result, may be *more*, rather than less, liquid than their non-repurchasing counterparts.

[91] ICI Comment Letter, *supra* note 19, at 20–21 (all closed-end funds, including funds under rule 23c–3, should be required to reflect total return using net asset values); Fidelity Comment Letter, *supra* note 44, at 10; NASAA Comment Letter, *supra* note 28, at 5–6 (total return should be calculated using both market and net asset values). Other commenters stated that funds should have the flexibility to use either kind of total return information. Brown & Wood Comment Letter, *supra* note 19, at 23 (stating that the Commission should require "appropriate disclosure regarding the limitations of the reliability of such [total return] information"); Merrill Lynch Comment Letter, *supra* note 22, at 7.

[92] ICI Comment Letter, *supra* note 19, at 10; Fidelity Comment Letter, *supra* note 44, at 20 (suggesting the term "closed-end interval fund").

[93] *See* Fidelity Comment Letter, *supra* note 44, at 10 (recommending that, under section 35 of the Act, the Commission should prohibit closed-end funds from using a name implying that securities are redeemable or that a closed-end fund is a mutual fund).

[94] Fidelity Comment Letter, *supra* note 44, at 3–4 (noting that there is no required disclosure document comparable to a Form 8–K or 10–Q).

[95] *See, e.g.*, Brown & Wood Comment Letter, *supra* note 19, at 22; Prudential Comment Letter, *supra* note 45, at 8.

[96] New York Bar Committee Comment Letter, *supra* note 21, at 12.

[97] *Cf.* paragraph (b) of rule 8b–16, which exempts closed-end funds from that rule's requirements to update their registration statements annually if the funds disclose certain information in their annual reports. 17 CFR 270.8b–16(b).

[98] Repurchase offers pursuant to rule 23c–3 are not, however, exempted herein from other tender

Continued

stated that discretionary repurchase offers complying with 23c–3, if permitted, should also be exempt from the tender offer rules to the same extent as funds making periodic repurchase offers.[99] Accordingly, new paragraph (h)(7) of rule 13e–4 and new rule 14e–6, as adopted, respond to those suggestions.

I. Discretionary Repurchase Offers

Paragraph (c) of rule 23c–3 establishes requirements for closed-end fund repurchase offers that are made, not periodically, but at such time as a fund may determine in its discretion. These discretionary offers would be available both to funds making periodic repurchase offers pursuant to paragraph (b), and to other closed-end funds or business development companies that do not make periodic repurchase offers. Funds could make discretionary offers not more frequently than once every two years. This limitation is intended in part to ensure that funds do not make discretionary offers more frequently as a means of circumventing the fundamental policy requirements in paragraph (b)(2) concerning the frequency of repurchase offers.

The proposing release requested comment whether rule 23c–3 should permit repurchase offers that are not made on a periodic basis as a matter of fundamental policy. Several commenters argued that rule 23c–3 should permit funds, including funds that do not make periodic repurchase offers pursuant to rule 23c–3, to make discretionary, non-periodic repurchase offers. Some commenters suggested that such offers, if permitted, should be limited to not more than one in a specified period such as two or three years.[100] They argued that such offers do not present a potential conflict of interest; rather, any potential conflict lies in the likelihood that an adviser would restrict offers, not make too many offers.[101]

Such offers must comply with several of the requirements that apply to periodic repurchase offers under paragraph (b). The fund must pay repurchase proceeds within twenty-one days after the repurchase request deadline and must determine the applicable net asset value seven days before the payment deadline. Because these offers would be discretionary, a fund making such offers would not be required to adopt a fundamental policy specifying the terms of such offers; thus, discretionary repurchase offers would require only a vote of the directors, and not a vote of shareholders. Discretionary repurchase offers would be subject to the provisions regarding suspension or postponement of repurchase offers in paragraph (b)(3). A fund must send shareholders a notification pursuant to paragraph (b)(4).[102] The fund would be required to prorate repurchases and would have the options of the oversubscription allowance and proration exceptions under paragraph (b)(5). As with periodic repurchase offers, under paragraph (b)(6) a fund must permit the withdrawal or modification of repurchase requests under the repurchase request deadline, and may not do so thereafter. Under paragraph (b)(7)(ii), the fund must compute net asset value on each of the five business days preceding the repurchase request deadline. The fund must satisfy the independent director requirements of paragraph (b)(8). Finally, the fund must satisfy the liquidity standard of paragraph (b)(10)(i), as well as the cure provision of paragraph (b)(10)(ii).

