

ration date of the period prescribed by section 4(3) of the Act and Rule 174 may be inserted in the prospectuses to be used after the effective date which must be filed pursuant to Rule 424(b) (17 CFR 230.424(b)). Before the date when the security is first offered, issuers will be required to state in the blank provided for the expiration date whether the applicable prospectus delivery period is 40 or 90 days.

As adopted Rule 174 shortens or eliminates the aforementioned 40 or 90 day statutory prospectus delivery period in the instances hereinafter discussed. The rule provides that no dealer is required to deliver a prospectus with respect to a security registered on Form S-8 (17 CFR 239.16b) (relating to certain offerings to employees), Form S-9 (17 CFR 239.22) (relating to certain non-convertible fixed interest debt securities), Form S-12 (17 CFR 239.19) (relating to American Depositary Receipts), and Form F-1 (17 CFR 239.9) (relating to voting trust certificates); except that, in the case of registration on Form S-12 or F-1, the exemption does not apply if the deposited securities are also required to be registered. It also provides that the maximum period during which dealers must deliver a prospectus will expire in 40 days if the issuer has a class of securities listed and registered on a national securities exchange under Section 12(b) of the Securities Exchange Act of 1934.

Paragraph (c) of the rule as proposed has been deleted. As proposed paragraph (c) provided that the maximum period during which dealers must deliver a prospectus expired after 40 days with respect to all registration statements which became effective on or prior to August 20, 1964, the effective date of the Securities Acts Amendments of 1964. In view of the expiration of 90 days after such effective date the Commission has determined that it is no longer necessary to include this interpretation of the Act, as amended, and has provided in lieu thereof a new paragraph (c).

New paragraph (c) of the rule as adopted relates to offerings to be made from time to time under a single registration statement. The purpose of the paragraph is to make clear in such cases, e.g., where securities are to be offered at different times by one or more of several offerees, commonly referred to as a "shelf" registration, that no new prospectus delivery period will begin for dealers trading in the offering after the first 40 or 90 day prospectus delivery period has expired following the initial offering of any of the registered securities for the accounts of any of the offerees.

The rule as adopted provides that its special provisions are inapplicable if the registration statement was the subject of a stop order. It also reserves to the Commission the power to modify the applicable period by order upon application or on its own motion in particular cases. Since the rule is addressed only to the obligation of dealers to deliver a prospectus in the trading market, provision is inserted to make clear that it

does not apply to an underwriter continuing to act as such, or to a dealer participating in a distribution in a transaction in the registered securities constituting an unsold allotment to or subscription by such dealer.

Other suitable relaxations of the dealers' exemption in section 4(3) will doubtless become apparent as the Commission and the financial community gain experience under the amended requirements of the Securities Act. Meanwhile, provision is made in Paragraph (d) (2) of the rule for variations from this pattern upon application to the Commission in appropriate cases.

**Commission action.** Part 230 of Title 17, Chapter II of the Code of Federal Regulations is amended by adding new §§ 230.425a and 230.174 to read as follows:

**§ 230.425a Statement required on prospectus regarding delivery of prospectuses by dealers.**

(a) The statement set forth in paragraph (b) of this section shall be set forth on the outside front or back cover page or on the inside front cover page of every prospectus, inserting the expiration date of the period prescribed by section 4(3) of the act and § 230.174 thereunder; except that, this section shall not apply if, pursuant to § 230.174, dealers are not required to deliver a prospectus pursuant to the provisions of section 4(3)(B) of the act, or if the exemption provided by section 4(3) of the act is not applicable pursuant to the provisions of section 24(d) of the Investment Company Act of 1940. If the said expiration date is not known on the effective date of the registration statement it may be inserted in the prospectus filed pursuant to § 230.424(b). Prior to such time the applicable period prescribed in section 4(3) of the act and § 230.174 thereunder shall be included in the blank.

(b) The following legend required by paragraph (a) of this section shall be printed in bold-face type or italic type at least as large as eight point modern type and at least two points leaded:

Until \_\_\_\_\_ (insert date) all dealers effecting transactions in registered securities, whether or not participating in this distribution, may be required to deliver a prospectus. This is an addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

**§ 230.174 Delivery of prospectus by dealers; exemptions under section 4(3) of the act.**

The obligations of a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transactions) to deliver a prospectus in transactions in a security as to which a registration statement has been filed taking place prior to the expiration of the 40 or 90 day period specified in section 4(3) of the act after the effective date of such registration statement or prior to the expiration of such period after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date,

whichever is later, shall be subject to the following provisions:

(a) No prospectus need be delivered if the registration statement is on Forms S-8 (17 CFR 239.16b), S-9 (17 CFR 239.22), S-12 (17 CFR 239.19), or F-1 (17 CFR 239.9): *Provided*, in the case of a registration statement on Forms S-12 (17 CFR 239.19) or F-1 (17 CFR 239.9), this provision shall not apply if registration of the deposited securities is also required.

