

§ 230.486

(A) the date on which the prior post-effective amendment was to become effective under paragraph (a) of this section; or

(B) a new effective date designated under paragraph (b)(1)(iii) of this section.

In this case the prior post-effective amendment filed under paragraph (a) of this section and any prior post-effective amendment filed under paragraph (b) of this section shall also become effective on the new effective date designated under paragraph (b)(1)(iii) of this section.

(3) Notwithstanding paragraphs (d)(1) and (d)(2) of this section, if another post-effective amendment relating to the same prospectus is filed under paragraph (a) of this section before the prior amendments filed pursuant to paragraphs (a) and (b) of this section have become effective, none of such prior amendments shall become effective under this section.

(e) *Certain Separate Accounts.* For purposes of this section, a post-effective amendment to a registration statement for an offering of securities by a registered open-end management investment company or unit investment trust as those terms are used in paragraphs (a), (b), and (e) of this section and as such amendments are referred to in paragraphs (c) and (d) of this section, shall include a post-effective amendment to an offering of securities by an insurance company funded through a separate account, as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(37)], where the separate account need not register under the Investment Company Act of 1940 under section 3(c)(11) thereof [15 U.S.C. 80a-3(c)(11)].

(f) *Electronic Filers.* When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

NOTE: To determine the date of automatic effectiveness, the day following the filing date is the first day of the time period. For example, a post-effective amendment filed under paragraph (a) of this section on No-

17 CFR Ch. II (4-1-03 Edition)

ember 1 would become effective on December 31.

[59 FR 43464, Aug. 24, 1994, as amended at 62 FR 47938, Sept. 12, 1997; 63 FR 13943, Mar. 23, 1998; 64 FR 27894, May 21, 1999]

§ 230.486 Effective date of post-effective amendments and registration statements filed by certain closed-end management investment companies.

(a) *Automatic Effectiveness.* Except as otherwise provided in this section, a post-effective amendment to a registration statement, or a registration statement filed for the purpose of registering additional shares of common stock for which a registration statement filed on Form N-2 (§§ 239.14 and 274.11a-1 of this chapter) is effective, filed by a registered closed-end management investment company or business development company which makes periodic repurchase offers under § 270.23c-3 of this chapter, shall become effective on the sixtieth day after the filing thereof, or a later date designated by the registrant on the facing sheet of the amendment or registration statement, which date shall not be later than eighty days after the date on which the amendment or registration statement is filed, *Provided*, that the Commission, having due regard to the public interest and the protection of investors, may declare an amendment or registration statement filed under this paragraph (a) effective on an earlier date.

(b) *Immediate Effectiveness.* Except as otherwise provided in this section, a post-effective amendment to a registration statement, or a registration statement for additional shares of common stock, filed by a registered closed-end management investment company or business development company which makes periodic repurchase offers under § 270.23c-3 of this chapter, shall become effective on the date on which it is filed with the Commission, or a later date designated by the registrant on the facing sheet of the amendment or registration statement, which date shall be not later than thirty days after the date on which the amendment or registration statement is filed, except that a post-effective amendment including a designation of a new effective date under paragraph (b)(1)(iii) of

this section shall become effective on the new effective date designated therein, *Provided*, that the following conditions are met:

(1) It is filed for no purpose other than one or more of the following:

(i) Registering additional shares of common stock for which a registration statement filed on Form N-2 (§§ 239.14 and 274.11a-1 of this chapter) is effective;

(ii) Bringing the financial statements up to date under section 10(a)(3) of the Act [15 U.S.C. 77j(a)(3)] or rule 3-18 of Regulation S-X [17 CFR 210.3-18];

(iii) Designating a new effective date for a previously filed post-effective amendment or registration statement for additional shares under paragraph (a) of this section, which has not yet become effective, *Provided*, that the new effective date shall be no earlier than the effective date designated in the previously filed amendment or registration statement under paragraph (a) of this section and no later than thirty days after that date;

(iv) Disclosing or updating the information required by Item 9c of Form N-2 [17 CFR 239.14 and 274.11a-1];

(v) Making any non-material changes which the registrant deems appropriate; and

(vi) Any other purpose which the Commission shall approve.

