

Statutory Basis

Proposed Rule 3a12-9, would be adopted under the Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly sections 3(a)(12), 7(c), and 11(d)(1) and 23 [15 U.S.C. 78c(a)(12), 78g, 78k, and 78w].

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendment**PART 240—AMENDED**

On the basis of the above discussion and analysis, the Commission proposes to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations by adding § 240.3a12-9 as follows:

§ 240.3a12-9 Exemption of certain direct participation program interests from the arranging provisions of sections 7(c) and 11(d)(1).

(a) Direct participation program securities sold on a basis whereby the purchase price is paid to the issuer in a series of mandatory installments shall be deemed to be exempt securities for the purposes of the arranging provisions of sections 7(c) and 11(d)(1) of the Act provided that:

(1) The securities are registered under the Securities Act of 1933;

(2) The issuer registers the securities under section 12(g) of the Exchange Act and the securities remain registered under that section until the total purchase price of the security is paid; and

(3) The mandatory installment payments bear a direct relationship to the cash needs and program objectives described in a business development plan disclosed in the registration statement filed with the Commission pursuant to the Securities Act of 1933.

(b) For purposes of this rule:

(1) "Direct participation program" shall mean a program financed through the sale of interests in securities other than margin securities (as defined in 12 CFR 220.2(o)) that provides direct flow-through tax consequences to its investors and created pursuant to a contractual agreement between and among investors as in a limited partnership: *Provided, however*, That the term "direct participation program" does not include real estate investment trusts, Subchapter S corporate offerings, tax qualified pension and profit sharing plans pursuant to sections 401 and 403(a) of the Internal Revenue Code ("Code"), tax shelter annuities pursuant to section 403(b) of the Code, individual retirement plans under section 408 of the

Code, and any company, including separate accounts, registered pursuant to the Investment Company Act of 1940.

(2) "Business development plan" shall mean a specific plan of the program's anticipated economic development, and the amounts of future capital contributions to be required, in the form of deferred payments, at specified times or upon the occurrence of certain events.

By the Commission.

November 16, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30979 Filed 11-28-84; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 270

[Release No. IC-14244; File No. S7-39-84]

Pricing of Redeemable Securities for Distribution, Redemption, and Repurchase

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing for comment a rule and rule amendment under the Investment Company Act of 1940 relating to the pricing of redeemable securities by investment companies. Specifically, the proposals would limit the days on which pricing might be required to customary United States business days, and would provide that an investment company will not have suspended the right of redemption if it prices a redemption request by computing net asset value pursuant to the amended rule. The proposals, if adopted, would simplify and clarify pricing requirements primarily for funds with portfolio securities trading on foreign markets.

DATE: Comments must be received by January 28, 1985.

ADDRESS: Three copies of all comments should be submitted to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-39-84. All comments received will be available for public inspection in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Jay Gould, Esq., Office of Disclosure Policy and Adviser Regulation, [202] 272-2107, 450 Fifth Street, NW., Room 5130, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment a

proposed amendment to rule 22c-1(b) [17 CFR 270.22c-1] and a new rule 22c-2 [17 CFR 270.22c-2] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*]. The amendment to rule 22c-1(b) would require investment companies subject to its provisions to compute the current net asset value of their redeemable securities at least every weekday (Monday through Friday) except for: (i) Days which are customary United States business holidays that are stated in the prospectus, (ii) days on which no security is tendered for redemption and no customer order is received, or (iii) days when the degree of trading in the investment company's portfolio securities is such that the current net asset value of the investment company's redeemable securities will not be affected by changes in the value of the portfolio securities. New rule 22c-2 would simply apply the pricing provisions of amended rule 22c-1 to the section 22(e) requirement regarding the honoring of redemption requests. Proposed rule 22c-2 would make it clear that an investment company would not be required to price redemption requests on days on which pricing would not be required under rule 22c-1.

