

MEMO# 4689

April 12, 1993

SEC ADOPTS CLOSED-END INTERVAL FUND RULE AND PROPOSES AMENDMENTS TO THE REGISTRATION PROCEDURES FOR INTERVAL FUNDS

April 12, 1993 TO: BOARD OF GOVERNORS NO. 31-93 CLOSED-END FUND DIVISIONAL COMMITTEE CLOSED-END FUND MEMBERS NO. 13-93 SEC RULES MEMBERS NO. 36-93 RE: SEC ADOPTS CLOSED-END INTERVAL FUND RULE AND PROPOSES RELATED REGISTRATION PROCEDURE AMENDMENTS _____

The Securities and Exchange Commission recently adopted a new rule under the Investment Company Act, Rule 23c-3, to allow closed-end management investment companies (1) to repurchase their common stock at periodic intervals ("closed-end interval funds") and (2) to make discretionary repurchase offers at net asset value not more frequently than once every two years ("closed-end discretionary funds"). The final rule reflects a number of the Institute's comments on the Commission's initial proposal. The rule will become effective thirty days after publication in the Federal Register. In a companion release, the Commission proposed rule amendments and a new rule under the Securities Act to allow closed-end interval funds to offer their shares on a continuous or delayed basis, and to obtain automatic effectiveness for certain filings. At the same time that the Commission proposed Rule 23c-3, it proposed a new rule to allow open-end management investment companies (1) to redeem their shares at periodic intervals and to take up to thirty-one days to pay redemption proceeds and (2) to accept daily redemptions and take up to thirty-one days to pay redemption proceeds. The release states that the Commission is "neither adopting nor withdrawing [that proposal] at this time." (See note 11.) The Commission's releases on the new closed-end fund periodic repurchase rule and proposed amendments to the registration procedures are attached and summarized below.

A. Repurchase Offers By Closed-End Funds

1. Interval Funds

a. Fundamental Policy - Rule 23c-3 provides that a closed-end interval fund must adopt a fundamental policy, changeable only by a majority vote of the outstanding shares, stating (i) that the fund will make repurchase offers at periodic intervals, (ii) the periodic intervals at which the repurchases will be made, (iii) the dates by which the fund must receive repurchase requests submitted by shareholders ("repurchase request deadlines") or the means for determining such dates, and (iv) the maximum number of days between each repurchase request deadline and the date on which the fund will determine the net asset value applicable to the repurchase of the securities ("repurchase pricing date").

b. Amount of Repurchase Offers - Under Rule 23c-3, a repurchase offer amount may not be less than five percent and may not exceed twenty-five percent of the amount of common stock outstanding on the repurchase request deadline. If the amount tendered by shareholders for repurchase exceeds the repurchase

amount, the fund must repurchase its shares on a pro rata basis, subject to certain exceptions set forth in paragraph (b)(5) of the Rule.

c. Periodic Intervals - Closed-end interval funds may repurchase their shares only at intervals of three, six or twelve months.

d. Pricing Date and Payment Deadline - A closed-end interval fund could take up to fourteen days after the repurchase request deadline to determine the net asset value applicable to the repurchase of the fund's shares. The fund must pay repurchase proceeds to shareholders within seven days after the applicable price for repurchases is determined.

e. Notification - Closed-end interval funds must send shareholders a notification containing specified information at least twenty-one days, and no more than forty-two days, before the repurchase request deadline.

f. Repurchase Price - All repurchases made under Rule 23c-3 must be made at net asset value, subject to the imposition of a repurchase fee not exceeding two percent. Closed-end interval funds generally must compute net asset value at least weekly, on such day and at such times as determined by the board of directors. In addition, funds must compute net asset value daily during the five business days preceding the repurchase request deadline.

g. Senior Securities - Paragraph (b)(9) of Rule 23c-3 permits closed-end interval funds to issue two categories of senior securities: (1) senior securities or other indebtedness maturing by the next repurchase pricing date and (2) senior securities or other indebtedness whose terms provide for redemption or call of the securities, or repayment of the indebtedness, by the next repurchase pricing date as necessary to permit the fund to repurchase its shares.

h. Liquidity - From the time a closed-end interval fund sends a notification to shareholders until the repurchase pricing date, the fund must have assets equal to at least 100 percent of the repurchase offer amount that can be sold or disposed of in the ordinary course of business, at approximately the price at which the fund has valued the investment, within the period between the repurchase request deadline and the repurchase payment deadline. Assets that mature by the next repurchase deadline will satisfy the liquidity requirement.

i. Independent Directors - A fund making repurchase offers under Rule 23c-3 must have a board with a majority of directors who are not interested persons of the fund and who are self-nominating.

j. Disclosure Regarding Repurchase Offers - A new staff guideline to Form N-2, the registration statement for closed-end funds, has been adopted to assist funds making periodic repurchase offers under Rule 23c-3. The new guide does not require that closed-end interval funds use a descriptive term (e.g., "periodic repurchase", "closed-end interval") on prospectus covers, and in advertisements and sales literature, to distinguish themselves from mutual funds, as recommended by the Institute in its comment letter. However, the Commission states in the release that it "would be deceptive and misleading for a closed-end fund to use any term or name implying that its securities are redeemable or that the fund is a mutual fund." (See page 39.)

Closed-end interval funds must include in their annual reports to shareholders certain information about its repurchase offers.

2. Closed-End Discretionary Funds Rule 23c-3 permits closed-end funds, whether or not making periodic repurchases, to make an offer to repurchase up to 100 percent of their outstanding common stock not more frequently than once every two years. Funds making discretionary offers must comply with several of the requirements that apply to closed-end interval funds discussed above.

B. Continuous or Delayed Offerings and Automatic Effectiveness The SEC proposed for public comment a new rule and an amendment to a rule under the Securities Act to allow closed-end interval funds to offer securities on a continuous or delayed basis and to provide for the automatic effectiveness of post-effective amendments and registration statements filed for the purpose of registering additional securities. These proposals are intended to provide closed-end interval funds with a new offering procedure and a simplified registration process so that they can offer shares on an ongoing basis to counter reductions in net assets caused by repurchases.

Craig S. Tyle Vice President -Securities Attachments

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