

SUPPORTING STATEMENT
Rule 23c-3 and Form N-23c-3

A. JUSTIFICATION

1. Necessity for the Information Collections

Section 23(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-23(c)) ("Investment Company Act") prohibits a registered closed-end investment company ("closed-end fund" or "fund") from purchasing any security it issues except on a securities exchange, pursuant to tender offers, or under such other circumstances as the Commission may permit by rules or orders designed to ensure that purchases are made in a manner that does not unfairly discriminate against any holders of the securities to be purchased. Rule 23c-3 (17 CFR 270.23c-3), entitled "Repurchase Offers by Closed-End Companies," permits a closed-end fund that meets certain requirements to repurchase from its shareholders a limited number of its shares at net asset value. The rule enables these funds to offer their shareholders a limited ability to resell their shares in a manner that previously was available only to open-end investment company shareholders.

To protect shareholders, a closed-end fund that relies on rule 23c-3 must send shareholders a notification that contains specified information each time the fund makes a repurchase offer (on a quarterly, semi-annual, or annual basis, or, for certain funds, on a discretionary basis not more often than every two years). The fund also must file copies of the shareholder notification with the Commission (electronically through the Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR")) on Form N-23c-3, a filing that provides certain information about the fund and the type of offer the fund is making.¹ The fund must describe in its annual report to shareholders the fund's policy concerning repurchase offers and the results of any repurchase offers made during the reporting period. The

¹ Form N-23c-3, entitled "Notification of Repurchase Offer Pursuant to Rule 23c-3," requires the fund to state its registration number, its full name and address, the date of the accompanying shareholder notification, and the type of offer being made (periodic, discretionary, or both).

fund's board of directors must adopt written procedures designed to ensure that the fund's investment portfolio is sufficiently liquid to meet its repurchase obligations and other obligations under the rule. The board periodically must review the composition of the fund's portfolio and change the liquidity procedures as necessary. The fund also must file copies of advertisements and other sales literature with the Commission as if it were an open-end investment company subject to section 24 of the Investment Company Act (15 U.S.C. 80a-24) and the rules that implement section 24. Rule 24b-3 under the Investment Company Act (17 CFR 270.24b-3), however, exempts the fund from that requirement if the materials are filed instead with the Financial Industry Regulatory Authority ("FINRA").

2. Purpose of the Information Collections

Rule 23c-3 contains multiple collection of information requirements. The purpose of the rule's requirement that the fund send a notification to shareholders of each offer is to ensure that a fund provides material information to shareholders about the terms of each offer. The requirement that copies be sent to the Commission is intended to enable the Commission to monitor the fund's compliance with the notification requirement. The requirement that the shareholder notification be attached to Form N-23c-3 is intended to ensure that the fund provides basic information necessary for the Commission to process the notification and to monitor the fund's use of repurchase offers. The requirement that the fund describe its current policy on repurchase offers and the results of recent offers in the annual shareholder report is intended to provide shareholders current information about the fund's repurchase policies and its recent experience. The requirement that the board approve and review written procedures designed to maintain portfolio liquidity is intended to ensure that the fund has enough cash or liquid securities to meet its repurchase obligations, and that written procedures are available for review by shareholders and examination by the Commission. The requirement that the fund file advertisements and sales literature as if it were an open-end fund is intended to facilitate the

review of these materials by the Commission or FINRA to prevent incomplete, inaccurate, or misleading disclosure about the special characteristics of a closed-end fund that makes periodic repurchase offers.

3. Role of Improved Information Technology

The Commission's EDGAR system is designed to automate the filing, processing and dissemination of full disclosure filings. The automation provides for speed, accuracy and public availability of information, generating benefits to investors and financial markets. Closed-end funds currently file copies of shareholder notifications attached to Form N-23c-3 as well as annual shareholder reports through EDGAR.

4. Efforts to Identify Duplication

The Commission periodically evaluates rule- and form-based reporting and recordkeeping requirements for duplication, and reevaluates them whenever it proposes a rule or form, or a change in either. Rule 23c-3 and Form N-23c-3 do not require duplicative reporting or recordkeeping. As noted above, the requirement that the fund file advertisements and sales literature with the Commission would not apply under rule 24b-3 if the fund files them instead with FINRA.

5. Effect on Small Entities

Rule 23c-3 and Form N-23c-3 provide greater flexibility to closed-end funds to make repurchase offers by eliminating some of the burdens that these funds face under other securities laws, such as the provisions governing tender offers. The rule and form apply equally to all closed-end funds, regardless of size. The additional paperwork burdens that the rule and form impose are essential to protect the rights of shareholders when a closed-end fund makes periodic repurchase offers.