Paragraph (c) does not require discretionary repurchase offers to comply with the net asset value computation requirement of paragraphs (b)(7) (i) and (iii), or the senior security provisions of paragraph (b)(9).

J. Other Issues

1. Warrants and Similar Rights

One commenter suggested that funds should be permitted to issue long-term warrants.[103] Another commenter suggested that closed-end funds should be able to sell shares as units, comprising common and convertible preferred shares (or other possibilities like warrants or convertible bonds).[104] Section 18 prohibits such practices. Moreover, the issuance of warrants or units is outside the scope of the Commission's proposal. Accordingly, rule 23c–3 as adopted does not include any exemption from section 18 to accommodate the issuance of such securities.

2. Market Transactions

Rule 23c–3 applies only to repurchase offers to all shareholders at net asset value. Thus, it does not include any repurchases, including repurchases made in the secondary market, at prices other than a price based on net asset value. Two commenters argued that closed-end funds should be able to buy shares in the market at a discount, and to sell new shares above net asset value when the market is trading at a premium. One of those commenters argued that permitting market purchases should increase demand and raise prices and should not involve the expenses of notifying shareholders or any repurchase fees.[105] Such transactions, however, because they would not occur at net asset value, would dilute the interests of either shares that are tendered or those that are not. Accordingly, rule 23c–3 as adopted does not provide for such transactions.

III. Cost/Benefit Analysis

Rule 23c–3 should facilitate periodic repurchases by closed-end investment companies and thus should attract greater investment in closed-end companies, which may invest in less liquid assets, including venture capital and small business investments. Repurchase offers under the rule are exempted from certain tender offer rules under the Exchange Act and thus are not subject to the filing fees imposed on issuer tender offers under rule 13e–4; this exemption should reduce the filing costs, as well as legal costs, currently incurred by closed-end funds making issuer tender offers. Closed-end funds making repurchase offers under rule 23c–3 are exempted from the requirements to provide certain disclosure to shareholders and to the Commission pursuant to rule 13e–4. The rule replaces that requirement with a requirement to provide certain information to shareholders and to file copies of that disclosure with the Commission; the Commission believes that the disclosure and filing required under rule 23c–3 should be less burdensome than the requirements under rule 13e–4.

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offer rules, including rule 13e–3, which applies to certain going private transactions. 17 CFR 240.13e–3.

[99] ABA Subcommittee Comment Letter, *supra* note 25, at 6; Brown & Wood Comment Letter, *supra* note 19, at 23–24.

[100] ABA Subcommittee Comment Letter, *supra* note 25, at 6.

[101] *See* Davis Polk Comment Letter, *supra* note 21, at 5.

[102] ABA Subcommittee Comment Letter, *supra* note 25, at 13 (suggesting that notification be required if discretionary offers are included in the rule).

[103] Davis Polk Comment Letter, *supra* note 21, at 9–10 (noting that such warrants are permitted in the U.K.). With limited exceptions, section 18(d) of the Act [15 U.S.C. 80a–18(d)] prohibits management investment companies from issuing warrants or rights except warrants or rights that expire within 120 days after issuance and that are issued exclusively and ratably to a class or class of the companies' security holders.

[104] Letter from Newgate Management Associates to Jonathan G. Katz, Secretary, SEC 4 (Oct. 30, 1992), File No. S7–27–92 [hereinafter Newgate Comment Letter].

[105] Newgate Comment Letter, *supra* note 104, at 3; Ruckstuhl Comment Letter, *supra* note 49, at 1.

IV. Summary of the Final Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis, which was prepared in accordance with 5 U.S.C. 603, was published in Securities Act Release No. 6948. No comments were received on this analysis. Some commenters on rule 23c–3, however, questioned whether the rule as proposed could result in additional costs for funds that might be passed on to investors. The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604 and has clarified in this release the interpretation of certain aspects of rule 23c–3 to respond to commenters' questions. A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Robert G. Bagnall, Mail Stop 10–6, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Parts 239, 240, 270, and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of the Adopted Rules and Rule Amendments

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

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

2. Section 240.10b–6 is amended by redesignating paragraph (h) as paragraph (i) and adding new paragraph (h) to read as follows:

§ 240.10b–6 Prohibitions against trading by persons interested in a distribution.

* * * * *

(h) The provisions of this section shall not apply to repurchases of equity securities pursuant to § 270.23c–3 of this chapter by a closed-end management investment company. Any terms used in this paragraph (h) which are defined in the Investment Company Act of 1940 [15 U.S.C. 80a] shall have the meanings specified in such Act.

