

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission**  
**“RULE 23C-3 AND FORM N-23C-3”**

**A. JUSTIFICATION**

**1. Information Collections Necessity**

Section 23(c) of the Investment Company Act of 1940 ("Investment Company Act")<sup>1</sup> 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.<sup>2</sup> Rule 23c-3 under the Investment Company Act permits a closed-end fund that meets certain requirements to repurchase common stock of which it is the issuer from shareholders at periodic intervals, pursuant to repurchase offers made to all holders of the stock.<sup>3</sup> 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

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<sup>1</sup> 15 U.S.C. 80a-1 *et seq.*

<sup>2</sup> 15 U.S.C. 80a-23(c).

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.<sup>4</sup> 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 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 and the rules that implement section 24.<sup>5</sup> Rule 24b-3 under the Investment Company Act, however, exempts the fund from that requirement if the materials are filed instead with the Financial Industry Regulatory Authority (“FINRA”).<sup>6</sup>

## **2. Information Collections Purpose**

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

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<sup>3</sup> 17 CFR 270.23c-3.

<sup>4</sup> 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).

<sup>5</sup> 15 U.S.C. 80a-24.

<sup>6</sup> 17 CFR 270.24b-3.

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. Consideration Given to Information Technology**

The Commission's EDGAR system automates the filing, processing, and dissemination of full disclosure filings. The automation has increased the speed, accuracy, and 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. 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 do not distinguish between small entities and other funds. The Commission believes, however, that imposing different requirements on smaller funds would not be consistent with investor protection and the purposes of the requirements. The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act, to identify methods to minimize recordkeeping or reporting requirements affecting small businesses.

## **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)**

This collection is not inconsistent with 5 CFR 1320.5(d)(2).

**8. Consultation Outside the Agency**

The Commission and staff of the Division of Investment Management 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 with a means of ascertaining and acting upon paperwork burdens that may confront the industry. The Commission requested public comment on the collection of information requirements in rule 23c-3 and Form N-23c-3 before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to its request.

**9. Payment or Gift**

No payment or gift to respondents was provided.

**10. Confidentiality**

No assurance of confidentiality was provided.

**11. Sensitive Questions**

No questions of a sensitive nature are involved.

## 12. Information Collection Time Burden

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995<sup>7</sup> and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Compliance with rule 23c-3 and Form N-23c-3 is mandatory for every fund that relies on rule 22c-3. Responses to the disclosure requirements will not be kept confidential.

We estimate that 20 closed-end funds rely upon the repurchase procedures under rule 23c-3.<sup>8</sup> Based on staff experience, we further estimate that each of the 20 funds makes on average four repurchase offers each year.<sup>9</sup> Based on staff experience, we estimate that the repurchase offers result in the following collections of information and associated burden hours:

- 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;

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<sup>7</sup> 44 U.S.C. 3501 *et seq.*

<sup>8</sup> The Commission's records indicate that, on average, approximately 20 closed-end funds filed Form N-23c-3 each year during calendar years 2009-2011.

<sup>9</sup> 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.

- 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 two of the 20 funds relying on rule 23c-3 are doing so for the first time.<sup>10</sup> Based on staff experience, we estimate that these funds 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.

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<sup>10</sup> The Commission's records indicate that, on average, approximately two closed-end funds filed Form N-23c-3 for the first time each year during calendar years 2009-2011.

Based on the estimates above, the Commission estimates that the total annual burden of the rule's paperwork requirements is 1,836 hours.<sup>11</sup> We estimate that funds' boards of directors perform 28 of these burden hours at a total cost of \$126,000 per year.<sup>12</sup> We further estimate that professional staff perform 640 of these burden hours at a total cost of \$241,920,<sup>13</sup> while support staff perform 1,168 of these burden hours at a total cost of \$94,608.<sup>14</sup> Thus, the Commission estimates the aggregate annual cost of the burden hours associated with rule 23c-3 is \$462,528.<sup>15</sup>

### **13. 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. Based on staff experience, Commission staff

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<sup>11</sup> This estimate is based on the following calculation: (20 funds x ((4 x 18 hours) + (4 x 1 hour) + (5 hours) + (8 hours))) + (2 funds x 28 hours) = 1,836 hours.

<sup>12</sup> This estimate is based on the following calculations: (20 funds x 1 hour) + (2 funds x 4 hours) = 28 hours; 28 hours x \$4,500 per hour = \$126,000. The estimate for the cost of board time as a whole is derived from estimates made by the staff regarding typical board size and compensation that is based on information received from fund representatives and publicly available sources.

<sup>13</sup> The professional staff estimates are based on the following calculations: 640 hours = (20 funds x ((4 x 6 hours) + (4 x 0.25 hours) + (3 hours) + (2 hours))) + (2 funds x 20 hours); and 640 hours x \$378 per hour = \$241,920. The estimated wage figures are based on published rates for in-house attorneys, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding effective hourly rates of \$378. *See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2011.*

<sup>14</sup> The support staff estimates are based on the following calculations: 1,168 hours = (20 funds x ((4 x 12 hours) + (4 x 0.75 hours) + (2 hours) + (5 hours))) + (2 funds x 4 hours); and 1,168 hours x \$81 per hour = \$94,608. The estimated wage figures are based on published rates for executive assistants, modified to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead, yielding effective hourly rates of \$81. *See Securities Industry and Financial Markets Association, Report on Office Salaries in the Securities Industry 2011.*

<sup>15</sup> This estimate is based on the following calculation: \$462,528 = (28 hours of board time x \$4,500 per hour) + (640 hours of professional time hours x \$378 per hour) + (1,168 hours of support staff time x \$81 per hour).



estimate that the average yearly cost to each fund that relies on rule 23c-3 to print and mail repurchase offers to shareholders is approximately \$29,966.50. The Commission estimates total annual cost is therefore approximately \$599,330.<sup>16</sup>

#### **14. Federal Government Cost**

The annual cost of reviewing and processing registration statements, post-effective amendments, proxy statements, shareholder reports, and other filings of investment companies amounted to approximately \$20.5 million in fiscal year 2011, based on the Commission's 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. Changes in Burden**

The total annual hour burden of 1,836 hours represents a decrease of 951 hours from the prior estimate of 2,787 hours. The decrease principally results from a decrease in the number of funds relying on rule 23c-3.

The total annual cost burden of \$599,330 in printing and mailing costs represents a decrease of \$329,632 from the last approved cost burden of \$928,962. This decrease principally results from a decrease in the number of funds relying on rule 23c-3.

#### **16. Information Collection Planned for Statistical Purposes**

The results of any information collected will not be published.

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<sup>16</sup> This estimate is based on the following calculation:  $\$599,330 = (\$29,966.50 \text{ per fund} \times 20 \text{ funds})$ .

**17. Approval to Omit OMB Expiration Date**

We request authorization to omit the expiration date on the electronic version of the form for design and IT project scheduling reasons. The OMB control number will be displayed.

**18. Exceptions to Certification Statement**

The Commission is not seeking an exception to the certification statement.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

The collection of information will not employ statistical methods.