6. Consequences of Less Frequent Collection

The requirements of rule 23c-3 and Form N-23c-3 apply to a closed-end fund that determines as a matter of fundamental policy that it will make periodic share repurchase offers (and to certain closed-end funds that may make discretionary share repurchase offers without establishing a fundamental policy). If the fund did not send notifications to shareholders of each repurchase offer, shareholders might not be aware of the pendency of the offer or its conditions. If the fund did not file shareholder notifications attached to Form N-23c-3 with the Commission, the Commission might find it difficult to monitor compliance with the rule's requirements as necessary to protect shareholders who receive repurchase offers. If the fund did not report annually to shareholders about repurchase policies and recent offers, shareholders might lack important information about the fund's policy and the effect of recent offers on the fund. If the Commission did not require prompt submission of advertisements and sales literature, the Commission or FINRA would lose the ability to monitor the sales practices of these funds with their special characteristics. The requirement that fund directors prepare and review portfolio liquidity procedures imposes an initial burden that does not recur except as directors deem necessary. The Commission believes that the limited costs of complying with the rule and form are outweighed by the benefits afforded by the rule and form.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

Not applicable.

8. Consultation Outside the Agency

The Commission proposed rule 23c-3 for public comment before its adoption, and made rule changes in the adopting release based on comments received.² The Commission also requested comment on the collection of information requirements in rule 23c-3 and

² Investment Company Act Release No. 18869 (July 28, 1992), (57 FR 34701 (Aug. 6, 1992)) (proposing release); Investment Company Act Release No. 19399 (Apr. 7, 1993), (58 FR 19330 (Apr. 14, 1993)) (adopting release)).

Form N-23c-3 before it submitted this request for extension and approval to OMB. The Commission received no comments in response to its request for comment.

The Commission and staff of the Division of Investment Management also participate in an ongoing dialogue with representatives of the investment company industry through public conferences, meetings, and informal exchanges. These forums provide the Commission and the staff useful means to identify and address paperwork burdens that may confront the industry.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable.

12. Estimates of Hour Burden

Commission staff estimates that 31 closed-end funds rely upon the repurchase procedures under rule 23c-3.³ Staff further estimates that each of the 31 funds makes on average four repurchase offers each year.⁴ The repurchase offers result in the following collections of information and associated burden hours:⁵

³ The Commission's records indicate that, on average, approximately 31 closed-end funds filed Form N-23c-3 each year during calendar years 2006 - 2008.

⁴ Staff estimates that most funds relying on rule 23c-3 typically engage in quarterly periodic repurchases. As noted above, however, funds may also engage in semi-annual, annual, or discretionary repurchases of shareholders' stocks, which would result in fewer burden hours per fund.

⁵ These estimates are based upon consultation with lawyers and accountants familiar with the practices of fund boards and the staff of investment advisers.

- To prepare, mail, and file shareholder notifications for each of four repurchase offers:
 18 burden hours: 6 hours professional time
 12 hours support staff time;
- To prepare and file each (of four) Form N-23c-3 with the shareholder notifications:
 1 burden hour: 15 minutes professional time
 45 minutes support staff time;
- To prepare disclosures in the annual shareholder report concerning the fund's repurchase policy and recent offers (the burden of mailing the shareholder report is not included because that requirement exists under other rules):
 5 burden hours: 3 hours professional time
 2 hours support staff time; and
- To perform reviews of procedures to protect portfolio liquidity:
 8 burden hours: 1 hour director time
 2 hours professional time
 5 hour support staff time.

In addition, we estimate that one of the 31 funds relying on rule 23c-3 is doing so for the first time.⁶ Staff estimates that this fund would incur an additional one-time collection of information:

- To draft procedures to protect portfolio liquidity:
 28 burden hours: 4 hours director time
 20 hours professional time
 4 hours support staff time.

The Commission believes that the requirement to submit advertisements and sales literature to the Commission does not impose any hour burdens because the fund's underwriter virtually always submits these materials to FINRA, instead of the Commission, under other requirements.