(b) If the issuer has a class of security listed and registered on a national securities exchange pursuant to section 12(b) of the Securities Exchange Act of 1934, the period during which a prospectus must be delivered shall be 40 days.

(c) Where a registration statement relates to offerings to be made from time to time no prospectus need be delivered after the expiration of the initial prospectus delivery period specified in section 4(3) of the act or in paragraphs (a) or (b) of this section following the first bona fide offering of securities under such registration statement.

(d) Notwithstanding the foregoing, the period during which a prospectus must be delivered by a dealer shall be:

(1) As specified in section 4(3) of the act if the registration statement was the subject of a stop order issued under section 8 of the act; or

(2) As the Commission may provide upon application or on its own motion in a particular case.

(e) Nothing in this section shall affect the obligation to deliver a prospectus pursuant to the provisions of section 5 of the act by a dealer who is acting as an underwriter with respect to the securities involved or who is engaged in a transaction as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

(Sec. 12, 78 Stat. 580, 15 U.S.C. 77d; sec. 19, 48 Stat. 85, as amended, 15 U.S.C. 77d)

**Effective date.** The amendment shall become effective on January 25, 1965.

By the Commission.

[SEAL] ORVAL L. DuBOIS,  
Secretary.

DECEMBER 23, 1964.

[F.R. Doc. 64-13395; Filed, Dec. 29, 1964; 8:46 a.m.]

[Release 40-4105]

**PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940**

**Periodic Calculation of Current Net Asset Value of Redeemable Security**

On July 2, 1964, in Investment Company Act Release No. 4006, and in the FEDERAL REGISTER on July 10, 1964 (29 F.R. 9456), the Securities and Exchange Commission published notice that it had under consideration the adoption of a proposed § 270.2a-4 (Rule 2a-4 under the Investment Company Act of 1940 ("Act")) and invited the comments of

interested persons. Upon consideration of the comments received, the Commission has determined pursuant to the authority conferred by sections 38(a) and 22 of the Act to adopt § 270.2a-4 in the form set forth below.

Section 38(a) authorizes the Commission to make rules and regulations, inter alia, defining "accounting, technical, and trade terms" used in the Act. "Current net asset value" is a term used in section 22 of the Act relating to "distribution, redemption, and repurchase of redeemable securities," and the concept is employed in the definition of the term "redeemable security" in section 2(a)(31) of the Act.

The Commission's experience in the administration of the Act and its analysis of data provided by the periodic inspection of books and records maintained by registered investment companies pursuant to section 31 of the Act indicate that uniformity with respect to the calculation of net asset value of redeemable securities issued by registered investment companies would be in the public interest and in the interest of investors. Accordingly, pursuant to the authority conferred by sections 38(a) and 22 of the Act, the Commission has promulgated § 270.2a-4 defining the term "current net asset value" as it is used in the Act with reference to redeemable securities issued by a registered investment company.

The Commission has considered that the public interest and the interest of investors require that the rule be effective as promptly as is reasonably practicable in order that the current net asset value of redeemable securities currently being distributed, redeemed, and repurchased by registered investment companies be appropriately calculated. Consideration has also been given to the obligations of registered investment companies to file reports under the provisions of the Act and the rules thereunder relating to the fiscal periods of said companies, and to the substantial number of registered investment companies which will begin new fiscal periods on January 1, 1965. The Commission therefore finds that there is good cause for the rule to become effective on January 1, 1965. Accordingly, the effective date of the rule shall be January 1, 1965.

The text of § 270.2a-4 is as follows:

**§ 270.2a-4** Definition of "Current Net Asset Value" for use in computing periodically the current price of redeemable security.

(a) The current net asset value of any redeemable security issued by a registered investment company used in computing periodically the current price for the purpose of distribution, redemption, and repurchase means an amount which reflects calculations, whether or not recorded in the books of account, made substantially in accordance with the following, with estimates used where necessary or appropriate:

(1) Portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as de-

termined in good faith by the board of directors of the registered company.

