

(10)(i) From the time a company sends a notification to shareholders pursuant to paragraph (b)(4) of this section until the repurchase pricing date, a percentage of the company's assets equal to at least 100 percent of the repurchase offer amount shall consist of assets that can be sold or disposed of in the ordinary course of business, at approximately the price at which the company has valued the investment, within a period equal to the period between a repurchase request deadline and the repurchase payment deadline, or of assets that mature by the next repurchase payment deadline.

(ii) In the event that the company's assets fail to comply with the requirements in paragraph (b)(10)(i) of this section, the board of directors shall cause the company to take such action as it deems appropriate to ensure compliance.

(iii) In supervising the company's operations and portfolio management by the investment adviser, the company's board of directors shall adopt written procedures reasonably designed, taking into account current market conditions and the company's investment objectives, to ensure that the company's portfolio assets are sufficiently liquid so that the company can comply with its fundamental policy on repurchases, and comply with the liquidity requirements of paragraph (b)(10)(i) of this section. The board of directors shall review the overall composition of the portfolio and make and approve such changes to the procedures as the board deems necessary.

(11) The company, or any underwriter for the company, shall comply, as if the company were an open-end company, with the provisions of section 24(b) [15 U.S.C. 80a-24(b)] and rules issued thereunder with respect to any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors.

(c) *Discretionary repurchase offers.* A registered closed-end company or a business development company may repurchase common stock of which it is the issuer from the holders of the stock pursuant to a repurchase offer that is not made pursuant to a fundamental policy and that is made to all holders

of the stock not earlier than two years after another offer pursuant to this paragraph (c) if the company complies with the requirements of paragraphs (b) (1), (3), (4), (5), (6), (7)(ii), (8), (10)(i), and (10)(ii) of this section.

(d) *Exemption from the definition of redeemable security.* A company that makes repurchase offers pursuant to paragraph (b) or (c) of this section shall not be deemed thereby to be an issuer of redeemable securities within section 2(a)(32) [15 U.S.C. 80a-2(a)(32)].

[58 FR 19343, Apr. 14, 1993; 58 FR 29695, May 21, 1993, as amended at 66 FR 3759, Jan. 16, 2001]

§ 270.24b-1 Definitions.

(a) The term *form letter* as used in section 24(b) of the Act includes (1) one of a series of identical sales letters, and (2) any sales letter a substantial portion of which consists of a statement which is in essence identical with similar statements in sales letters sent to 25 or more persons within any period of 90 consecutive days.

(b) The term *distribution* as used in section 24(b) of the Act includes the distribution or redistribution to prospective investors of the content of any written sales literature, whether such distribution or redistribution is effected by means of written or oral representations or statements.

(c) The terms *rules and regulations* as used in section 24 (a) and (c) of the Act shall include the forms for registration of securities under the Securities Act of 1933 and the related instructions thereto.

(Sec. 19, 48 Stat. 85, as amended, sec. 319, 53 Stat. 1173; 15 U.S.C. 77s, 77sss)

[Rule N-24B-1, 6 FR 3020, June 21, 1941, as amended by 21 FR 1046, Feb. 15, 1956]

§ 270.24b-2 Filing copies of sales literature.

Copies of material filed with the Commission for the sole purpose of complying with section 24(b) of the Act either shall be accompanied by a letter of transmittal which makes appropriate references to said section or shall make such appropriate reference on the face of the material. Such material shall be submitted to the Commission in paper only, whether or not the

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investment company to which the material relates is otherwise required to file in electronic format.

[Rule N-24B-2, 6 FR 3020, June 21, 1941, as amended at 58 FR 14860, Mar. 18, 1993]

§ 270.24b-3 Sales literature deemed filed.

Any advertisement, pamphlet, circular, form letter or other sales literature addressed to or intended for distribution to prospective investors shall be deemed filed with the Commission for purposes of section 24(b) of the Act [15 U.S.C. 80a-24(b)] upon filing with a national securities association registered under section 15A of the Securities Exchange Act of 1934 [15 U.S.C. 78o] that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising.

[53 FR 3880, Feb. 10, 1988]

§ 270.24e-1 Filing of certain prospectuses as post-effective amendments to registration statements under the Securities Act of 1933.

Section 24(e) of the Act requires that when a prospectus is revised so that it may be available for use in compliance with section 10(a)(3) of the Securities Act of 1933 for a period extending beyond the time when the previous prospectus would have ceased to be available for such use, such revised prospectus, in order to meet the requirements of section 10 of said Act, must be filed as an amendment to the registration statement under said Act and such amendment must have become effective prior to the use of the revised prospectus. Except as hereinabove provided, section 24(e) of the Act shall not be deemed to govern the times and conditions under which post-effective amendments shall be filed to registration statements under the Securities Act of 1933.

(Sec. 24, 54 Stat. 825, as amended; 15 U.S.C. 80a-24)

[20 FR 2856, Apr. 28, 1955, as amended at 62 FR 47938, Sept. 12, 1997]

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§ 270.24f-2 Registration under the Securities Act of 1933 of certain investment company securities.

(a) *General.* Any face-amount certificate company, open-end management company or unit investment trust (“issuer”) that is deemed to have registered an indefinite amount of securities pursuant to section 24(f) of the Act (15 U.S.C. 80a-24(f)) must not later than 90 days after the end of any fiscal year during which it has publicly offered such securities, file Form 24F-2 (17 CFR 274.24) with the Commission. Form 24F-2 must be prepared in accordance with the requirements of that form, and must be accompanied by the payment of a registration fee with respect to the securities sold during the fiscal year in reliance upon registration pursuant to section 24(f) of the Act calculated in the manner specified in section 24(f) of the Act and in the Form. An issuer that pays the registration fee more than 90 days after the end of its fiscal year must pay interest in the manner specified in section 24(f) of the Act and in Form 24F-2.

(b) *Issuer ceasing operations; mergers and other transactions.* For purposes of this section, if an issuer ceases operations, the date the issuer ceases operations will be deemed to be the end of its fiscal year. In the case of a liquidation, merger, or sale of all or substantially all of the assets (“merger”) of the issuer, the issuer will be deemed to have ceased operations for the purposes of this section on the date the merger is consummated; *provided, however*, that in the case of a merger of an issuer or a series of an issuer (“Predecessor Issuer”) with another issuer or a series of an issuer (“Successor Issuer”), the Predecessor Issuer will not be deemed to have ceased operations and the Successor issuer will assume the obligations, fees, and redemption credits of the Predecessor Issuer incurred pursuant to section 24(f) of the Act and § 270.24e-2 (as in effect prior to October 11, 1997; see 17 CFR part 240 to end, revised as of April 1, 1997) if the Successor Issuer:

(1) had no assets or liabilities, other than nominal assets or liabilities, and no operating history immediately prior to the merger;