Background

Rule 22c-1(b), as amended in 1979, requires investment companies issuing redeemable securities to compute the net asset value of shares (i) not less frequently than once daily on each day (other than days when no order to purchase or sell is received and no tender for redemption is made) in which there is a sufficient degree of trading in the investment company's portfolio securities that the current net asset value of the fund'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.¹

Rule 22c-1 was originally adopted in 1968 to require forward pricing of investment company redeemable securities.² The rule requires that an open-end investment company, for purposes of sales, redemptions and repurchases of its redeemable securities, give investor orders the next computed price of the net asset value after receipt of the order. Prior to adoption of rule 22c-1, investor orders to purchase and redeem could be executed at a price

¹17 CFR 270.22c-1(b).

²ICA Release No. 5519 (October 10, 1968); 33 FR 16331 (November 7, 1968).

computed before receipt of the order, allowing investors to lock-in a low price in a rising market and a higher price in a falling market. The forward pricing provision of rule 22c-1 was designed to eliminate these trading practices and the dilution to fund shareholders which occurred as a result of backward pricing.

Under the rule as originally adopted, current net asset value was to be computed at least once every day at the close of the New York Stock Exchange. In 1979, the rule was amended to unlink the pricing of investment company shares from New York Stock Exchange trading days and eliminate the requirement that pricing be done at a specific time.³ As amended the rule gave the boards of directors of investment companies responsibility for establishing the time for pricing, and permitted an investment company to compute current net asset value at a time which is most appropriate for its particular investment portfolio.⁴

In amending the rule in 1979, the Commission intended that investors receive a fair and accurate valuation of their securities so that they could take appropriate trading action on every day in which there is a "significant degree of trading" in the portfolio securities. As the Commission has interpreted the amended rule, an investment company is not required to keep its administrative offices open on Saturdays, Sundays, and holidays but it must accept investor orders every day mail is delivered and price its redeemable securities as of the day such orders are received.

Proposed Amendment to Rule 22c-1(b)

The proposed amendment to 22c-1(b) would establish customary United States business days as the days on which an investment company, at a minimum, must price its redeemable securities provided customer orders are received⁵ and there is significant

trading in the fund's portfolio securities. Specifically, the amendment would permit a fund to limit its business days to Monday through Friday, exclusive of customary United States business holidays that are disclosed in the prospectus.

As discussed above, currently, an investment company whose portfolio securities trade on Saturday, for example, must segregate mail received on Saturday from other mail and determine whether the trading in the fund's portfolio securities on Saturday might have materially affected the fund's net asset value. If so, Saturday net asset value must be computed and Saturday orders must be processed at that price. The same procedures must be followed where trading in the fund's portfolio securities occurs on a business holiday in the United States on which mail is delivered.

Members of the investment company industry have argued that this requirement imposes an administrative and financial burden on investment companies and their transfer agents or pricing services which is not justified by the limited benefits derived by investors. The rule permits investment companies to keep their administrative offices closed on Saturday and, accordingly, does not require that investment companies receive wire or telephone transactions on Saturday. Even if funds were open on Saturday, the Federal Reserve wire transfer system is closed on Saturday as are transfer agents, pricing services and other investment company support organizations. In addition, investor orders received in Saturday's mail generally do not reflect an attempt to act on Saturday's trading activity.

Because the arguments made by investment companies appear to have merit, the Commission has decided to propose an amendment to Rule 22c-1. The proposed amendment would permit an investment company to give investor orders received in Saturday's mail the next computed price on Monday. This arrangement would give all investors equal opportunity to place orders with the fund, while permitting funds to limit pricing to customary business days. The amendment also would eliminate the need to price on holidays on which mail is delivered.

fact received in the mail or otherwise on that same day. Similarly, if a fund decided to close its business operations for a local holiday or for other comparable reasons, the fund would be expected to later calculate net asset value for that day and apply that price to orders that were received that day.

