

Securities Lawyer 's Deskbook

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Rules and Regulations promulgated under the Investment Company Act of 1940

Rule 23c-1 -- Repurchase of Securities by Closed-End Companies

- a. A registered closed-end company may purchase for cash a security of which it is the issuer, subject to the following conditions:
 1. If the security is a stock entitled to cumulative dividends, such dividends are not in arrears.
 2. If the security is a stock not entitled to cumulative dividends, at least 90 percent of the net income of the issuer for the last preceding fiscal year, determined in accordance with good accounting practice and not including profits or losses realized from the sale of securities or other properties, was distributed to its shareholders during such fiscal year or within 60 days after the close of such fiscal year.
 3. If the security to be purchased is junior to any class of outstanding security of the issuer representing indebtedness (except notes or other evidences of indebtedness held by a bank or other person, the issuance of which did not involve a public offering) all securities of such class shall have an asset coverage of at least 300 percent immediately after such purchase; and if the security to be purchased is junior to any class of outstanding senior security of the issuer which is a stock, all securities of such class shall have an asset coverage of at least 200 percent immediately after such purchase, and shall not be in arrears as to dividends.
 4. The seller of the security is not to the knowledge of the issuer an affiliated person of the issuer.

5. Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase.
 6. The purchase is made at a price not above the market value, if any, or the asset value of such security, whichever is lower, at the time of such purchase.
 7. The issuer discloses to the seller or, if the seller is acting through a broker, to the seller's broker, either prior to or at the time of purchase the approximate or estimated asset coverage per unit of the security to be purchased.
 8. No brokerage commission is paid by the issuer to any affiliated person of the issuer in connection with the purchase.
 9. The purchase is not made in a manner or on a basis which discriminates unfairly against any holders of the class of securities purchased.
 10. If the security is a stock, the issuer has, within the preceding six months, informed stockholders of its intention to purchase stock of such class by letter or report addressed to all the stockholders of such class.
 11. The issuer files with the Commission, as an exhibit to Form N-CSR (Section 249.331 and Section 274.128), a copy of any written solicitation to purchase securities under this section sent or given during the period covered by the report by or on behalf of the issuer to 10 or more persons.
- b. Notwithstanding the conditions of paragraph (a) of this section, a closed-end company may purchase fractional interests in, or fractional rights to receive, any security of which it is the issuer.
 - c. This rule does not apply to purchase of securities made pursuant to [section 23\(c\)](#) (1) or (2) of the Act. A registered closed-end company may file an application with the Commission for an order under section 23(c)(3) of the Act permitting the purchase of any security of which it is the issuer which does not meet the conditions of this rule and which is not to be made pursuant to section 23(c) (1) or (2) of the Act.
 - d. This rule relates exclusively to the requirements of section 23(c) of the Act, and the provisions hereof shall not be construed to authorize any action which contravenes any other applicable law, statutory or otherwise, or the provision of any indenture or other instrument pursuant to which securities of the issuer were issued.

Regulatory History

Rule N-23C-1, 7 FR 10424, Dec. 15, 1942 as amended by 68 FR 64952, Nov. 10, 2003.

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Contact: webmaster@law.uc.edu