

from the provisions of section 17(a) of the Act, if no person who is:

(1) An officer, director, employee, investment adviser, member of an advisory board, depositor, promoter or principal underwriter for the registered investment company, or

(2) A person directly or indirectly controlling the registered investment company, or

(3) A person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of the registered investment company, or

(4) A person directly or indirectly under common control with the registered investment company, or

(5) An affiliated person of any of the foregoing.

(i) Is also a party to the transaction, or

(ii) Has, or within six months prior to the transaction had, or pursuant to an arrangement will acquire, a direct or indirect financial interest in a party (except the registered investment company) to the transactions.

By the Commission.

George A. Fitzsimmons,
Secretary.

August 13, 1979.

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17 CFR Part 270

[Release No. IC-10827]

Pricing of Investment Company Shares Generally

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission today is adopting an amendment to the rule under the Investment Company Act of 1940 which requires, in part, that an investment company's redeemable securities be priced on each day the New York Stock Exchange is open for trading, not less frequently than once daily at that exchange's close, even though the investment company's portfolio securities might not be listed on that exchange. The amended rule unlinks the pricing of investment company shares from the New York Stock Exchange by requiring that the net asset value of such shares be computed (1) not less frequently than once daily on each day (other than days when no order to purchase or sell or tender for redemption is received) in which there is a sufficient degree of trading in the investment company's portfolio

securities that the current net asset value of the investment company's redeemable securities might be materially affected by changes in the value of these portfolio securities, and (ii) at such specific time during the day as determined by a majority of the board of directors of the investment company no less frequently than annually.

EFFECTIVE DATE: December 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Mark B. Goldfus, Special Counsel (202) 755-0230 or

Mark J. Mackey, Esq. (202) 755-1547, Investment Company Act Study Group, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today amended paragraph (b) of rule 22c-1 (17 CFR 270.22c-1) under the Investment Company Act of 1940 ("Act") (15 U.S.C. 80-1 et seq.), which pertains to the computation of the current net asset value at which an investment company must sell, purchase or redeem its securities. The rule, as amended, generally provides that, for purposes of section 22c-1, the current net asset value of such a security shall be computed (1) not less frequently than once daily on each day (other than a day during which no tender for redemption or order to purchase or sell such security was received by the investment company) in which there is a sufficient degree of trading in the investment company's portfolio securities that the current net asset value of the investment company's redeemable securities might be materially affected by changes in the value of these portfolio securities, and (ii) at such specific time during the day as determined by a majority of the board of directors of the investment company no less frequently than annually. The reasons for the Commission's proposing to amend rule 22c-1 were discussed thoroughly in Investment Company Act Release No. 10691 (May 15, 1979), 44 FR 29678 (May 22, 1979). Persons interested in a more detailed discussion of the amendment should refer to that release.

In response to its request for comments regarding the proposed amendment to rule 22c-1, the Commission received and considered 10 letters. The commentators, with a single exception, generally approved the intent of the amendment to unlink the requirement of computing current net asset value from the business days and hours of the New York Stock Exchange

("NYSE"). In response to recommendations included in these comments the Commission has made certain modifications to the amended rule.

Among the comments, several commentators addressed whether the amendment precludes an investment company's determining the current net asset value of its redeemable securities more frequently than once during a particular day. The Commission emphasizes that the amendment is not intended to limit the frequency of such determinations. Accordingly, to resolve any potential ambiguity, the text of the amended rule has been modified specifically to address this concern.

A number of commentators also questioned the Commission's position that, if an investment company has a substantial portion of its portfolio securities listed on a foreign securities exchange, such company may be required to price its shares on each day when that exchange is open, whether or not the principal national securities exchanges in the United States are open. These commentators believed, generally, that this position would involve significant and unwarranted costs. In this regard, the Commission notes that in most instances an investment company—by segregating orders received, although not necessarily making the appropriate calculations prior to the next business day—may satisfy its obligations to provide its investors with accurate pricing on days which are not business days in the United States in a manner which should not incur unreasonable costs.¹ Moreover, to ensure that an investment company will not be subject to unjustifiable expenses in computing the net asset value of its redeemable securities, the Commission has determined to incorporate into the text of the rule the "no-action" position of the Division of Investment Management that an investment company need not compute the net asset value on days when no such security was tendered for redemption and no order to purchase or sell such security was received.² The Commission believes that its actions represent an appropriate balance between a concern that an investment company's shareholders should not bear

¹ For example, in an application for exemption from the provisions of then-existing rule 22c-1, an investment company which invested primarily in foreign issuers undertook to the Commission to segregate orders received on Saturdays and certain holidays when the U.S. mail is delivered. C.T. Pacific Investment Company Act Release Nos. 9580 (Mar. 17, 1977), 11 SEC Docket 2034, and 9746 (May 3, 1977), 12 SEC Docket 328.

² See Release No. 10691, proposing the amendments to rule 22c-1.

unreasonable operating costs and the need to provide investors with the benefits of accurate valuation during periods of significant trading activity in that investment company's portfolio securities.