An investment company's pricing practices must be disclosed in its prospectus. Because the United States business holidays observed by funds may vary somewhat, the rule would require specific disclosure in the prospectus of the holidays on which the fund will not price its redeemable securities.⁶ Also, to the extent that a fund's pricing practices may limit investor access to the fund on days when significant trading in the fund's portfolio securities may occur, the Commission would expect the fund to explain the consequences of its pricing practices in its prospectus.

It should be noted that, although the rule amendment would permit funds to eliminate segregated pricing of orders received on Saturdays and holidays, it would not require them to do so. Also, if the rule amendment is adopted, the Commission will re-examine it from time to time if the increasingly international character of the securities markets results in longer trading days, additional trading days in United States markets, or other changes that may affect the operation of the rule.

Proposed Rule 22e-2

Section 22(e) of the Investment Company Act provides that an investment company may not suspend the right of redemption, or postpone payment upon redemption for more than seven calendar days after tender of redemption, except in limited circumstances. These circumstances are when the New York Stock Exchange is closed other than on normal closing days or when trading is restricted, in emergencies where it is not reasonably practicable to calculate net asset value, and where ordered by the Commission for the protection of shareholders. The staff has interpreted section 22(e) generally to require investment companies to honor a redemption request received on any day the New York Stock Exchange is open.

To clarify the application of the general pricing requirements of rule 22c-1 to the pricing of redemption requests pursuant to section 22(e), proposed rule 22e-2 states that a fund does not violate section 22(e) if it honors redemption requests by pricing them in accordance with the pricing requirements of rule 22c-1.⁷ Thus, an investment company

³ ICA Release No. 10827 (August 13, 1979), 44 FR 48559 (August 20, 1979).

⁴ For example, because substantially all money market trading occurs in the morning, most money market funds compute net asset value at noon.

⁵ Investment companies will be expected to comply with the long-standing staff position with regard to when an order to purchase or redeem is "received." Arguments have sometimes been made that where the fund itself is closed for business, an order has not been "received" even though the postal service has delivered the order to the fund's place of business or transfer agent. The staff has historically not accepted that argument, but has taken the position that if a fund is unable, due to emergency conditions such as snowstorms or power failures, to complete the mechanical process of pricing on a day on which it would normally be required to do so under Rule 22c-1, the price for that day may be calculated subsequently and applied to sales, redemptions and repurchases that were in

⁶ Open-end management companies would disclose their pricing practices and holiday changes in Part A of Form N-1A.

⁷ A fund whose portfolio securities trade on several foreign exchanges or on one or more foreign exchanges in addition to a domestic market may continue to rely on the Division's no-action position.

can postpone calculating a price for redemption purposes on any day on which pricing is not required under rule 22c-1. This means, for example, that an investment company would not violate section 22(e) of the Act if it did not calculate a price for redemption purposes on a day where the primary trading market for the investment company's portfolio securities was closed, and the degree of trading in the investment company's other portfolio securities was not significant enough to trigger the pricing requirement of rule 22c-1. It should be noted, however, that an investment company would violate section 22(e) (and section 22(c)) and rule 22c-1 of the Act if it failed to price a redemption request with respect to a day where the degree of trading in its portfolio securities was such that pricing under rule 22c-1 would be required even though there was no trading in a substantial portion of the investment company's portfolio securities because the foreign exchange on which those securities trade was closed. New Rule 22e-2 codifies a staff position maintaining the principle of forward pricing established by rule 22c-1.⁸

Last of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposals

Accordingly, Part 270 of Chapter II, Title 17 of the Code of Federal Regulations, is proposed to be amended as follows:

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

1. Paragraph (b)(1) of § 270.22c-1 is revised to read as follows:

In Putnam Growth Fund and Putnam International Equities Fund, Inc., (pub. avail. February 23, 1981) with regard to the limited circumstances under which a fund may use a previous closing price to calculate current net asset value. Under *Putnam*, if the foreign exchange on which a portfolio security is principally traded is closed at the time a fund computes its current net asset value, then the fund may use the previous closing price on the foreign exchange to calculate the value of the security, except when an event has occurred since the time the value was established that is likely to have resulted in a change in such value. If an event does occur which will affect the value of portfolio securities after the market has closed, the fund must, to the best of its ability, determine the fair value of the securities, as of the time pricing is done under Rule 22c-1, by using appropriate indicia of value which, in certain cases, may include the opening price at which trading in the securities next begins.

