

FREQUENTLY ASKED QUESTIONS ABOUT INTERVAL FUNDS

Understanding Interval Funds

What is an “interval fund”?

An interval fund is a registered closed-end management investment company that periodically offers to buy back its shares from shareholders every three, six or 12 months when relying on Rule 23c-3 under the Investment Company Act of 1940, as amended (the “1940 Act”). Shareholders are not required to accept these offers.

How do interval funds differ from traditional closed-end funds?

A traditional closed-end fund issues a fixed number of shares in a public offering. Shares of traditional closed-end funds that are listed on a stock exchange trade at market price, which may be at a discount or at a premium to net asset value (“NAV”). Closed-end funds do not routinely repurchase shares directly from shareholders. From time to time, however, they offer to buy back shares at the NAV, allowing shareholders to

minimize the size of the discount.¹ These “tender offers” are subject to the requirements of Rule 13e-4 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

In contrast, shares of an interval fund typically do not trade on a secondary market. Instead, interval funds periodically offer to repurchase shares at a price based on NAV. Interval funds are also permitted to continuously offer their shares at a price based on the fund’s NAV.

What are the advantages of interval funds?

Interval funds may be attractive to investors that seek less traditional investment strategies of privately offered funds that offer more liquidity than traditional non-exchange-traded closed-end funds. Interval funds are registered under the 1940 Act, which provides important investor protections, such as frequent NAV calculations, restrictions on the use of leverage and transactions with affiliates, and custody, governance

¹ For more information about closed-end funds, see Frequently Asked Questions About Closed-End Funds at <https://media2.mofo.com/documents/faqs-closed-end-funds.pdf>.

and oversight requirements. While exchange-traded closed-end funds also offer the protections of the 1940 Act, many traditional privately offered closed-end funds do not.

What are some of the risks of an investment in interval funds?

Interval funds may expose investors to liquidity risk. While an interval fund periodically offers to repurchase a portion of its securities, there is no guarantee that investors may sell their shares at any given time or in the desired amount. Moreover, if an interval fund invests in companies with smaller market capitalizations, derivatives or securities that entail significant market or credit risk, the liquidity risk may be greater.

The Regulatory Basis for Interval Funds

What is the regulatory basis for interval funds?

Interval funds offer to repurchase their shares from shareholders at periodic and predetermined intervals, generally every three, six or 12 months. To operate as an interval fund, a closed-end fund must comply with the conditions of Rule 23c-3 under the 1940 Act.

Generally, Rule 23c-3 requires interval funds to make periodic repurchase offers pursuant to a fundamental policy established by the board of directors of the fund. Under the rule, the fundamental policy must provide:

- that the fund will make repurchase offers at periodic intervals;
- the length of the intervals between “repurchase request deadlines”;

- the dates of repurchase request deadlines or the means of determining the repurchase request deadlines; and
- the maximum number of days between each repurchase request deadline and the next repurchasing price date.²

A repurchase request deadline is the date by which the interval fund must receive shareholder repurchase requests in response to the offer, or by which withdrawals or modifications of previously submitted repurchase requests must be received.³

The fundamental policy may only be changed by a vote of a majority of the interval fund’s outstanding voting shareholders. Interval funds may also provide liquidity through repurchase offers made pursuant to Rule 13e-4 under the Exchange Act.

How often does an interval fund offer to repurchase its shares from shareholders?

Generally, an interval fund will offer to repurchase shares every three, six, or 12 months, as disclosed in the fund’s prospectus and annual report.⁴ An interval fund will also periodically notify its shareholders of the upcoming repurchase dates.⁵ When the fund makes a repurchase offer to its shareholders, it will specify the repurchase request deadline. The actual repurchase will occur at a later specified date.

The price that shareholders will receive on a repurchase will be based on the NAV per share determined as of a specified (and disclosed) date. This date will occur sometime after the close of business on

² See Rule 23c-3(b)(2).

³ See Rule 23c-3(a)(7).

⁴ See Rule 23c-3(a)(1).

⁵ See Rule 23c-3(b)(4).

the repurchase request deadline (but generally not more than 14 days after that date).

May interval funds charge shareholders repurchase fees?

Interval funds are permitted to deduct a repurchase fee from the repurchase proceeds, which is “reasonably intended” to compensate the fund for expenses directly related to the repurchase.⁶ The fee, however, may not exceed two percent of the repurchase proceeds.

Are interval funds permitted to make discretionary repurchase offers?

An interval fund is permitted to make discretionary repurchase offers, that is, offers that are not made pursuant to its fundamental policy, no more frequently than once every two years.⁷ This option provides the interval fund with flexibility, but is subject to many of the same restrictions as periodic repurchase offers.

Must interval funds offer to repurchase a specific amount of shares?

At each periodic interval, an interval fund must offer to repurchase between five and 25 percent of its common shares outstanding on the repurchase request deadline.⁸ The repurchase amount percentage must be approved by the interval fund’s board of directors.