* * * * *

3. Section 240.13e–4 is amended by removing the word "or" following the semicolon at the end of paragraph (h)(6), redesignating paragraph (h)(7) as paragraph (h)(8), and adding new paragraph (h)(7) to read as follows:

§ 240.13e–4 Tender offers by issuers.

* * * * *

(h) * * *

(7) Offers by closed-end management investment companies to repurchase equity securities pursuant to § 270.23c–3 of this chapter; or

* * * * *

4. By adding § 240.14e–6 to read as follows:

§ 240.14e–6 Repurchase offers by certain closed-end registered investment companies.

Sections 240.14e–1 and 240.14e–2 shall not apply to any offer by a closed-end management investment company to repurchase equity securities of which it is the issuer pursuant to § 270.23c–3 of this chapter.

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

5. The authority citation for part 270 is amended by adding the following citation:

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

* * * * *

Section 270.23c–3 also issued under 15 U.S.C. 80a–23(c).

6. By adding § 270.23c–3 to read as follows:

§ 270.23c–3 Repurchase offers by closed-end companies.

(a) *Definitions.* For purposes of this section:

(1) *Periodic interval* shall mean an interval of three, six, or twelve months.

(2) *Repurchase offer* shall mean an offer pursuant to this section by an investment company to repurchase common stock of which it is the issuer.

(3) *Repurchase offer amount* shall mean the amount of common stock that is the subject of a repurchase offer, expressed as a percentage of such stock outstanding on the repurchase request deadline, that an investment company offers to repurchase in a repurchase offer. The repurchase offer amount shall not be less than five percent nor more than twenty-five percent of the common stock outstanding on a repurchase request deadline. Before each repurchase offer, the repurchase offer amount for that repurchase offer shall be determined by the directors of the company.

(4) *Repurchase payment deadline* with respect to a tender of common stock shall mean the date by which an investment company must pay securities holders for any stock repurchased. A repurchase payment deadline shall occur seven days after the repurchase pricing date applicable to such tender.

(5) *Repurchase pricing date* with respect to a tender of common stock shall mean the date on which an investment company determines the net asset value applicable to the repurchase of the securities. A repurchase pricing date shall occur no later than the fourteenth day after a repurchase request deadline, or the next business day if the fourteenth day is not a business day. In no event shall an investment company determine the net asset value applicable to the repurchase of the stock before the close of business on the repurchase request deadline.

(i) For an investment company making a repurchase offer pursuant to paragraph (b) of this section, the number of days between the repurchase request deadline and the repurchase pricing date for a repurchase offer shall be the maximum number specified by the company pursuant to paragraph (b)(2)(i)(D) of this section.

(ii) For an investment company making a repurchase offer pursuant to paragraph (c) of this section, the repurchase pricing date shall be such date as the company shall disclose to security holders in the notification pursuant to paragraph (b)(4) of this section with respect to such offer.

(iii) For purposes of paragraph (b)(1) of this section, a repurchase pricing date may be a date earlier than the date determined pursuant to paragraph (a)(5)(i) or (ii) of this section if, on or immediately following the repurchase request deadline, it appears that the use of an earlier repurchase pricing date is not likely to result in significant dilution of the net asset value of either stock that is tendered for repurchase or stock that is not tendered.

(6) *Repurchase request* shall mean the tender of common stock in response to a repurchase offer.

(7) *Repurchase request deadline* with respect to a repurchase offer shall mean the date by which an investment company must receive repurchase requests submitted by security holders in response to that offer or withdrawals or modifications of previously submitted repurchase requests. The first repurchase request deadline after the effective date of the registration statement for the common stock that is the subject of a repurchase offer, or after a shareholder vote adopting the fundamental policy specifying a company's periodic interval, whichever

is later, shall occur no later than two periodic intervals thereafter.

(b) *Periodic repurchase offers.* A registered closed-end company or a business development company may repurchase common stock of which it is the issuer from the holders of the stock at periodic intervals, pursuant to repurchase offers made to all holders of the stock, *Provided* that:

(1) The company shall repurchase the stock for cash at the net asset value determined on the repurchase pricing date and shall pay the holders of the stock by the repurchase payment deadline except as provided in paragraph (b)(3) of this section. The company may deduct from the repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the company and is reasonably intended to compensate the company for expenses directly related to the repurchase. A company may not condition a repurchase offer upon the tender of any minimum amount of shares.

