Guide 34. Multiple Class and Master-Feeder Structures

In response to Item 6, if a single prospectus is used to offer more than one class of a multiple class fund or more than one feeder fund that invests in the same master fund, the prospectus should provide a separate response to Item 2(a)(i) (the fee table requirement) for each class or feeder fund and should clearly explain the differences between the expense and/or sales load arrangements of the classes or feeder funds. The fee table information should be arranged to facilitate a comparison by shareholders of the different fee structures.

11. By amending Form N–14 [referenced in § 239.23] by revising Item 16(10) to read as follows:

Note: Form N–14 does not, and the amendment to Form N–14 will not, appear in the Code of Federal Regulations.

Form N–14

* * * * *

Item 16. Exhibits

* * * * *

(10) copies of any plan entered into by registrant pursuant to rule 12b–1 under the 1940 Act [17 CFR 270.12b–1] and any agreements with any person relating to implementation of the plan, and copies of any plan entered into by Registrant pursuant to Rule 18f–3 under the 1940 Act [17 CFR 270.18f–3], any agreement with any person relating to implementation of the plan, any amendment to the plan, and a copy of the portion of a meeting of the minutes of the Registrant's directors describing any action taken to revoke the plan;

* * * * *

Dated: February 23, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4997 Filed 3–1–95; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–20916; File No. S7–24–88]

RIN 3235–AD18

Exemption for Certain Open-End Management Investment Companies To Impose Contingent Deferred Sales Loads

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a new rule under the Investment Company Act of 1940 to permit certain registered open-end management investment companies (''mutual funds'') to impose contingent deferred sales loads (''CDSLs''). A CDSL is a sales charge that is paid at redemption; its amount declines over several years until it reaches zero. The adoption of the rule is intended to allow mutual funds to offer investors the choice of an additional form of sales load without applying to the Commission for exemptive relief.

EFFECTIVE DATE: The new rule will become effective April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Nadya B. Roytblat, Staff Attorney, (202) 942–0693, or Robert G. Bagnall, Assistant Chief, (202) 942–0686, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–6, Washington, D.C. 20549.

Requests for formal interpretive advice should be directed to the Office of Chief Counsel at (202) 942–0659, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–6, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting rule 6c–10 [17 CFR 270.6c–10] under the Investment Company Act of 1940 [15 U.S.C. § 80a] (the ''Investment Company Act'' or the ''Act''). The Commission is not adopting the amendments that were proposed to Form N–1A [17 CFR 239.15A, 274.11A]. In a companion release, the Commission is proposing amendments to rule 6c–10 that would permit mutual funds to impose deferred sales loads generally, including loads payable in installments (''installment loads''); the amendments also would modify most of the substantive requirements of rule 6c–10 as adopted here.[1]

A condition in many CDSL exemptive orders granted to date requires applicants to comply with rule 6c–10 as originally proposed or as it may be reproposed, adopted, or amended. Rule 6c–10 as adopted here constitutes the rule as adopted within the meaning of that condition; the amendments that the Commission is proposing in the companion release do not constitute the rule as reproposed or amended within the meaning of that condition and may not be relied upon by those applicants.

I. Introduction and Background

The Commission proposed rule 6c–10 in 1988 to allow mutual funds to impose deferred sales loads generally, including CDSLs, as well as other loads paid at redemption and sales loads payable in installments.[2] The Commission received 33 comment letters.[3] Although the commenters generally supported the proposal to allow CDSLs, some commenters questioned the need for certain substantive requirements in the rule. Commenters had mixed reactions to the proposed provisions for installment loads.

Since the proposal of rule 6c–10, the Commission (or the Division of Investment Management exercising delegated authority) has issued almost 200 exemptive orders permitting funds to impose CDSLs and continues to receive such applications. Also since the original proposal, the National Association of Securities Dealers, Inc. (''NASD'') has amended the provisions of its Rules of Fair Practice that govern mutual fund sales charges (''NASD Sales Charge Rule''). The amendments address certain deferred sales charges, including CDSLs, and distribution charges paid by funds in accordance with rule 12b–1 under the Investment Company Act.[4]

The Commission has considered the comments on the proposal and the implications of the amendments to the NASD Sales Charge Rule and has concluded that it may be appropriate to modify the rule to eliminate most of the substantive requirements in the original proposal and rely upon the roles of disclosure and the overall limits in the NASD Sales Charge Rule. Instead of adopting rule 6c–10 with these changes, the Commission is proposing modifications to rule 6c–10 to obtain the benefit of public comment on this approach and on issues raised by deferred loads other than CDSLs.