Based on the estimates above, the Commission estimates that the total annual burden of

⁶ The Commission's records indicate that, on average, approximately one closed-end fund filed Form N-23c-3 for the first time each year during calendar years 2006 – 2008.

the rule's paperwork requirements is 2787 hours.⁷ We estimate that funds' boards of directors perform 35 of these burden hours at a total cost of \$140,000.⁸ We further estimate that professional staff perform 950 of these burden hours at a total cost of \$289,750,⁹ while support staff perform 1802 of these burden hours at a total cost of \$135,150.¹⁰ Thus, the Commission estimates the aggregate annual cost of the burden hours associated with rule 23c-3 is \$564,900.¹¹

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

13. Estimate of Total Annual Cost Burden

In addition to the costs associated with the burden hours discussed in item 12 above, funds that rely on rule 23c-3 and Form N-23c-3 incur costs associated with the printing and mailing of repurchase offers to shareholders. Commission staff estimate that the average yearly cost to each fund that relies on rule 23c-3 to print and mail repurchase offers to shareholders is

⁷ This estimate is based on the following calculation: $(31 \text{ funds} \times ((4 \times 18 \text{ hours}) + (4 \times 1 \text{ hour}) + (5 \text{ hours}) + (8 \text{ hours}))) + (1 \text{ fund} \times 28 \text{ hours}) = 2787 \text{ hours}$.

⁸ This estimate is based on the following calculations: $(31 \text{ funds} \times 1 \text{ hour}) + (1 \text{ fund} \times 4 \text{ hours}) = 35 \text{ hours}$; $35 \text{ hours} \times \$4000/\text{hour} = \$140,000$. Staff estimates the hourly cost for a fund board is \$4000 based on an average board size of 8 directors and a cost of \$500 per hour for each director.

⁹ The professional staff estimates are based on the following calculations: $950 \text{ hours} = (31 \text{ funds} \times ((4 \times 6 \text{ hours}) + (4 \times 0.25 \text{ hours}) + (3 \text{ hours}) + (2 \text{ hours}))) + (1 \text{ fund} \times 20 \text{ hours})$; and $950 \text{ hours} \times \$305/\text{hour} = \$289,750$. These per hour cost estimates are based on figures for attorney positions found in SIFMA's Management & Professional Earnings in the Securities Industry 2008, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

¹⁰ The support staff estimates are based on the following calculations: $1802 \text{ hours} = (31 \text{ funds} \times ((4 \times 12 \text{ hours}) + (4 \times 0.75 \text{ hours}) + (2 \text{ hours}) + (5 \text{ hours}))) + (1 \text{ fund} \times 4 \text{ hours})$; and $1802 \text{ hours} \times \$75/\text{hour} = \$135,150$. These per hour cost estimates are based on figures for executive assistant positions found in SIFMA's Management & Professional Earnings in the Securities Industry 2008, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

¹¹ This estimate is based on the following calculation: $\$564,900 = (35 \text{ hours of director time} \times \$4000 \text{ per hour}) + (950 \text{ hours of professional time} \times \$305 \text{ per hour}) + (1802 \text{ hours of support staff time} \times \$75 \text{ per hour})$.

\$29,966.50.¹² The Commission estimates total annual cost is therefore \$928,961.50.¹³

14. Estimate of Cost to the Federal Government

The annual operating cost of reviewing and processing new registration statements, post effective amendments, proxy statements, and shareholder reports of investment companies amounted to approximately \$19.6 million in fiscal year 2008, based on our computation of the value of staff time devoted to this activity and related overhead. A portion of those costs relate to processing and reviewing Form N-23c-3 filings submitted to the Commission for compliance with rule 23c-3.

15. Explanation of Changes in Burden

The total annual hour burden of 2787 hours represents a decrease of 1497 hours from the prior estimate of 4284 hours. The decrease principally results from an adjustment in the methodology used to calculate burden hours. In particular, the staff recategorized the collection of information associated with preparing procedures to protect portfolio liquidity from an annual requirement for all funds to a one-time requirement for funds relying on rule 23c-3 for the first time.

The total annual cost burden of \$928,961.50 in printing and mailing costs represents a decrease of \$36,638.50 from the last approved cost burden of \$965,600.¹⁴ This decrease stems from a decrease in the number of respondents.

16. Information Collection Planned for Statistical Purposes

Not applicable.

¹² This estimate is an average calculated from cost figures based on informal discussions between staff and representatives of not more than nine funds that rely on rule 23c-3.

¹³ This estimate is based on the following calculation: $\$928,961.50 = (\$29,966.50 \text{ per fund} \times 31 \text{ funds})$.

¹⁴ The last approved cost burden was incorrectly calculated and should have been \$1,018,861, based on the following calculation: $\$1,018,861 = (\$29,966.50 \text{ per fund} \times 34 \text{ funds})$.

17. Approval to Not Display Expiration Date

Not applicable.

18. Exception to Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.