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TITLE 17 - COMMODITY AND SECURITIES EXCHANGES

Chapter II Securities and Exchange Commission

(Release 34-8429 Release IC-5519)

PART 240 - GENERAL RULES AND REGULATIONS, SECURITIES

EXCHANGE ACT OF 1934

PART 270 - RULES AND REGULATIONS, INVESTMENT COMPANY

ACT OF 1940

Pricing of Redeemable Securities for Distribution,
Redemption and Repurchase and Time-Stamping of Orders
by Dealers

On June 25, 1968, the Securities and Exchange Commission published notice (Investment Company Act Release No. 5413; Securities Exchange Release No. 8340) [in the Federal Register on June 29, 1968 at 33 F.R. 9557] that it had under consideration the adoption of Rule 22c-1 [17 CFR §270.22c-1] under the Investment Company Act of 1940 ("Investment Company Act") and the amendment of Rule 17a-3(a)(7) [17 CFR §240.17a-3(a)(7)] under the Securities Exchange Act of 1934 ("Securities Exchange Act") and invited all interested persons to submit their views and comments upon the proposal. The Commission has considered all the comments and suggestions received and has determined to adopt Rule 22c-1 [17 CFR §270.22c-1] under the Act in the form set forth below and to adopt the amendment of Rule 17a-3(a)(7) [17 CFR §240.17a-3(a)(7)] under the Securities Exchange Act as originally proposed.

Section 22(c) of the Investment Company Act, by reference to Section 22(a) of the Investment Company Act, authorizes the Commission to

make rules and regulations applicable to principal underwriters of, and dealers in, the redeemable securities of registered investment companies "for the purpose of eliminating or reducing so far as reasonably practicable any dilution of the value of other outstanding securities of such company or any other result of such purchase, redemption, or sale which is unfair to holders of such other outstanding securities." Such rules and regulations are authorized with respect to, among other things, the time for computing the minimum price at which any redeemable security issued by an investment company may be purchased from such company and the maximum price at which such security may be sold to such company or at which such security may be surrendered to such company for redemption. Section 38(a) of the Investment Company Act authorizes the Commission to issue such rules as are necessary or appropriate to the exercise of the powers conferred upon the Commission in that Act.

One purpose of Rule 22c-1 [17 CFR §270.22c-1] is to eliminate or reduce so far as reasonably practicable any dilution of the value of outstanding redeemable securities of registered investment companies through (i) the sale of such securities at a price below their net asset value or (ii) the redemption or repurchase of such securities at a price above their net asset value. Dilution through the sale of redeemable securities at a price below their net asset value may occur, for example, through the practice of selling securities for a certain period of time at a price based upon a previously established net asset value. This practice permits a potential investor to take advantage of an upswing in the market and an accompanying increase in the net asset value of investment company shares by purchasing such shares at a price which does not reflect the increase.

An investor may be encouraged to purchase securities in this manner by the practice of announcing the next sale price in advance of the time at which it becomes effective, thereby enabling the investor to time his purchase so as to obtain investment company securities at the lower of two known prices. Based upon its experience in the administration of the Investment Company Act, the Commission believes that such practices have the effect of diluting the value of outstanding redeemable securities of registered investment companies.

Another purpose of Rule 22c-1 [17 CFR §270.22c-1] is to eliminate or reduce so far as reasonably practicable other results, aside from dilution, which arise from the sale, redemption, or repurchase of securities of registered investment companies and which are unfair to the holders of such outstanding securities. The Commission believes that the practice of selling securities for a certain period of time, at a price based upon a previously established net asset value, encourages speculative trading practices which so compromise registered investment companies as to be unfair to the holders of their outstanding securities. This pricing practice allows speculators to buy large blocks of such securities under circumstances where the net asset value of the securities has increased but where the increase in value is not reflected in the price. The speculators hold such securities until the next net asset value is determined and then redeem them at large profits. These speculative trading practices can seriously interfere with the management of registered investment companies to the extent that (i) management may hesitate to invest what it believes to be speculators' money and (ii) management may

have to effect untimely liquidations when speculators redeem their securities. Based upon its experience in the administration of the Investment Company Act, the Commission believes that such practices cause unfair results to the holders of outstanding securities of registered investment companies.