In light of the Commission's extensive experience under the CDSL exemptive

[1] Exemption for Certain Open-End Management Investment Companies to Impose Deferred Sales Loads, Investment Company Act Release No. 20917 (Feb. 23, 1995).

[2] 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 [hereinafter Proposing Release].

[3] The commenters included the American Bar Association Subcommittee on Investment Companies and Investment Advisers (the ''ABA Subcommittee''); the American Council of Life Insurance; Deutsche Bank AG New York Branch (''Deutsche Bank'') (commenting outside the comment period); Fidelity Management and Research Company; Gaston & Snow; IDS Financial Services, Inc. (''IDS Financial''); IDS Mutual Fund Group; the Investment Company Institute (the ''ICI'') (commenting both within and outside the comment period); the Keystone Group, Inc.; the National Association of Securities Dealers, Inc.; NASL Financial Services, Inc. (commenting outside the comment period); NYLIFE Securities, Inc.; Simpson, Thacher & Bartlett (''Simpson Thacher'') (commenting outside the comment period); Templeton Funds Management, Inc.; and 19 individual investors. The comment letters are available for public inspection and copying at the Commission's public reference room in File No. S7–24–88.

[4] 17 CFR 270.12b-1.

orders, the Commission does not believe that it is necessary to require funds seeking to impose CDSLs to continue to file exemptive applications with the Commission pending consideration of these proposed modifications. Therefore, the Commission is adopting rule 6c–10 to permit the imposition of CDSLs, but not other forms of deferred sales load.[5]

II. Discussion

The Commission is adopting rule 6c–10 substantially as originally proposed to permit mutual funds[6] to impose CDSLs. The rule as adopted and as originally proposed requires CDSLs to be calculated based on the lesser of the net asset value at the time of purchase or at the time of redemption; specifies a particular order of load calculation in a partial redemption; prohibits CDSLs on reinvested dividends and capital gains distributions; and allows scheduled CDSL variations. The rule as adopted does depart from the proposal in certain respects in light of comments on the 1988 proposal and of the adoption of amendments to the NASD Sales Charge Rule.

A. The NASD Rule on Maximum Sales Charges

Paragraph (a)(2) in the proposed rule provided that the maximum amount of a back-end load, or any combination of a back-end load and a front-end load, may not exceed the maximum allowed under the NASD Sales Charge Rule. At the time rule 6c–10 was proposed, the NASD Sales Charge Rule did not expressly apply to back-end loads. Since then, the NASD has amended its Sales Charge Rule to include expressly back-end loads, as well as asset-based distribution fees.[7] Because a Commission rule no longer is necessary to bring CDSLs within the limits of the NASD Sales Charge Rule, the proposed paragraph has been deleted from rule 6c–10 as adopted to permit CDSLs.

B. ''No-Load'' Labeling

As initially proposed, rule 6c–10 would have prohibited any exempted person and its first and second tier affiliates (all as set forth in the proposed rule), from holding a mutual fund out to the public as being ''no-load'' or as having ''no sales charge'' if the fund imposed a deferred sales load. The amendments to the NASD Sales Charge Rule also expressly prohibited NASD members and their associated persons from describing a mutual fund as ''no load'' or as having ''no sales charge'' if the fund imposes a front-end load, a back-end load, or a 12b–1 and/or service fee that exceeds .25% of average net assets per year.[8] Therefore, the rule as adopted to permit CDSLs omits the prohibition in proposed paragraph (b) as duplicative of the provision in the NASD Sales Charge Rule. The Commission also believes that it would be misleading and a violation of the federal securities laws for a fund that imposes a deferred sales load to be held out as a no-load fund.[9]

C. Interest, Carrying, and Finance Charges

As proposed in 1988, rule 6c–10 would have prohibited a fund from imposing a deferred load if any amount were charged on the shareholders or the fund that was intended to be a payment of interest related to the load or a similar charge. Several commenters pointed out that a prohibition on interest charges would leave a fund's underwriter uncompensated for the cost of advancing the sales and promotional expenses later reimbursed through deferred loads.[10] Commenters noted that the NASD Sales Charge Rule allows the inclusion of an interest component in the computation of the aggregate sales load limits.[11]

