

Securities Lawyer's Deskbook

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The Investment Company Act of 1940

Section 23 -- Closed-End Companies

- a. Issuance of securities. No registered closed-end company shall issue any of its securities (1) for services; or (2) for property other than cash or securities (including securities of which such registered company is the issuer), except as a dividend or distribution to its security holders or in connection with a reorganization.
- b. Sale of common stock at price below current net asset value. No registered closed-end company shall sell any common stock of which it is the issuer at a price below the current net asset value of such stock, exclusive of any distributing commission or discount (which net asset value shall be determined as of a time within forty-eight hours, excluding Sundays and holidays, next preceding the time of such determination), except (1) in connection with an offering to the holders of one or more classes of its capital stock; (2) with the consent of a majority of its common stockholders; (3) upon conversion of a convertible security in accordance with its terms; (4) upon the exercise of any warrant outstanding on the date of enactment of this Act [enacted Aug. 22, 1940] or issued in accordance with the provisions of section 18(d) [15 USCS § 80a-18(d)]; or (5) under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.
- c. Purchase of securities of which it is issuer; exceptions. No registered closed-end company shall purchase any securities of any class of which it is the issuer except--
 1. on a securities exchange or such other open market as the Commission may designate by rules and regulations or orders: Provided, That if such securities are stock, such registered company shall, within the preceding six months, have informed stockholders of its intention to purchase stock of such class by letter or report addressed to stockholders of such class; or

2. pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or
 3. under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors in order to insure that such purchases are made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased.
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Legislative History

Aug. 22, 1940, ch 686, Title I, § 23, 54 Stat. 825.

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