Rule 22c-1 [17 CFR §270.22c-1] prohibits any registered investment company issuing any redeemable security; any person designated in such issuer's prospectus as authorized to consummate transactions in any such security; and any principal underwriter of, or dealer in, any such security from selling, redeeming, or repurchasing any such security except at a price determined in accordance with the provisions of the rule [17 CFR §270.22c-1]. The rule [17 CFR §270.22c-1] requires that the price be based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Current net asset value is defined by the rule to be that computed on each day during which the New York Stock Exchange is open for trading, not less frequently than once daily as of the time of the close of trading on such Exchange. The effect of the rule [17 CFR §270.22c-1] is to prohibit the practice of selling securities for a certain period of time at a price based on a previously established net asset value.

After consideration of the comments and suggestions received from interested persons, the Commission has determined to substitute a once daily pricing requirement for the twice daily pricing requirement

originally proposed. However, the once daily pricing requirement is not intended to prohibit an investment company from pricing its redeemable securities more frequently if it so wishes. Furthermore, where an investment company believes that the once daily pricing requirement will be unduly burdensome, it can apply to the Commission for an appropriate exemption.

It should be noted that Rule 2a-4 [17 CFR §270.2a-4] under the Investment Company Act defines the term "current net asset value" for use in computing the current price of redeemable securities issued by registered investment companies for the purpose of distribution, redemption, and repurchase.

It also should be noted that Rule 31a-1(b)(1) [17 CFR §270.31a-1(b)(1)] under the Investment Company Act provides, in pertinent part, that every registered investment company shall maintain and keep current journals or other records of original entry containing an itemized daily record in detail of all sales and redemptions of its own securities. It is expected that registered investment companies will time-stamp, upon receipt, all orders with respect to sales, redemptions, and repurchases of their own securities.

Any person desiring a Commission order under Section 6(c) of the Investment Company Act granting an exemption from the once daily pricing requirement of Rule 22c-1 [17 CFR §270.22c-1] before its effective date may file an application under that Section of the Investment Company Act. Such application should of course be supported with factual data and legal arguments to enable the Commission to make the required finding that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act.

In order to implement Rule 22c-1 [17 CFR §270.22c-1] under the Investment Company Act, the Commission, as a companion measure, has determined to adopt an amendment of Rule 17a-3(a)(7) [17 CFR §240.17a-3(a)(7)] under the Securities Exchange Act to require dealers, when selling securities to, or buying securities from, a customer, other than a broker or dealer, to stamp on the memorandum of order the time of receipt. Brokers are already subject to such requirement under subparagraph (a)(6) of the Rule 17a-3 [17 CFR §240.17a-3(a)(6)].

The text of Rule 22c-1 [17 CFR §270.22c-1], adopted by the Commission pursuant to the authority granted to it in Sections 22(c) and 38(a) of the Investment Company Act, is as follows:

§270.22c-1. Pricing of redeemable securities for
distribution, redemption and repurchase

(a) No registered investment company issuing any redeemable security, no person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and no principal underwriter of, or dealer in, any such security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

(b) For the purposes of this section, the current net asset value of any such security shall be that computed on each day during which the New York Stock Exchange is open

for trading, not less frequently than once daily as of the time of the close of trading on such Exchange.

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The test of the Commission action, pursuant to the authority granted to the Commission in Sections 17(a) and 23(a) of the Securities Exchange Act, is as follows:

§240.17a-3(a)(7) under the Securities Exchange Act of 1934 is amended by deleting the period at the end of the sentence and adding "; and, in addition, where such purchase or sale is with a customer other than a broker or dealer, a memorandum for each order received, showing the time of receipt, the terms and conditions of the order, and the account in which it was entered." As so amended, the subparagraph reads:

§240.17a-3 Records to be made by certain exchange members, brokers and dealers.

(a) * * * * *

(7) A memorandum of each purchase and sale for the account of such member, broker, or dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where such purchase or sale is with a customer other than a broker or dealer, a memorandum of each order received,

showing the time of receipt, the terms and conditions of the order, and the account in which it was entered.

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(Secs. 22(c), 38(a), 54 Stat. 823, 841, 15 U.S.C. 80a-22(c), 80a-37(a))

(Secs. 17(a), 23 (a), 48 Stat. 897, 901, 17 U.S.C. 78q, 78w)

In order that investment companies and broker-dealers may have a reasonable period of time to conform their present pricing practices and current prospectuses to the new requirements, Rule 22c-1 [17 CFR §270.22c-1] under the Investment Company Act and the amendment of Rule 17a-3(a)(7) [17 CFR §240.17a-3(a)(7)] under the Securities Exchange Act are declared effective at the commencement of business on January 13, 1969.

By the Commission.

Orval L. DuBois
Secretary