If shareholders tender more than the repurchase offer amount, the interval fund may repurchase additional shares, subject to a maximum of an additional two percent of shares outstanding on the repurchase request deadline.⁹ Generally, if the interval fund determines not to repurchase more than the repurchase

offer amount, or if the amount exceeds the repurchase amount plus two percent, the interval fund must repurchase the shares on a *pro rata* basis.

Are interval funds permitted to suspend or postpone repurchase offers?

Interval funds may only suspend or postpone a repurchase offer by a vote of the majority of directors, including a majority of independent directors, and only:

- if the repurchase would cause the interval fund to lose its status as a “regulated investment company” under Subchapter M of the Internal Revenue Code of 1986, as amended;
- if the repurchase would jeopardize the interval fund’s listing on a national securities exchange;
- for any period during which the New York Stock Exchange, or any other market in which the securities owned by the interval fund are principally traded, is closed, other than customary weekend or holiday closings, or if trading in such market is restricted;
- for any period during which an emergency exists as a result of which disposal of securities by the interval fund is not reasonably practicable, or during which it is not reasonably practicable for the interval fund to fairly determine its NAV; or
- for such other periods as the SEC may by order permit for the protection of the interval fund’s shareholders.¹⁰

If the repurchase offer is suspended or postponed, the interval fund must notify shareholders.

⁶ See Rule 23c-3(b)(1).

⁷ See Rule 23c-3(c).

⁸ See Rule 23c-3(a)(3).

⁹ See Rule 23c-3(b)(5).

¹⁰ See Rule 23c-3(b)(3).

What is the timing of repurchase offers?

An interval fund's repurchase offer deadline can be no less than 21 days and no more than 42 days from the date that the interval fund sends the repurchase notice to its shareholders.¹¹ Until, but not after the repurchase request deadline, shareholders are permitted to withdraw (or modify) their repurchase request.¹²

What information must be contained in the notice?

The written notice of a repurchase offer must include:

- a statement that the interval fund is offering to repurchase its shares at NAV;
- any applicable repurchase fees;
- the repurchase offer amount;
- the dates of the repurchase request deadline, repurchasing pricing date and repurchase payment deadline;
- the risk that the interval fund's NAV will fluctuate between the repurchase request deadline and the repurchase pricing date;
- the ability of the interval fund to set an earlier repurchase pricing date under certain circumstances;
- the procedures for shareholders to tender their shares and their right to modify or withdraw their tenders until the repurchase request deadline;
- the procedures that the interval fund will use to purchase shares on a *pro rata basis* (if necessary);

- the circumstances under which the interval fund could suspend or postpone the repurchase offer;
- the interval fund's NAV as of a date within the previous seven days and the means by which shareholders can ascertain the NAV thereafter; and
- the interval fund's market price as of that same date the NAV is calculated, if the fund is traded on a secondary market, and the means by which shareholders can ascertain the market price thereafter.¹³

Interval funds must file a copy of the notice with the SEC on Form N-23C3A within three days after sending it to shareholders.¹⁴

When are repurchased shares valued?

The repurchase pricing date can occur no later than 14 business days after the repurchase request deadline, and the fund must pay redeeming shareholders 100 percent of the redemption proceeds in cash no later than seven days after the repurchase pricing date.¹⁵

For an illustration of a sample repurchase offer timeline, see Appendix A.

May an interval fund repurchase its shares through a traditional tender offer?

In addition to the repurchase offer procedure outlined above, interval funds may also repurchase their shares pursuant to Rule 13e-4 under the Exchange Act ("Tender Offer").¹⁶ A Tender Offer may be advantageous to an interval fund since many of the

¹¹ See Rule 23c-3(b)(4).

¹² See Rule 23c-3(b)(6).

¹³ See Rule 23c-3(b)(4)(i).

¹⁴ See Rule 23c-3(b)(ii).

¹⁵ See Rule 23c-3(a)(4) - (5).

¹⁶ See Rule 13e-4.

requirements of Rule 23c-3 are not applicable. For example, a Tender Offer has less restrictive valuation procedures and also permits monthly repurchase offers.

The Registration and Reporting Requirements of Interval Funds

How are interval funds registered with the SEC?

Like traditional closed-end funds, interval funds must file a notification of registration on Form N-8A with the SEC. If the fund intends to offer its shares publicly, it must file a registration statement on Form N-2 within three months of filing the Form N-8A to register its shares under the Securities Act of 1933, as amended (the "Securities Act").

Are interval funds permitted to offer multiple share classes?

The 1940 Act imposes restrictions on the ability of interval funds to offer multiple share classes of the same fund that differ in expense structure. Rule 18f-3 under the 1940 Act allows open-end mutual funds to issue multiple classes of the same fund, but this exception is not available to closed-end funds. Therefore, an interval fund must seek and receive exemptive relief from the SEC in order to offer multiple share classes.¹⁷ The multi-class exemptive relief application process has become more standardized over recent years.