Several commentators believed that the amendment's requirement that a majority of the directors who are not interested persons³ of the investment company determine, in addition to the determination of the entire board of directors, the specific time for computing the current net asset value could be construed to reflect a general, unwarranted distrust of management. These commentators asserted that such a determination is not a decision in which any directors have a personal interest and, therefore, it should not require independent consideration by the disinterested directors. The Commission had included this requirement in the amended rule in recognition of the responsibility of disinterested directors as "independent watchdogs" over an investment company's operations.⁴ In this regard, it also should be noted that this requirement accords with statutorily assigned special duties of disinterested directors regarding certain other decisions in which management apparently has no direct financial interest.⁵ However, the Commission is persuaded on balance that there are sufficient investor protections in the rule, such that any practical benefit from a separate polling of the disinterested directors would be slight. Thus, it has withdrawn that condition from the rule.

Authority, Effective Date

The Commission amends rule 22c-1 pursuant to the provisions of section 22(c) (15 U.S.C. 80a-22(c)) and section 38(a) (15 U.S.C. 37(a)) of the Act. The amendments to rule 22c-1 will be effective in 90 days.

Text of Adopted Rule

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended by amending paragraph (b) of § 270.22c-1 as follows:

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

(b) For the purposes of this section, (1)

³The term "interested person" is defined in section 2(a)(19) of the Act (15 U.S.C. 80a-2(a)(19)).

⁴See *Burks v. Lasker*, 99 S. Ct. 1831, 1849 (May 14, 1979), quoting *Tannenbaum v. Zeller*, 552 F.2d 402, 406 (CA 2 1977).

⁵See, e.g., section 16(c) (15 U.S.C. 80a-16(c)) (filling certain vacancies on board of directors) and section 32(a) (15 U.S.C. 80a-31(a)) (selection of accountants).

the current net asset value of any such security shall be computed (i) no less frequently than once daily on each day (other than a day during which no such security was tendered for redemption and no order to purchase or sell such security was received by the investment company) in which there is a sufficient degree of trading in the investment company's portfolio securities that the current net asset value of the investment company's redeemable securities might be materially affected by changes in the value of the portfolio securities, and (ii) at such specific time during the day as determined by a majority of the board of directors of the investment company no less frequently than annually; and (2) a "qualified evaluator" shall mean any evaluator which represents it is in a position to determine, on the basis of an informal evaluation of the eligible trust securities held in the Trust's portfolio, whether—

(i) The current bid price is higher than the offering side evaluation, computed on the last business day of the previous week, and

(ii) The offering side evaluation, computed as of the last business day of the previous week, is more than one-half of one percent (\$5.00 on a unit representing \$1,000 principal amount of eligible trust securities) greater than the current offering price.

By the Commission.

George A. Fitzsimmons,
Secretary.

August 13, 1979.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 270, 271, and 273

[Docket No. RM79-60]

Publication of Prescribed Maximum Lawful Prices Under the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: This rule amends certain Federal Energy Regulatory Commission's regulations implementing the Natural Gas Policy Act of 1978 (NGPA). By this amendment the Commission revises its method of publication of the maximum lawful prices under the NGPA and issues a

compilation of Prescribed Maximum Lawful Prices under the NGPA for the months of August, September and October of 1979. Section 101(b)(6) of the NGPA requires that the Commission compute and make available prices and inflation adjustments at least five days before the beginning of any month for which such figures apply.

EFFECTIVE DATE: July 25, 1979.

FOR FURTHER INFORMATION CONTACT: Mark Magnuson, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 275-4850. July 25, 1979.

A. Background

On December 1, 1978, the Federal Energy Regulatory Commission (Commission) issued Interim Regulations (43 FR 56448, December 1, 1978), implementing the Natural Gas Policy Act of 1978 (NGPA), Pub. L. No. 95-621, 92 Stat. 3350.

On April 27, 1979, the Commission issued the Publication of Prescribed Maximum Lawful Prices Under the NGPA under Docket No. RM79-39 (44 FR 26068, May 4, 1979).

Sections 271.101(a), 271.202, 271.302, 271.402(a), 271.402(c)(4), 271.602, 271.702, 271.802, and 271.902 of the Commission's regulations under the NGPA set forth maximum lawful prices per MMBtu (per Mcf for minimum rate gas) for deliveries made in December, 1978 through July, 1979. Section 271.102(c) set forth the monthly inflation adjustment factors. Section 101(b)(6) of the NGPA requires that the Commission compute and make available maximum lawful prices and inflation adjustments at least five days before the beginning of any month for which such figures apply. Pursuant to that mandate, the Commission is amending its regulations implementing the NGPA to issue the maximum lawful prices for the months of August, September and October of 1979. In addition, the Commission is revising its method of announcing such prices by publishing for each quarter a single set of tables which will specify the maximum lawful prices and inflation adjustments up to and including that quarter's. Table I specifies the maximum lawful prices for gas subject to sections 102, 103, 106(b)(1)(B), 107, 108 and 109 of the NGPA; Table II specifies the prices for sections 104 and 108(a); Table III sets forth the inflation adjustments.

B. Summary of Amended Regulations

The Commission's regulations under the NGPA are being amended by the publication of Tables I, II and III establishing the maximum lawful prices