(2)(i) The company shall repurchase the security pursuant to a fundamental policy, changeable only by a majority vote of the outstanding voting securities of the company, stating:

(A) That the company will make repurchase offers at periodic intervals pursuant to this section, as this section may be amended from time to time;

(B) The periodic intervals between repurchase request deadlines;

(C) The dates of repurchase request deadlines or the means of determining the repurchase request deadlines; and

(D) The maximum number of days between each repurchase request deadline and the next repurchase pricing date.

(ii) The company shall include a statement in its annual report to shareholders of the following:

(A) Its policy under paragraph (b)(2)(i) of this section; and

(B) With respect to repurchase offers by the company during the period covered by the annual report, the number of repurchase offers, the repurchase offer amount and the amount tendered in each repurchase offer, and the extent to which in any repurchase offer the company repurchased stock pursuant to the procedures in paragraph (b)(5) of this section.

(iii) A company shall be deemed to be making repurchase offers pursuant to a policy of paragraph (b)(2)(i) of this section if:

(A) The company makes repurchase offers to its security holders at periodic intervals and, before May 14, 1993, has disclosed in its registration statement its intention to make or consider making such repurchase offers; and

(B) The company's board of directors adopts a policy specifying the matters required by paragraph (b)(2)(i) of this section, and the periodic interval specified therein conforms generally to the frequency of the company's prior repurchase offers.

(3)(i) The company shall not suspend or postpone a repurchase offer except pursuant to a vote of a majority of the directors, including a majority of the directors who are not interested persons of the company, and only:

(A) If the repurchase would cause the company to lose its status as a regulated investment company under Subchapter M of the Internal Revenue Code [26 U.S.C. 851–860];

(B) If the repurchase would cause the stock that is the subject of the offer that is either listed on a national securities exchange or quoted in an inter-dealer quotation system of a national securities association to be neither listed on any national securities exchange nor quoted on any inter-dealer quotation system of a national securities association;

(C) For any period during which the New York Stock Exchange or any other market in which the securities owned by the company are principally traded is closed, other than customary weekend and holiday closings, or during which trading in such market is restricted;

(D) For any period during which an emergency exists as a result of which disposal by the company of securities owned by it is not reasonably practicable, or during which it is not reasonably practicable for the company fairly to determine the value of its net assets; or

(E) For such other periods as the Commission may by order permit for the protection of security holders of the company.

(ii) If a repurchase offer is suspended or postponed, the company shall provide notice to security holders of such suspension or postponement. If the company renews the repurchase offer, the company shall send a new notification to security holders satisfying the requirements of paragraph (b)(4) of this section.

(4)(i) No less than twenty-one and no more than forty-two days before each repurchase request deadline, the company shall send to each holder of record and to each beneficial owner of the stock that is the subject of the repurchase offer a notification providing the following information:

(A) A statement that the company is offering to repurchase its securities from security holders at net asset value;

(B) Any fees applicable to such repurchase;

(C) The repurchase offer amount;

(D) The dates of the repurchase request deadline, repurchase pricing date, and repurchase payment deadline, the risk of fluctuation in net asset value between the repurchase request deadline and the repurchase pricing date, and the possibility that the company may use an earlier repurchase pricing date pursuant to paragraph (a)(5)(iii) of this section;

(E) The procedures for security holders to tender their shares and the right of the security holders to withdraw or modify their tenders until the repurchase request deadline;

(F) The procedures under which the company may repurchase such shares on a pro rata basis pursuant to paragraph (b)(5) of this section;

(G) The circumstances in which the company may suspend or postpone a repurchase offer pursuant to paragraph (b)(3) of this section;

(H) The net asset value of the common stock computed no more than seven days before the date of the notification and the means by which security holders may ascertain the net asset value thereafter; and

(I) The market price, if any, of the common stock on the date on which such net asset value was computed, and the means by which security holders may ascertain the market price thereafter.

(ii) The company shall file three copies of the notification with the Commission within three business days after sending the notification to security holders. Those copies shall be accompanied by copies of Form N–23c–3 (§ 274.221 of this chapter) ("Notification of Repurchase Offer"). The format of the copies shall comply with the requirements for registration statements and reports under § 270.8b–12 of this chapter.

(iii) For purposes of sending a notification to a beneficial owner pursuant to paragraph (b)(4)(i) of this section, where the company knows that shares of common stock that is the subject of a repurchase offer are held of record by a broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers in nominee name or otherwise, the company shall follow the procedures for transmitting materials to beneficial owners of securities that are set forth in § 240.14a–13 of this chapter.