The proposed provision was not intended to prohibit any interest charges that might be reflected in the specified load amount. Rather, the provision was designed to prohibit any interest or similar charge that was separate from and in addition to the load amount. Because paragraph (a)(1) of the rule already requires all components of a deferred load to be included in one specified amount, rule 6c–10 as adopted does not include the interest charge prohibition.[12]

D. Scheduled Variations

Paragraph (a)(4) of the rule as adopted permits a fund to offer a scheduled variation in, or eliminate, a CDSL for a particular class of shareholders or transactions, provided that the scheduled variation meets the conditions in rule 22d–1 under the Act.[13] Paragraph (a)(4) also permits a fund to offer an existing shareholder any new scheduled variation that would

---

[5] *See supra* note 1.

[6] Like the rule as proposed, rule 6c–10 as adopted applies only to open-end management investment companies other than registered separate accounts. In the Proposing Release, the Commission also requested comment on whether to propose amendments to rules 6c–8 [17 CFR 270.6c–8] and 6e–3(T) [17 CFR 270.6e–3(T)] under the Act, and whether to issue revised proposed amendments to rule 6e–2 [17 CFR 270.6e–2] under the Act, governing the use of deferred sales loads by registered insurance company separate accounts. The Commission received eight comment letters in response to that request, suggesting that the Commission not propose any amendments. The Commission is not taking any action with regard to these rules.

[7] The NASD Sales Charge Rule prohibits NASD members from offering or selling shares of an open-end management investment company registered under the Act if the sales charges described in the company's prospectus are excessive. Aggregate sales charges are deemed excessive under the Rule if they do not conform to the specific provisions set forth in the Rule. NASD, Rules of Fair Practice, Art. III, Secs. 26(d)(1) and (2). *See also* Letter from the NASD to Jonathan G. Katz, Secretary, SEC (March 14, 1989), File No. S7–24–88; Proposed Rule Change by NASD Relating to the Limitation of Asset-Based Sales Charges as Imposed by Investment Companies, Securities Exchange Act Release No. 29070 (Apr. 12, 1991), 56 FR 16137; Order Approving Proposed Rule Change Relating to the Limitation of Asset-Based Sales Charges as Imposed by Investment Companies, Securities Exchange Act Release No. 30897 (July 7, 1992), 57 FR 30985.

Since back-end loads are used by mutual funds to finance the payment of brokerage commissions, and brokers selling mutual fund shares must be members of the NASD, virtually all funds that impose these loads would be distributed by NASD members and therefore would be subject to the Sales Charge Rule.

[8] NASD, Rules of Fair Practice, Art. III, Sec. 26(d)(3).

[9] *See* Proposing Release, *supra* note 2, at 45283 (referring, in turn, to an earlier Commission statement of its view).

[10] Letter from the ABA to Jonathan G. Katz, Secretary, SEC at 7–8 (Jan. 31, 1989); Letter from Deutsche Bank, submitted on its behalf by Simpson Thacher, to the Division of Investment Management, SEC 8–9 (Nov. 5, 1993); Letter from the ICI to Barry Barbash, Director, Division of Investment Management, SEC 3–4 (June 14, 1994); Letter from the ICI to Jonathan G. Katz, Secretary, SEC 7–8 (Jan. 9, 1989); Letter from IDS Financial to Jonathan G. Katz, Secretary, SEC 1–2 (Jan. 3, 1989).

[11] ICI June 14 comment letter, *supra* note 10, at 3–4; Deutsche Bank November 5, 1993 comment letter, *supra* note 10, at 9.

[12] The initial proposal stated that in the view of the Commission's Division of Market Regulation, deferred sales loads likely would not involve an extension of credit from a fund's underwriter to the shareholders that would be prohibited under section 11(d)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act''). One commenter nevertheless raised a concern that section 11(d)(1) of the Exchange Act would prohibit deferred sales charges. Deutsche Bank November 5, 1993 comment letter, *supra* note 10, at 9–10. The Commission believes that absent an explicit interest charge, a deferred sales load would not involve an extension of credit prohibited by section 11(d)(1) of the Exchange Act. The Commission notes that the NASD Sales Charge Rule limits the amount that NASD members can charge their customers for the purchase of mutual fund shares.