⁸*Nomura Capital Fund of Japan, Inc.*, *Nomura Index Fund of Japan, Inc.* (pub. avail. January 20, 1980).

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

(b) For the purposes of this section: (1) The current net asset value of any such security shall be computed no less frequently than once daily, Monday through Friday, at such specific time during the day that a majority of the board of directors of the investment company determines no less frequently than annually. However, the current net asset value of such securities need not be determined on (i) days in which the degree of trading in the investment company's portfolio securities is such that the current net asset value of the investment company's redeemable securities will not be materially affected by changes in the value of the portfolio securities, (ii) days during which no security is tendered for redemption and no order to purchase or sell such security is received by the investment company, or (iii) customary United States business holiday as specifically disclosed in the prospectus; * * *

2. By adding § 270.22e-2 to read as follows:

§ 270.2e-2 Pricing of redemption requests when foreign exchange on which investment company trades is closed but the New York Stock Exchange is open.

An investment company shall not be deemed to have suspended the right of redemption if it honors a redemption request by computing the net asset value of the investment company's redeemable securities in accordance with the provisions of rule 22c-1. (§270.22c-1)

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendment to rule 22c-1 and proposed rule 22e-2. The analysis notes that the proposed amendment and proposed rule would have the principle effect of allowing investment companies whose portfolio securities trade primarily on foreign exchanges to maintain customary United States business days while preserving forward pricing of investor orders. The objective of the proposed amendment and proposed rule is to reduce operating costs to investment companies while still providing investors with access to the fund and forward pricing for all transactions.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Jay Gould, Esq., Office of

Disclosure Policy and Adviser Regulation, Securities and Exchange Commission (202) 272-2107, 450 Fifth Street, NW., Washington, D.C. 20540.

Statutory Authority

The Commission is proposing the amendments to rule 22c-1 pursuant to sections 22(c) (15 U.S.C. 80a-22(c)) and section 38(a) (15 U.S.C. 80a-37(a)) of the Investment Company Act of 1940.

The Commission is proposing rule 22e-2 pursuant to sections 6(c) (15 U.S.C. 80a-6(c)), 22(e) (15 U.S.C. 80a-22(e)) and 38(a) (15 U.S.C. 80a-37(a)) of the Investment Company Act of 1940.

By the Commission.

Shirley E. Hollis,
Acting Secretary.

November 21, 1984.

[FR Doc. 84-31022 Filed 11-25-84; 6:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION Coast Guard

33 CFR Part 165

[CGD 12 84-05]

Regulated Navigation Area; San Francisco Bay and Its Tributaries Inland to and Including the Ports of Sacramento, CA and Stockton, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish a Regulated Navigation Area to include the waters of San Francisco Bay inland to and including the port areas of Sacramento, CA and Stockton, CA. The purpose of this regulation would be to prescribe certain operational guidelines and procedures to be observed by vessels transiting this area carrying designated quantities of Certain Dangerous Cargoes. These safety procedures would be established to minimize the potential for a vessel casualty which could result in an accidental release or detonation of those cargoes.

DATES: Comments must be received on or before January 11, 1985.

ADDRESSES: Comments should be mailed or hand delivered to Marine Safety Division, Twelfth Coast Guard District, Government Island, Building 54-B, Room 250, Alameda, CA 94501. The comments will be available for inspection and copying between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander William F. Walker, Marine Safety Division, Twelfth Coast Guard District, Government