(5) If security holders tender more than the repurchase offer amount, the company may repurchase an additional amount of stock not to exceed two percent of the common stock

outstanding on the repurchase request deadline. If the company determines not to repurchase more than the repurchase offer amount, or if security holders tender stock in an amount exceeding the repurchase offer amount plus two percent of the common stock outstanding on the repurchase request deadline, the company shall repurchase the shares tendered on a pro rata basis; *Provided, however*, That this provision shall not prohibit the company from:

(i) Accepting all stock tendered by persons who own, beneficially or of record, an aggregate of not more than a specified number which is less than one hundred shares and who tender all of their stock, before prorating stock tendered by others; or

(ii) Accepting by lot stock tendered by security holders who tender all stock held by them and who, when tendering their stock, elect to have either all or none or at least a minimum amount or none accepted, if the company first accepts all stock tendered by security holders who do not so elect.

(6) The company shall permit tenders of stock for repurchase to be withdrawn or modified at any time until the repurchase request deadline but shall not permit tenders to be withdrawn or modified thereafter.

(7)(i) The current net asset value of the company's common stock shall be computed no less frequently than weekly on such day and at such specific time or times during the day that the board of directors of the company shall set.

(ii) The current net asset value of the company's common stock shall be computed daily on the five business days preceding a repurchase request deadline at such specific time or times during the day that the board of directors of the company shall set.

(iii) For purposes of section 23(b) [15 U.S.C. 80a–23(b)], the current net asset value applicable to a sale of common stock by the company shall be the net asset value next determined after receipt of an order to purchase such stock. During any period when the company is offering its common stock, the current net asset value of the common stock shall be computed no less frequently than once daily, Monday through Friday, at the specific time or times during the day that the board of directors of the company shall set, except on:

(A) Days on which changes in the value of the company's portfolio securities will not materially affect the current net asset value of the common stock;

(B) Days during which no order to purchase its common stock is received, other than days when the net asset value would otherwise be computed pursuant to paragraph (b)(7)(i) of this section; or

(C) Customary national, local, and regional business holidays described or listed in the prospectus.

(8) A majority of the directors of the company shall be directors who are not interested persons of the company, and the selection and nomination of those directors shall be committed to the discretion of those directors.

(9) Any senior security issued by the company or other indebtedness contracted by the company either shall mature by the next repurchase pricing date or shall provide for the redemption or call of such security or the repayment of such indebtedness by the company by the next repurchase pricing date, either in whole or in part, without penalty or premium, as necessary to permit the company to repurchase securities in such repurchase offer amount as the directors of the company shall determine in compliance with the asset coverage requirements of section 18 [15 U.S.C. 80a–18] or 61 [15 U.S.C. 80a–60], as applicable.

(10)(i) From the time a company sends a notification to shareholders pursuant to paragraph (b)(4) of this section until the repurchase pricing date, a percentage of the company's assets equal to at least 100 percent of the repurchase offer amount shall consist of assets that can be sold or disposed of in the ordinary course of business, at approximately the price at which the company has valued the investment, within a period equal to the period between a repurchase request deadline and the repurchase payment deadline, or of assets that mature by the next repurchase payment deadline.

(ii) In the event that the company's assets fail to comply with the requirements in paragraph (b)(10)(i) of this section, the board of directors shall cause the company to take such action as it deems appropriate to ensure compliance.

(iii) In supervising the company's operations and portfolio management by the investment adviser, the company's board of directors shall adopt written procedures reasonably designed, taking into account current market conditions and the company's investment objectives, to ensure that the company's portfolio assets are sufficiently liquid so that the company can comply with its fundamental policy on repurchases, and comply with the liquidity requirements of paragraph (b)(10)(i) of this section. The board of directors shall review the overall composition of the portfolio and make and approve such changes to the procedures as the board deems necessary.

(11) The company, or any underwriter for the company, shall comply, as if the company were an open-end company, with the provisions of section 24(b) [15 U.S.C. 80a–24(b)] and rules issued thereunder with respect to any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors.

(c) *Discretionary repurchase offers.* A registered closed-end company or a business development company may repurchase common stock of which it is the issuer from the holders of the stock pursuant to a repurchase offer that is not made pursuant to a fundamental policy and that is made to all holders of the stock not earlier than two years after another offer pursuant to this paragraph (c) if the company complies with the requirements of paragraphs (b) (1), (3), (4), (5), (6), (7)(ii), (8), (10)(i), and (10)(ii) of this section.

