

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
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 (“Investment Company Act”)¹ 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.² 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.³ 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.⁴ 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

¹ 15 U.S.C. 80a-1 *et seq.*

² 15 U.S.C. 80a-23(c).

³ 17 CFR 270.23c-3.

⁴ 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).

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 24.⁵ 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”).⁶

2. Purpose and Use of the Information Collection

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. Consideration Given to Information Technology

The Commission's EDGAR system provides for automated 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 are required to 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

⁵ 15 U.S.C. 80a-24.

⁶ 17 CFR 270.24b-3.

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

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. 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.

6. Consequences of Not Conducting 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 fund industry through public conferences, meetings, and informal exchanges. These various forums provide the Commission and staff with a means of ascertaining and acting upon paperwork burdens confronting 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 information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection collects basic Personally Identifiable Information (PII) that may include name, job title, and work address. However, the agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier. In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a Privacy Impact Assessment (PIA) of the EDGAR system in connection with this collection of information. The EDGAR PIA, published on January 29, 2016 is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

12. Burden of Information Collection

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995⁷ 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 33 closed-end funds rely upon the repurchase procedures under rule 23c-3.⁸ Based on staff experience, we further estimate that each of the 33 funds makes on average four repurchase offers each year.⁹ Based on staff experience, we estimate that the

⁷ 44 U.S.C. 3501 *et seq.*

⁸ The Commission's records indicate that, on average, about 33 closed-end funds filed Form N-23c-3 each year during calendar years 2015–2017.

⁹ 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.

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) filings on 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 (not including the burden of mailing the shareholder report 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 eight of the 33 funds relying on rule 23c-3 are doing so for the first time.¹⁰ 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.

Based on the estimates above, the Commission estimates that the total annual hour burden of the rule's paperwork requirements is 3,161 hours.¹¹ We estimate that funds'

¹⁰ The Commission's records indicate that, on average, about eight closed-end funds filed Form N-23c-3 for the first time each year during calendar years 2015–2017.

¹¹ 18 burden hours per fund to print and mail notifications per offer × 4 offers per year = 72 hours per fund per year to print and mail notifications. 1 burden hour per fund per

boards of directors perform 65 of these burden hours at a total cost of \$292,500 per year.¹² We further estimate that professional staff perform 1,150 of these burden hours at a total cost of \$461,150,¹³ while support staff perform 1,946 of these burden hours at a total cost of \$177,086.¹⁴ Therefore, the Commission estimates the aggregate annual cost of the burden hours associated with rule 23c-3 is \$930,736.¹⁵

filing on Form-23c-3 × 4 filings per year = 4 burden hours per fund per year to prepare and file on Form N-23c-3. 72 hours per fund per year to print and mail notifications + 4 burden hours per fund per year to prepare and file on Form N-23c-3 + 5 burden hours per fund per year to prepare annual report disclosure + 8 burden hours per fund per year to perform reviews = 89 burden hours per fund per year. (89 burden hours per fund per year × 33 funds) + (28 burden hours per first-time fund × 8 first-time funds per year) = 2,937 burden hours per year + 224 burden hours per year = 3,161 burden hours per year.

¹² (33 funds × 1 hour per fund per year) + (8 first-time funds per year × 4 hours per first-time fund per year) = 33 hours per year + 32 hours per year = 65 hours per year. 65 hours per year × \$4,500 per hour = \$292,500 per year. 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.

¹³ 6 burden hours per fund to print and mail notifications per offer × 4 offers per year = 24 hours per fund per year to print and mail notifications. 0.25 burden hours per fund per filing on Form-23c-3 × 4 filings per year = 1 burden hour per fund per year to prepare and file on Form N-23c-3. 24 hours per fund per year to print and mail notifications + 1 burden hour per fund per year to prepare and file on Form N-23c-3 + 3 burden hours per fund per year to prepare annual report disclosure + 2 burden hours per fund per year to perform reviews = 30 burden hours per fund per year. (30 burden hours per fund per year × 33 funds) + (20 burden hours per first-time fund × 8 first-time funds per year) = 990 burden hours per year + 160 burden hours per year = 1,150 burden hours per year. 1,150 burden hours per year × \$401 per hour = \$461,150 per year. The Commission's estimate concerning the wage rate is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure is based on published rates for attorneys, modified to account for an 1,800-hour work-year; multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead; and adjusted to account for the effects of inflation, yielding an effective hourly rate of \$401. *See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.*

¹⁴ 12 burden hours per fund to print and mail notifications per offer × 4 offers per year = 48 hours per fund per year to print and mail notifications. 0.75 burden hours per fund per filing on Form-23c-3 × 4 filings per year = 3 burden hours per fund per year to prepare and file on Form N-23c-3. 48 hours per fund per year to print and mail notifications + 3 burden hours per fund per year to prepare and file on Form N-23c-3 + 2

13. Cost to Respondent

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 estimate that the average yearly cost to each fund that relies on rule 23c-3 to print and mail repurchase offers to shareholders is about \$31,184.88.¹⁶ The Commission estimates total annual cost is therefore about \$1,029,101.¹⁷

14. Cost to the Federal Government

The annual cost of reviewing and processing disclosure documents, including new registration statements, post-effective amendments, proxy statements, shareholder reports, and other filings of investment companies amounted to approximately \$22.9 million in fiscal year 2016, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.

15. Changes in Burden

The estimated annual burden hours for funds relying on rule 23c-3 has increased from 2,037 to 3,161 hours (an increase of 1,124 hours). This is due to an increase in the

burden hours per fund per year to prepare annual report disclosure + 5 burden hours per fund per year to perform reviews = 58 burden hours per fund per year. (58 burden hours per fund per year × 33 funds) + (4 burden hours per first-time fund × 8 first-time funds per year) = 1,914 burden hours per year + 32 burden hours per year = 1,946 burden hours per year. 1,946 burden hours per year × \$91 per hour = \$177,086 per year. The Commission's estimate concerning the wage rate is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure is based on published rates for executive assistants, modified to account for an 1,800-hour work-year; multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead; and adjusted to account for the effects of inflation, yielding an effective hourly rate of \$91. *See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.*

¹⁵ \$292,500 per year for board of directors time + \$461,150 per year for professional staff time + \$177,086 per year for support staff time = \$930,736 per year.

¹⁶ This estimate is based on staff's December 2015 estimate of average yearly cost to each fund that relies on rule 23c-3 to print and mail repurchase offers to shareholders (\$29,966.50), adjusted for inflation to March 2018 values using the Personal Consumption Expenditures Chain-Type Price Index ("PCE Index"). *See Personal Consumption Expenditures, Chain-type Price Index, available at <http://fred.stlouisfed.org/series/PCEPI>.*

¹⁷ 33 funds relying on rule × \$31,184.88 per fund = \$1,029,101.

number of funds that rely on rule 23c-3. The estimated annual cost burden for funds relying on rule 23c-3 has increased from \$629,297 to \$1,029,101 (an increase of \$399,804). This increase is due to an increase in the number of funds that rely on rule 23c-3 and the effects of inflation.

16. Information Collection Planned for Statistical Purposes

The results of any information collected will not be published.

17. Approval to Omit OMB Expiration Date

The Commission is not seeking approval to not display the expiration date for OMB approval.

18. Exceptions to Certification Statement for Paperwork Reduction Act Submission

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.