

1. You can advertise and sell Pendleton products at any price you choose.

2. Pendleton will not take any action against you, including termination, because of the price at which you advertise or sell its products.

3. Pendleton will not suggest retail prices for any product until April 20, 1982.

4. The price at which you sell or advertise our products will not affect your right to use Pendleton trademarks or other identification in your sale or advertising of products bearing Pendleton trademarks or identification.

If you have any questions regarding the Order or this letter, please call Mr. Pedley at Pendleton.

for Pendleton Woolen Mills, Inc.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Pendleton Woolen Mills, Inc., a large manufacturer of wearing apparel, blankets and wool fabric.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint in this matter alleges that Pendleton has restrained trade by fixing the resale prices at which its dealers advertise, offer for sale and sell Pendleton products.

The consent agreement provides as follows:

1. Pendleton cannot fix or otherwise control the resale prices at which its products are sold or advertised.

2. Pendleton cannot take any action against any dealer, including termination, because of the resale prices at which the dealer sells or advertises any Pendleton product.

3. As to products which bear any of its trademarks or other identifications, Pendleton cannot restrict any dealer from using any such trademark or other identification in the sale or advertising of such products.

4. Pendleton cannot suggest retail prices for any product from the date the order becomes final until April 20, 1982.

The purpose of this analysis is to facilitate public comment on the

proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Carol M. Thomas
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 270]

[Release No. IC-10691, File No. S7-782]

Pricing of Investment Company Shares Generally

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: On January 8, 1979, the Commission proposed for public comment a rulemaking which, among other things, proposed an amendment of the rule under the Investment Company Act of 1940 which ties to the New York Stock Exchange the days and time for pricing an investment company's redeemable securities even though its portfolio securities may not be listed for trading on that exchange. The Commission has considered the comments received and has decided to republish for public comment a revision of part of the rulemaking, which would (1) unlink that rule from the business days of the New York Stock Exchange and (2) allow directors of an investment company to determine the time for it to compute the current net asset value of its redeemable securities.

DATE: Comments must be received by June 29, 1979.

ADDRESSES: Send comments in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 N. Capitol Street, Washington, D.C. 20549. (Refer to File No. S7-782.) All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mark J. Mackey, Esq., Investment Company Act Study Group, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202) 755-1547.

SUPPLEMENTARY INFORMATION: The Commission proposes for public comment an amendment to rule 22c-1 of the Investment Company Act of 1940 ("Act"), regarding the pricing of

investment company shares generally. This rulemaking, if adopted, would (1) unlink the rule from the business days of the New York Stock Exchange, and (2) allow directors of an investment company to determine the time for the investment company to compute the current net asset value of its redeemable securities.

In response to its request for comments regarding Investment Company Act Release No. 10545 (Jan. 8, 1979, 44 FR 3376, Jan. 18, 1979), proposing rules to provide start-up exemptions for certain unit investment trusts and to regulate the pricing of all investment companies' redeemable securities, the Commission received and considered 14 letters. All comments received appeared to favor the Commission's rulemaking; but, with a single exception, each commentator suggested modifications to the proposals. As a result of considering these comments, the Commission has decided to republish for public comment a revision of that part of the rulemaking which relates to the pricing of investment company shares generally, and to adopt, in a separate release, that part of the rulemaking which relates solely to unit investment trusts.¹

Pricing of Investment Company Shares Generally

After considering the comments received, the Commission has determined to republish in modified form a proposed amendment to paragraph (b) of rule 22c-1 under the Act. That paragraph presently ties to the New York Stock Exchange the days and time for the pricing of an investment company's redeemable securities even though the investment company's portfolio securities may not be listed for trading on that exchange. The Commission had proposed to amend that paragraph to require forward pricing for all investment company redeemable securities as of the close of the relevant primary trading market in which each portfolio security is traded.²

Commentators favored divorcing the pricing of securities from the New York Stock Exchange's trading hours, but generally expressed a variety of reservations regarding the manner for determining any particular portfolio security's relevant primary trading market. Concern was also expressed as to the procedures to be followed when an investment company's portfolio

¹ See Investment Company Act Release No. 10090, May 15, 1979.

² The proposed rulemaking represented a codification of existing orders in the area. See, e.g., G.T. Pacific Fund, Inc., Investment Company Act Release No. 8748 (May 3, 1977).

consists of securities with differing relevant primary markets.

Accordingly, the Commission proposes to give each investment company's board of directors enhanced responsibility in establishing the time for which the investment company will forward price its redeemable securities.³ Their determination would allow each investment company to compute its current net asset value at a time most appropriate to its particular investment portfolio. However, the directors would have to review at least annually the continuing appropriateness of their determination as to the time the company should compute the net asset value of its redeemable shares.⁴

Moreover, commentators noted that the trading days of the New York Stock Exchange may not coincide with the trading days of other securities marketplaces. To address the concerns expressed by such commentators while ensuring that redemptions, repurchases and sales of the securities issued by an investment company are transacted by it with the investing public at an accurate price, the Commission proposes to amend rule 22c-1(b) to provide for the pricing of redeemable securities on all days when there is a sufficient degree of trading in the investment company's portfolio securities that the current net asset value of the investment company's redeemable securities might be materially affected by changes in the value of these portfolio securities.⁵

³ Investment Company Act Release No. 5519, in which Rule 22c-1 was adopted, cites two purposes for Rule 22c-1: (1) To eliminate any dilution in the value of investment company shares; and (2) to eliminate certain speculative trading purchases.