(d) *Exemption from the definition of redeemable security.* A company that makes repurchase offers pursuant to paragraph (b) or (c) of this section shall not be deemed thereby to be an issuer of redeemable securities within section 2(a)(32) [15 U.S.C. 80a–2(a)(32)].

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

7. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

8. The authority citation for part 274 continues to read in part as follows:

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

* * * * *

8a. By adding § 274.221 to read as follows:

§ 274.221 Form N–23c–3, Notification of repurchase offer.

Note: Form N–23c–3 is not codified in the Code of Federal Regulations.

Form N–23c–3 shall be filed with copies of notifications of repurchase offers submitted to the Commission as required under rule 23c–3 (§ 270.23c–3 of this chapter).

Note: The Guides to Form N–2 are not codified in the Code of Federal Regulations.

9. Guide 2 to Form N–2 (§ 239.14 and § 274.11a–1) is amended by revising the first three paragraphs to read as follows:

Guide 2. Issuer Repurchase of Shares

Issuer repurchases of shares in the secondary market or through tender offers (collectively "share repurchases") are limited by section 23 of the 1940 Act [15 U.S.C. 80a–23] and Rules 23c–1 and 23c–3 [17 CFR 270.23c–1 and 270.23c–3] thereunder and are subject to sections 10(b), 13(e), and 14(e) [15 U.S.C. 78j(b), 78m(e), and 78n(e)] of the Securities Exchange Act of 1934 (the "1934 Act") and the rules thereunder, particularly (i) Rule 10b–5 [17 CFR 240.10b–5]; (ii) Rule 10b–13 [17 CFR 240.10b–13] (with respect to tender offers); (iii) Rule 10b–18 [17 CFR 240.10b–18], Rule 13e–1 [17 CFR 240.13e–1], and Rule 13e–3 [17 CFR 240.13e–3] (with respect to the types of share repurchases specified in those rules); and (iv) Rule 13e–4 [17 CFR 240.13e–4] and Regulation 14E [17 CFR 240.14e–1 *et seq.*] (with respect to tender offers). Registrants are urged to raise any questions with respect to the applicability of provisions of the 1934 Act and the rules thereunder and related disclosure issues with the staffs of the Office of Trading Practices of the Division of Market Regulation and the Office of Tender Offers of the Division of Corporation Finance prior to committing to make or commencing any share repurchases, whether by secondary market purchases or through tender offers.

In response to Item 8.5.d, Registrants contemplating making share repurchases should disclose the expected timing of and procedures associated with such repurchases, including, in the case of a tender offer, when the purchase price will be determined and how shareholders may readily ascertain the net asset value per share during the period that the tender offer is open.[1] If tender offers are contemplated, the prospectus should disclose that, when a tender offer is made, notice will be provided to shareholders describing the terms of the tender offer. The prospectus also should disclose that the notice will contain information shareholders should consider in deciding whether or not to participate in the tender offer (including the existence and amount of any repurchase fee that may be charged) and detailed instructions on how to tender shares.[2]

The prospectus of a Registrant that intends to repurchase its shares periodically should disclose the factors that the board, in the exercise of its fiduciary duty, will consider in determining when and if to make such repurchases, including how frequently the board will consider making repurchases.[3] In addition, while the disclosure need not be as detailed as that which would appear in an offer to purchase delivered to shareholders in connection with a tender offer, it should disclose the types of factors that would preclude a share repurchase.

* * * * *

10. By adding Guide 10 to Form N–2 (§§ 239.14 and 274.11a–1) to read as follows:

Guide 10. Periodic Repurchase Offers by Closed-End Funds

If a registrant intends to make periodic repurchase offers for its securities in accordance with the provisions of Rule 23c–3 [17 CFR 270.23c–3],[1] the registrant should make full disclosure of this policy in its prospectus. In response to Item 1.1.b, the cover page of the prospectus should state that the registrant is a closed-end investment company that will make periodic repurchase offers for its securities, subject to certain conditions. This cover page disclosure also should specify the anticipated frequency of such offers, the intervals between deadlines for repurchase requests, pricing and repayment and, if applicable, the anticipated timing of the registrant's initial repurchase offer. This response should include a cross-reference to those sections of the prospectus that discuss the registrant's repurchase policies and the risks attendant thereto.