(2) Changes in holdings of portfolio securities shall be reflected no later than in the first calculation on the first business day following the trade date.

(3) Changes in the number of outstanding shares of the registered company resulting from distributions, redemptions, and repurchases shall be reflected no later than in the first calculation on the first business day following such change.

(4) Expenses, including any investment advisory fees, shall be included to date of calculation.

(5) Dividends receivable shall be included to date of calculation either at ex-dividend dates or record dates, as appropriate.

(6) Interest income and other income shall be included to date of calculation.

(b) The items which would otherwise be required to be reflected by paragraph (a) (4) and (6) of this section need not be so reflected if cumulatively, when netted, they do not amount to as much as one cent per outstanding share.

(c) Notwithstanding the requirements of paragraph (a) of this section, any interim determination of current net asset value between calculations made as of the close of the New York Stock Exchange on the preceding business day and the current business day may be estimated so as to reflect any change in current net asset value since the closing calculation on the preceding business day.

(Sec. 22, 38(a), 54 Stat. 823, 841, 15 U.S.C. 80a-23, 80a-37)

By the Commission.

[SEAL] ORVAL L. DuBOIS,  
Secretary.

DECEMBER 22, 1964.

[F.R. Doc. 64-13398; Filed, Dec. 29, 1964; 8:46 a.m.]

## Title 20—EMPLOYEES' BENEFITS

### Chapter V—Bureau of Employment Security, Department of Labor

#### PART 602—COOPERATION OF UNITED STATES EMPLOYMENT SERVICE AND STATES IN ESTABLISHING AND MAINTAINING A NATIONAL SYSTEM OF PUBLIC EMPLOYMENT OFFICES

##### Foreign Agricultural Labor

Expiration of Public Law 78 on December 31, 1964, thereby indicating a Congressional intent to end reliance on Mexican Braceros for agricultural work in the United States, requires regulations effecting an orderly transition to the use of United States workers in areas where reliance has previously been placed upon foreign workers. These regulations, hereinafter set forth, are issued to carry out the function of the Secretary of Labor in advising the Attorney General, in accordance with his request under section 214 of the Immigration and Nationality Act of 1952, as to whether

unemployed persons capable of performing such agricultural labor can be found in this country. Of primary consideration in issuing these Regulations is the principle that foreign workers will not be admitted where unemployed domestic workers are available and, in no event, will be admitted under circumstances adversely affecting domestic wage levels.

In response to this Congressional direction and after due consideration of the evidence and views presented at hearings which were held pursuant to notice (29 F.R. 15191) at Washington, D.C. on November 30, 1964; Miami, Fla., on December 2; Dallas, Tex., on December 4; and San Francisco, Calif., on December 7, 8, and 9, the Regulations set forth below specifying the terms and conditions which must be offered to domestic workers before certification will be made for the admission of foreign workers under Public Law 414 have been adopted.

Because these rules constitute general statements of agency procedure and policy, further notice of proposed rule making, public participation, and delay in effective date are not required by section 4 of the Administrative Procedure Act (5 U.S.C. 1003), I do not believe additional proceedings or delay would serve a useful purpose here.

Now, therefore, pursuant to regulations issued by the Commissioner of Immigration and Naturalization (8 CFR 214.2(h); 29 F.R. 11959) implementing provisions of the Immigration and Nationality Act (8 U.S.C. 1184(c)), I hereby revise 29 CFR 602.10, effective immediately, to read as follows:

#### § 610.10 Certification and use of foreign labor for agricultural employment.

(a) Any agricultural employer with a foreseeable labor shortage remaining after reasonable efforts utilizing all sources of available domestic workers, including the interstate clearance process, may request through the appropriate State agency the certification of need for foreign labor. Before such certification will be made by the appropriate Regional Office of the Bureau of Employment Security, it must be shown that:

(1) Reasonable efforts have been made and will continue to be made to obtain domestic workers for the period for which these workers are requested. "Reasonable efforts" will include full use of (i) day-haul operations in accordance with the general practices of other employers in the area, or, in the absence of local day-haul operations, day-haul operations in accordance with the general practices within the State; (ii) other appropriate recruitment efforts; and (iii) the interstate clearance process for recruitment in areas within a reasonable distance, including use of the Annual Worker Plan, where practical. (In order to recruit workers from out of State, a minimum period of 15 days prior to the date of need will be required by the Labor-supply State agency for positive recruitment. In addition, the offer for local workers must be at the same rate which is specified on the date of need in the clearance order, or a request for foreign workers will be denied.)