Dilution through the sale of redeemable securities at a price below their net asset value may occur, for example, through the practice of selling securities for a certain period of time at a price based upon a previously established net asset value. This practice permits a potential investor to take advantage of an upswing in the market and an accompanying increase in the net asset value of investment company shares by purchasing such shares at a price which does not reflect the increase.

This rulemaking would not, of course, affect the requirement in paragraph (a) of rule 22c-1 that such price be based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security, except regarding certain unit investment trusts; nor would the rulemaking affect any of the special considerations applicable to the valuation of securities discussed in Accounting Series Release No. 118 (Dec. 23, 1970).

⁴ Of course, the directors could not, in accordance with their fiduciary obligations, contemporaneously determine to accelerate or defer pricing the securities in response to highly beneficial or adverse market conditions.

⁵ If, for example, an investment company had a substantial portion of its portfolio securities listed on a securities exchange, it would be expected to price its redeemable securities on days when that

An investment company is, of course, always obligated to provide a price for its shareholders which is not materially misleading in the context for which it is used.⁶

Text of Rulemaking

It is proposed to amend Part 270 of Chapter II of Title 17 of the Code of Federal Regulations by amending paragraph (b) of § 270.22c-1 as follows:

§ 270.22c-1 Pricing of redeemable securities for distribution, redemption and repurchase.

(b) For the purposes of this section, (1) the current net asset value of any such security shall be computed (i) on each day in which there is a sufficient degree of trading in the investment company's

exchange is open for trading since on those days the value of the investment company's redeemable securities might be materially affected. In the event that sufficient portfolio securities are traded on a foreign securities exchange, this obligation may require the investment company to price its shares on each day when that exchange is open for trading, whether or not the principal national securities exchanges in the United States are open for business. The Commission does not expect this element of directoral consideration. In establishing the time and dates for determining the price of its redeemable securities, generally to cause an investment company to incur significant increased operational costs. Rather, the Commission believes that a management investment company, in fulfilling its overriding investment management responsibilities, typically would be open for business to monitor such market's activity where the amount of exchange trading was significant. In other instances—for example, a company whose portfolio management is entirely overseas—the investment company would be expected to provide alternative procedures to segregate orders received for purchase, sale, or redemption of its securities during non-business days according to the time received in order to provide investors with the benefits of accurate pricing of the investment company's redeemable shares.

But, the Division of Investment Management has provided "no-action" assurances with respect to rule 22c-1 where an investment company has proposed not to compute the current net asset value of its redeemable securities on days when no such security was tendered for redemption and no order to purchase or sell such security was received. See letters to Investment Company Institute, Professional Investment Co., Inc., and Prudential Fund of Boston, Inc., dated Oct. 23, 1978, June 3, 1975, and July 1, 1971, respectively. The letter to Investment Company Institute additionally addressed a number of other issues concerning the pricing of investment company securities.

⁶ For example, in the case of an investment company which invests exclusively in New York Stock Exchange listed securities, a price computed during the mid-morning should not be represented as a price determined at that exchange's close. However, the Commission recognizes that, in order to publicly disseminate information regarding the net asset value of its shares through communications media, an investment company may be required to compute the price of its redeemable securities prior to the cessation of all significant market activity in its portfolio securities. The Commission would not object to such a practice, provided that such price is not represented to be the current net asset value computed at the close of all such markets.

portfolio securities that the current net asset value of the investment company's redeemable securities might be materially affected by changes in the value of the portfolio securities, and (ii) at such specific time during the day as determined by the board of directors, including a majority of the directors who are not interested persons of the investment company, no less frequently than annually; and (2) a "qualified evaluator" shall mean any evaluator which represents it is in a position to determine, on the basis of an informal evaluation of the eligible trust securities held in the Trust's portfolio, whether—

(i) The current bid price is higher than the offering side evaluation, computed on the last business day of the previous week, and

(ii) The offering side evaluation, computed as of the last business day of the previous week, is more than one-half of one percent (\$5.00 on a unit representing \$1,000 principal amount of eligible trust securities) greater than the current offering price.

Statutory basis

Amended rule 22c-1 is proposed pursuant to the provisions of section 22(c) (15 U.S.C. 80a-22(c)) and section 38(a) (15 U.S.C. 37(a)) of the Act.

By the Commission.
May 15, 1979.
George A. Fitzsimmons,
Secretary.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

Proposed Minimum Participation Standards

Correction

FR Doc. 79-12363, appearing at page 23541, on Friday, April 20, 1979, was corrected on page 28004, on Monday, May 14, 1979. The correction on page 28004, Monday, May 14, 1979, is withdrawn in its entirety.

On page 23542 (issue of Friday, April 20, 1979), in the first column, in the first paragraph, the last sentence reading "A showing that a specified percentage of employees covered by a plan are not officers, shareholders, or highly compensated, is not in itself sufficient to establish that the plan does not discriminate in favor of employees who are officers, shareholders, or highly compensated is not in itself sufficient to