The fee table required by Item 3.1 should state, as a specific caption under shareholder transaction expenses, the amount of any fees to be charged to shareholders in connection with the repurchase of their shares by the registrant.

A registrant whose shares are publicly traded in the secondary market and that makes periodic repurchase offers should calculate and disclose total investment return (Item 4.13) based on both the current market price of its common stock and the net asset value thereof. A registrant whose shares are not publicly traded should calculate total return only on the basis of its net asset value.

In response to Item 8.2.c, the registrant should provide a detailed description of its fundamental policy related to share repurchase offers. The description of the repurchase policy should be distinct from the registrant's description of its other fundamental policies so that investors appreciate its significance. The description of the registrant's fundamental repurchase policy should include the following:

a. That it is a fundamental policy that can be changed only by majority vote;

b. The intervals between, and the scheduled dates of, the repurchase request deadlines (*i.e.*, whether repurchase offers will be made every three, six or twelve months); and

c. Any circumstances in which the fund may postpone or fail to make a repurchase offer.

The registrant should provide a detailed description of the procedures that will be used in connection with periodic repurchase offers. This description should include the mechanics of the repurchase offer (*i.e.*, the anticipated timing of the registrant's initial repurchase offer, time periods between offer and repurchase, pricing mechanics and other matters related to the expected timing of and procedures associated with such repurchases); the

[1] The price at which a Registrant may repurchase its shares from shareholders generally is expressed in terms of their net asset value of its shares at a given point in time. Thus, the net asset value of a Registrant's shares during a tender offer will be material information to investors in determining whether or not to participate in the tender offer.

[2] Rule 13e–4(f)(8)(i) [17 CFR 240.13e–4(f)(8)(i)] requires a tender offer to be open to all security holders of the class of securities subject to the tender offer. Therefore, no record dates may be specified with respect to the eligibility of a shareholder to participate in any tender offer that may be made, since all shareholders must be able to participate in the offer until the close of the offering period. In addition, Rule 13e–4(f)(8)(ii) [17 CFR 240.13e–4(f)(8)(ii)] requires that the consideration paid to any holder during the tender offer be the highest paid to any other security holder during the tender offer. Therefore, an issuer may not deduct a service fee from consideration paid to shareholders because the effect would be to lower the price paid to those shareholders tendering a small amount of shares relative to the price paid to shareholders tendering a large number of shares. However, an "early withdrawal charge" (a deduction from the price paid where a tendering shareholder has not held the shares for a specified period of time) has been permitted where it is uniformly applied in accordance with a schedule included in the fund's prospectus. A "repurchase fee" of up to 2% of proceeds may be charged in connection with a discretionary repurchase offer pursuant to Rule 23c–3(c). See Rule 23c–3(b)(1) [17 CFR 270.23c–3(b)(1)].

[3] Disclosure as to the factors to be considered by the fund's board and the frequency, terms and manner of financing of any future share repurchases is required only to the extent that such information is known or has been determined at the time the registration statement becomes effective. It is the view of the Division that fund directors have a fiduciary duty to consider the appropriateness of share repurchases, but that this fiduciary duty does not preclude a Registrant from having a policy, or making a commitment, to conduct periodic share repurchases subject to the applicable laws and regulations relating to share repurchases discussed above. *See* Guide 10 to Form N–2 for a discussion of the disclosure required with respect to periodic repurchases pursuant to Rule 23c–3(b) [17 CFR 270.23c–3(b)].

[1] *See* Guide 2 for a discussion of regulatory and disclosure issues related to share repurchases by closed-end funds that do not make periodic repurchases under paragraph (b) of rule 23c–3.

possibility of additional discretionary repurchase offers; the way in which shareholders will be notified of repurchase offers; the tender procedures (including any special procedures that may be required where shares are held in street name); the ability to withdraw or modify repurchase requests; the means of determining the number of shares to be repurchased; the procedures to be followed in the event a repurchase offer is oversubscribed; the procedures for calculating the repurchase price; and whether and how shareholders may readily ascertain the net asset value per share during the period preceding the "repurchase request deadline" (the date by which investors must submit shares or withdraw or modify tenders previously made).[2] Registrants are encouraged to use graphic presentations (such as a time line or calendar) so that investors can readily understand the time periods used by the funds and the significance of the repurchase request deadline, the repurchase pricing date and the repurchase payment deadline.

