

how the fund plans to restore its minimum within a reasonable period of time.

(B) For purposes of determining whether a fund primarily holds assets that are highly liquid investments, a fund must exclude from its calculations the percentage of the fund's assets that are highly liquid investments that are pledged as margin or collateral in connection with derivatives transactions that the fund has classified as moderately liquid investments, less liquid investments, and illiquid investments, as determined pursuant to paragraph (b)(1)(ii)(C) of this section.

(iv) *Illiquid investments.* No fund or In-Kind ETF may acquire any illiquid investment if, immediately after the acquisition, the fund or In-Kind ETF would have invested more than 15% of its net assets in illiquid investments that are assets. If a fund or In-Kind ETF holds more than 15% of its net assets in illiquid investments that are assets:

(A) It must cause the person(s) designated to administer the program to report such an occurrence to the fund's or In-Kind ETF's board of directors within one business day of the occurrence, with an explanation of the extent and causes of the occurrence, and how the fund or In-Kind ETF plans to bring its illiquid investments that are assets to or below 15% of its net assets within a reasonable period of time; and

(B) If the amount of the fund's or In-Kind ETF's illiquid investments that are assets is still above 15% of its net assets 30 days from the occurrence (and at each consecutive 30 day period thereafter), the fund or In-Kind ETF's board of directors, including a majority of directors who are not interested persons of the fund or In-Kind ETF, must assess whether the plan presented to it pursuant to paragraph (b)(1)(iv)(A) continues to be in the best interest of the fund or In-Kind ETF.

(v) *Redemptions in Kind.* A fund that engages in, or reserves the right to engage in, redemptions in kind and any In-Kind ETF must establish policies and procedures regarding how and when it will engage in such redemptions in kind.

(2) *Board oversight.* A fund or In-Kind ETF's board of directors, including a

majority of directors who are not interested persons of the fund or In-Kind ETF, must:

(i) Initially approve the liquidity risk management program;

(ii) Approve the designation of the person(s) designated to administer the program; and

(iii) Review, no less frequently than annually, a written report prepared by the person(s) designated to administer the program that addresses the operation of the program and assesses its adequacy and effectiveness of implementation, including, if applicable, the operation of the highly liquid investment minimum, and any material changes to the program.

(3) *Recordkeeping.* The fund or In-Kind ETF must maintain:

(i) A written copy of the program and any associated policies and procedures adopted pursuant to paragraphs (b)(1) through (b)(2) of this section that are in effect, or at any time within the past five years were in effect, in an easily accessible place;

(ii) Copies of any materials provided to the board of directors in connection with its approval under paragraph (b)(2)(i) of this section, and materials provided to the board of directors under paragraph (b)(2)(iii) of this section, for at least five years after the end of the fiscal year in which the documents were provided, the first two years in an easily accessible place; and

(iii) If applicable, a written record of the policies and procedures related to how the highly liquid investment minimum, and any adjustments thereto, were determined, including assessment of the factors incorporated in paragraphs (b)(1)(iii)(A) through (B) of this section and any materials provided to the board pursuant to paragraph (b)(1)(iii)(A)(3) of this section, for a period of not less than five years (the first two years in an easily accessible place) following the determination of, and each change to, the highly liquid investment minimum.

(c) *UIT liquidity.* On or before the date of initial deposit of portfolio securities into a registered UIT, the UIT's principal underwriter or depositor must determine that the portion of the illiquid investments that the UIT holds or will hold at the date of deposit that

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are assets is consistent with the redeemable nature of the securities it issues, and must maintain a record of that determination for the life of the UIT and for five years thereafter.

[81 FR 82264, Nov. 18, 2016, as amended at 85 FR 83295, Dec. 21, 2020]

§ 270.23c-1 Repurchase of securities by closed-end companies.

(a) A registered closed-end company may purchase for cash a security of which it is the issuer, subject to the following conditions:

(1) If the security is a stock entitled to cumulative dividends, such dividends are not in arrears.

(2) If the security is a stock not entitled to cumulative dividends, at least 90 percent of the net income of the issuer for the last preceding fiscal year, determined in accordance with good accounting practice and not including profits or losses realized from the sale of securities or other properties, was distributed to its shareholders during such fiscal year or within 60 days after the close of such fiscal year.