(2) The registrant represents that the amendment is filed solely for one or more of the purposes specified in paragraph (b)(1) of this section and that no material event requiring disclosure in the prospectus, other than one listed in paragraph (b)(1) or one for which the Commission has approved a filing under paragraph (b)(1)(vi) of this section, has occurred since the latest of the following three dates:

(i) the effective date of the registrant's registration statement;

(ii) the effective date of its most recent post-effective amendment to its registration statement which included a prospectus; or

(iii) the filing date of a post-effective amendment or registration statement filed under paragraph (a) of this section which has not become effective; and

(3) The amendment or registration statement recites on the facing sheet thereof that the registrant proposes

that the amendment or registration statement will become effective under paragraph (b) of this section.

(4) The representations of the registrant referred to in paragraph (b)(2) of this section shall be made by certification on the signature page of the post-effective amendment or registration statement that the amendment or registration statement meets all of the requirements for effectiveness under paragraph (b) of this section. If counsel prepared or reviewed the post-effective amendment or registration statement filed under paragraph (b) of this section, counsel shall furnish to the Commission at the time the amendment or registration statement is filed a written representation that the amendment or registration statement does not contain disclosure which would render it ineligible to become effective under paragraph (b) of this section.

(c) *Incomplete or Inaccurate Amendments; Suspension of Use of Paragraph (b) of this section.* (1) No amendment or registration statement shall become effective under paragraph (a) of this section if, prior to the effective date of the amendment or registration statement, it should appear to the Commission that the amendment or registration statement may be incomplete or inaccurate in any material respect, and the Commission furnishes to the registrant written notice that the effective date of the amendment or registration statement is to be suspended. Following such action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for such a hearing is included in the petition. If the Commission has suspended the effective date of an amendment or registration statement, the amendment or registration statement shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(2) The Commission may, in the manner and under the circumstances set forth in this paragraph (c)(2), suspend the ability of a registrant to file a post-effective amendment or registration statement under paragraph (b) of

this section. The notice of such suspension shall be in writing and shall specify the period for which such suspension shall remain in effect. The Commission may issue a suspension if it appears to the Commission that a registrant which files a post-effective amendment under paragraph (b) of this section has not complied with the conditions of that paragraph. Any suspension under this paragraph shall become effective at such time as the Commission furnishes written notice thereof to the company. Any such suspension, so long as it is in effect, shall apply to any post-effective amendment or registration statement that has been filed but has not, at the time of such suspension, become effective, and to any post-effective amendment or registration statement that may be filed after the suspension. Any suspension shall apply only to the ability to file a post-effective amendment or registration statement under paragraph (b) of this section and shall not otherwise affect any post-effective amendment or registration statement. Following this action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for a hearing is included in the petition.

(d) *Subsequent Amendments.* (1) Except as provided in paragraph (d)(2) of this section, a post-effective amendment or registration statement which includes a prospectus shall not become effective under paragraph (a) of this section if a subsequent post-effective amendment or registration statement relating to the prospectus is filed before such amendment or registration statement becomes effective.

(2) A post-effective amendment or registration statement which includes a prospectus shall become effective under paragraph (a) of this section notwithstanding the filing of a subsequent post-effective amendment or registration statement relating to the prospectus, *Provided*, that the following conditions are met:

(i) The subsequent amendment or registration statement is filed under paragraph (b) of this section; and

(ii) The subsequent amendment or registration statement designates as its effective date either:

(A) The date on which the prior post-effective amendment or registration statement was to become effective under paragraph (a) of this section or

(B) A new effective date designated under paragraph (b)(1)(iii) of this section.

In this case the prior post-effective amendment or registration statement filed under paragraph (a) of this section and any prior post-effective amendment or registration statement filed under paragraph (b) of this section shall also become effective on the new effective date designated under paragraph (b)(1)(iii) of this section.

(3) Notwithstanding paragraphs (d)(1) and (d)(2) of this section, if another post-effective amendment or registration statement relating to the same prospectus is filed under paragraph (a) of this section before the prior amendments or registration statements filed under paragraphs (a) and (b) of this section have become effective, none of such prior amendments or registration statements shall become effective under this section.

(e) *Condition to Use of Paragraphs (a) or (b).* A post-effective amendment or new registration statement shall not become effective under paragraphs (a) or (b) of this section unless within two years prior to the filing thereof a post-effective amendment or registration statement relating to the common stock of the registrant has become effective.

(f) *Electronic Filers.* When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

NOTE: To determine the date of automatic effectiveness, the day following the filing date is the first day of the time period. For example, a post-effective amendment filed under paragraph (a) of this section on November 1 would become effective on December 31.

[59 FR 43466, Aug. 24, 1994, as amended at 64 FR 27894, May 21, 1999]