In response to Item 8.3.a, the registrant should fully disclose all risks associated with the registrant's intention to make periodic repurchases of its securities, including:

—The risk that, in the event of the oversubscription of a repurchase offer, shareholders may be unable to liquidate all or a given percentage of their investment in the registrant at net asset value during that repurchase offer;
—The risk that, because of the potential for proration, some investors might tender more shares than they wish to have repurchased in order to ensure the repurchase of a specific number of shares;
—The possibility that periodic repurchase offers may not eliminate any discount at which the registrant's shares trade;
—The effect of repurchase offers and related liquidity requirements on portfolio management and on the ability of the registrant to achieve its investment objectives, including the possibility that diminution in the size of the fund could result from repurchases in the absence of sufficient new sales of the fund's shares, and that this may decrease the fund's investment opportunities;
—The effect that share repurchase offers and related financings might have on expense ratios and on portfolio turnover;
—If the repurchase payment deadline is more than seven days after the repurchase request deadline, the market risk to which an investor may be subject as a result of the delay between the tender of shares and their pricing; and
—The possible decrease in share value as a result of currency fluctuations between the date of tender and the repurchase pricing date if the registrant has invested all or a portion of its portfolio in foreign markets.

The means by which share repurchases will be funded generally would be material, and thus these means and any risks inherent in the policies relating to funding should be disclosed. If the registrant intends to incur debt to finance a share repurchase, the registrant should disclose the maximum amount of debt that may be incurred for that purpose, the restrictions imposed by the Investment Company Act and by rule 23c-3 on leverage, the attendant risks of leveraging, and the extent to which the financing costs of borrowing may be borne by shareholders who do not tender.[3] If the registrant believes that share repurchases will be funded with the proceeds of sales of portfolio securities, it should disclose that fact and the risk that the need to sell securities to fund repurchase offers may affect the market for the portfolio securities being sold, which may, in turn, diminish the value of an investment in the fund.

The effect that repurchases may have on the ability of the registrant to qualify as a regulated investment company under the Internal Revenue Code in the event that share repurchases have to be funded with proceeds from the liquidation of portfolio securities should also be discussed. Finally, registrants should discuss the potential tax consequences to investors and the registrant of share repurchases and related portfolio security sales in response to Items 10.4 or 22, as appropriate.

Dated: April 7, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A will not appear in the Code of Federal Regulations.

Appendix A—Form N-23c-3 Notification of Repurchase Offer Pursuant to Rule 23c-3 [17 CFR 270.23c-3]

1. Investment Company Act File Number 811-

Date of Notification __________

2. Exact name of investment company as specified in registration statement:

3. Address of principal executive office: (number, street, city, state, zip code)

4. Check one of the following:

A. [ ] The notification pertains to a periodic repurchase offer under paragraph (b) of rule 23c-3.

B. [ ] The notification pertains to a discretionary repurchase offer under paragraph (c) of rule 23c-3.

C. [ ] The notification pertains to a periodic repurchase offer under paragraph (b) of rule 23c-3 and a discretionary repurchase offer under paragraph (c) of rule 23c-3.

By: __________
(Name)

(Title)

Instructions

1. This Form must be completed by registered closed-end investment companies or business development companies that make repurchase offers pursuant to rule 23c-3. The form shall be attached to a notification to shareholders under paragraph (b)(4) of rule 23c-3.

2. Submissions using this form shall be filed in triplicate with the Commission within three business days after a notification is sent to shareholders. One copy shall be manually signed; the other copies may have facsimile or typed signatures.

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[2] Since all repurchases under rule 23c-3 will be made at net asset value, the net asset value of a registrant's shares prior to the repurchase deadline will be material information to investors in determining whether or not to tender shares.

[3] See paragraph (b)(9) of rule 23c-3 and Guide 6 to Form N-2. Guide 6 contains a detailed discussion of the Division's views on the risks associated with leverage.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 93-27]

Country of Origin of Textile Products From U.S. Insular Possessions

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulation; solicitation of comments.

SUMMARY: This document amends the Customs Regulations to provide that textiles and textile products produced or manufactured in an insular possession of the United States, if subsequently assembled, advanced in value or improved in condition in a foreign country, will not be treated as having their origin in that insular possession for purposes of the U.S. textile import program. The amendment is intended to ensure that such products will be subject to the same rules of origin as products of the United States for quota, visa and other textile restraint purposes.

DATES: This interim rule is effective May 14, 1993. This interim regulation is applicable to all textiles and textile products exported from their country of origin on or after May 14, 1993. Comments must be received on or before June 14, 1993.