[13] 17 CFR 270.22d–1. Under rule 22d–1, any scheduled variation must be applied uniformly to all offerees in the specified class; adequate information about the scheduled variation must be furnished to the existing and prospective shareholders; the fund's prospectus and statement of additional information must be revised to describe the new scheduled variation prior to making the variation available to investors; and existing shareholders must be advised of the new scheduled variation within one year of the date the variation is first made available to investors.

waive or reduce the amount of a CDSL not yet paid.

E. Other Changes

The text of the rule as adopted also departs from the originally proposed text in two other respects. First, because the adoption of the rule is limited to CDSLs, the adopted rule text omits provisions relating to installment loads or other forms of back-end loads.[14] Second, paragraph (a) of the rule as adopted omits an exemption from section 22(c) of the Investment Company Act [15 U.S.C. § 80a–22(c)], because section 22(c) is solely a grant of rulemaking authority to the Commission and no exemption from that section is required.

F. Form N–1A

The Commission is not adopting the amendments to Form N–1A that were proposed in 1988. Because the Commission is not adopting the provisions of rule 6c–10 for installment loads, no adjustments to the fee table are necessary now.

III. Cost/Benefit Analysis

Rule 6c–10 as adopted does not impose any significant burdens on mutual funds. Rather, the rule should benefit the funds by making it possible to impose CDSLs without having to file exemptive applications with the Commission. The adoption of the rule would give investors an additional option for a means of paying sales charges.

IV. Summary of 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 Investment Company Act Release No. 16619. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604. The Analysis explains that the new rule allows mutual funds to impose CDSLs without having to file exemptive applications with the Commission. A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Nadya B. Roytblat, Esq., Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

V. Statutory Authority

The Commission is adopting rule 6c–10 under sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), and –37(a)].

List of Subjects in 17 CFR Part 270

Investment Companies, Reporting and recordkeeping requirements, Securities.

Text of Adopted Rule

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

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

1. The authority citation for Part 270 is amended by adding the following citation:

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

* * * * *

Section 270.6c–10 is also issued under sec. 6(c) [15 U.S.C. 80a–6(c)];

* * * * *

2. Section 270.6c–10 is added to read as follows:

§ 270.6c–10 Exemption for certain open-end management investment companies to impose contingent deferred sales loads.

(a) A company and any exempted person shall be exempt from the provisions of Sections 2(a)(32), 2(a)(35), and 22(d) of the Act [15 U.S.C. 80a–2(a)(32), 80a–2(a)(35), and 80a–22(d), respectively] and § 270.22c–1 to the extent necessary to permit a contingent deferred sales load to be imposed on shares issued by the company, *Provided*, that:

(1) The amount of a contingent deferred sales load is calculated as being the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents the same or a lower percentage of the net asset value of the shares at the time of redemption;

(2) No contingent deferred sales load is imposed on shares, or amounts representing shares, that are purchased through the reinvestment of dividends or capital gains distributions;

(3) The contingent deferred sales load is calculated as if shares or amounts representing shares not subject to a load are redeemed first, and other shares or amounts representing shares are then redeemed in the order purchased, *Provided*, however, that another order of redemption may be used if such order would result in the redeeming shareholder paying a lower contingent deferred sales load; and

(4) The same contingent deferred sales load is imposed on all shareholders, except that scheduled variations in or elimination of a contingent deferred sales load may be offered to particular classes of shareholders or in connection with particular classes of transactions, *Provided*, that the conditions in § 270.22d–1 are satisfied. Nothing in this paragraph (a) shall prevent a company from offering to existing shareholders a new scheduled variation that would waive or reduce the amount of a contingent deferred sales load that has not yet been paid.

(b) For purposes of this section:

(1) *Company* means a registered open-end management investment company, other than a registered separate account, and includes a separate series of such company;

(2) *Exempted person* means any principal underwriter of, dealer in, and any other person authorized to consummate transactions in, securities issued by such company; and

(3) *Contingent deferred sales load* means any amount properly chargeable to sales or promotional expenses that is paid by a shareholder, if at all, at the time of redemption, the amount of which would decrease to zero if the shares were held for a reasonable period of time specified by the company.

Dated: February 23, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4996 Filed 3–1–95; 8:45 am]

BILLING CODE 8010–01–P

[14] *E.g.*, paragraph (a)(1)(ii) and pertinent provisions of other paragraphs such as paragraph (c)(3) in the original proposal.