May interval funds issue senior securities?

Like other types of investment companies, interval funds are subject to SEC interpretations regarding what

constitutes a "senior security" and the asset coverage requirements of Section 18 of the 1940 Act. Interval funds may issue two types of senior securities: (i) securities maturing by the next repurchase pricing date; and (ii) securities with terms that provide for redemption or call of the security by the next repurchase pricing date as necessary to permit the fund to repurchase securities and to remain in compliance with the asset coverage requirements of Section 18. Like traditional closed-end funds, interval funds can borrow money from banks and non-bank lenders, subject to statutory limitations.

Multiple share classes are also considered to be "senior securities." As noted above, interval funds can only issue multiple classes if the SEC issues an exemptive order.

What are an interval fund's ongoing reporting requirements?

Interval funds must disclose in their annual reports to shareholders information about, among other things:

- the number of repurchase offers that occurred during the period covered by the report;
- the repurchase offer amount for each such repurchase offer;
- the amount of shares tendered in each such repurchase offer; and
- information related to any oversubscriptions.

Since a traditional closed-end fund issues a fixed amount of securities in a public offering, it is not required to update its registration statement annually. Interval funds, on the other hand, register their shares under the Securities Act and engage in continuous share offerings. Accordingly, interval funds are required to update their registration statements annually.

¹⁷ Rule 18f-3 provides that "a registered *open-end management investment company* or series or class thereof . . . whose shares are registered on Form N-1A . . . may issue more than one class of voting stock . . ." (emphasis added).

Interval funds may file post-effective amendments to their registration statements pursuant to Rule 486 under the Securities Act, which provides for the automatic effectiveness of the post-effective amendment.

The Management and Governance of Interval Funds

Who provides services to interval funds?

Like other types of investment companies, interval funds themselves do not typically have employees. Instead, interval funds contract with third-party service providers. These services include those of:

- an investment adviser that is responsible for managing the fund's portfolio investments;
- a distributor/underwriter that assists in selling shares of the fund;
- an administrator that generally oversees administration, accounting, NAV calculation and financial statement preparation;
- a transfer agent that is responsible for recording ownership of fund shares, processing dividends and sending shareholder and tax statements;
- a custodian that maintains custody of the fund's assets;
- fund counsel, and, frequently, independent legal counsel to the independent directors; and
- an independent accounting firm that audits and prepares financial statements.

What other 1940 Act rules apply to interval funds?

While Rule 23c-3 prescribes numerous requirements specific only to interval funds, interval funds are also subject to many other provisions of the 1940 Act that

also apply to closed- and open-end funds, including: restrictions on affiliated transactions (Section 17(a) and Section 17(d) of the 1940 Act); code of ethics requirements (Rule 17j-1); and limitations on the ability to invest in other investment companies (Section 12(d) of the 1940 Act).

Moreover, like other types of registered investment companies, interval funds must maintain a fidelity bond in accordance with Section 17(g) of the 1940 Act and Rule 17g-1 thereunder.

The Mechanics of Interval Funds

Who may purchase shares of interval funds?

If an interval fund's shares are not registered under the Securities Act, they may only be offered to shareholders in private placements targeted at accredited investors. Interval fund shares registered under the Securities Act may be offered to the broad investing public.

How often do interval funds calculate their NAV?

Interval funds must calculate their NAV at least weekly on the day and time established by the board. Similar to open-end mutual funds, interval funds must calculate their NAV on each day when investors purchase and redeem shares. Interval funds must also calculate their NAV during the five business days preceding a repurchase request deadline.¹⁸

Are there liquidity restrictions for interval funds?

An interval fund's board must adopt written policies and procedures to ensure that the fund's assets are sufficiently liquid so that the fund can meet its

¹⁸ See Rule 23c-3(b)(7).

repurchase obligations in compliance with its fundamental repurchase policy. The board must review the liquidity of the fund’s portfolio as the board deems necessary.¹⁹

May interval funds charge a performance fee?

Interval funds that limit sales to shareholders who are “qualified clients” as defined under the Investment Advisers Act of 1940, as amended (the “Advisers Act”), may charge a performance fee. Interval funds that do not limit sales to qualified clients may impose “fulcrum fees” pursuant to Section 205(b)(2) of the Advisers Act.

The Distribution of Interval Funds

Are interval funds permitted to charge distribution fees?

Interval funds may be distributed directly by the fund manager or through financial intermediaries and broker-dealers. Rule 12b-1 fees are a central component of open-end mutual funds and their distribution through financial intermediaries.²⁰ Since Rule 12b-1 does not apply to closed-end funds, interval funds that wish to charge distribution fees payable from fund assets may have to obtain exemptive relief from the SEC.

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¹⁹ See Rule 23c-3(10)(iii).

²⁰ See Rule 12b-1 (“Distribution of shares by registered *open-end management investment company*”) (emphasis added).

APPENDIX A

SAMPLE REPURCHASE OFFER TIMELINE