(3) If the security to be purchased is junior to any class of outstanding security of the issuer representing indebtedness (except notes or other evidences of indebtedness held by a bank or other person, the issuance of which did not involve a public offering) all securities of such class shall have an asset coverage of at least 300 percent immediately after such purchase; and if the security to be purchased is junior to any class of outstanding senior security of the issuer which is a stock, all securities of such class shall have an asset coverage of at least 200 percent immediately after such purchase, and shall not be in arrears as to dividends.

(4) The seller of the security is not to the knowledge of the issuer an affiliated person of the issuer.

(5) Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase.

(6) The purchase is made at a price not above the market value, if any, or the asset value of such security, whichever is lower, at the time of such purchase.

(7) The issuer discloses to the seller or, if the seller is acting through a broker, to the seller's broker, either

prior to or at the time of purchase the approximate or estimated asset coverage per unit of the security to be purchased.

(8) No brokerage commission is paid by the issuer to any affiliated person of the issuer in connection with the purchase.

(9) The purchase is not made in a manner or on a basis which discriminates unfairly against any holders of the class of securities purchased.

(10) If the security is a stock, the issuer has, within the preceding six months, informed stockholders of its intention to purchase stock of such class by letter or report addressed to all the stockholders of such class.

(11) The issuer files with the Commission, as an exhibit to Form N-CSR (§249.331 and §274.128), a copy of any written solicitation to purchase securities under this section sent or given during the period covered by the report by or on behalf of the issuer to 10 or more persons.

(b) Notwithstanding the conditions of paragraph (a) of this section, a closed-end company may purchase fractional interests in, or fractional rights to receive, any security of which it is the issuer.

(c) This rule does not apply to purchase of securities made pursuant to section 23(c)(1) or (2) of the Act (54 Stat. 825; 15 U.S.C. 80a-23). A registered closed-end company may file an application with the Commission for an order under section 23(c)(3) of the Act permitting the purchase of any security of which it is the issuer which does not meet the conditions of this rule and which is not to be made pursuant to section 23(c)(1) or (2) of the Act.

(d) This rule relates exclusively to the requirements of section 23(c) of the Act, and the provisions hereof shall not be construed to authorize any action which contravenes any other applicable law, statutory or otherwise, or the provision of any indenture or other instrument pursuant to which securities of the issuer were issued.

[Rule N-23C-1, 7 FR 10424, Dec. 15, 1942, as amended at 68 FR 64975, Nov. 17, 2003]

CROSS REFERENCE: For interpretative release applicable to §270.23c-1, see No. 78 in tabulation, part 271 of this chapter.

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§ 270.23c-2 Call and redemption of securities issued by registered closed-end companies.

(a) Notwithstanding the provisions of § 270.23c-1 (Rule N-23c-1), a registered closed-end investment company may call or redeem any securities of which it is the issuer, in accordance with the terms of such securities or the charter, indenture or other instrument pursuant to which such securities were issued: *Provided*, That, if less than all the outstanding securities of a class or series are to be called or redeemed the call or redemption shall be made by lot, on a pro rata basis, or in such other manner as will not discriminate unfairly against any holder of the securities of such class or series.

(b) A registered closed-end investment company which proposes to call or redeem any securities of which it is the issuer shall file with the Commission notice of its intention to call or redeem such securities at least 30 days prior to the date set for the call or redemption; *Provided, however*, That if notice of the call or the redemption is required to be published in a newspaper or otherwise, notice shall be given to the Commission at least 10 days in advance of the date of publication. Such notice shall be filed in triplicate and shall include (1) the title of the class of securities to be called or redeemed, (2) the date on which the securities are to be called or redeemed, (3) the applicable provisions of the governing instrument pursuant to which the securities are to be called or redeemed and, (4) if less than all the outstanding securities of a class or series are to be called or redeemed, the principal amount or number of shares and the basis upon which the securities to be called or redeemed are to be selected.

[Rule N-23C-2, 7 FR 6669, Aug. 25, 1942]

§ 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 within 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 week-end 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 com-

pany 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