## SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 270, and 274

[Release Nos. 33–7144; IC–20917; File No. S7–8–95]

RIN 3235-AD18

Exemption for Certain Open-End Management Investment Companies To Impose Deferred Sales Loads

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule and form amendments, and request for comment.

**SUMMARY:** The Commission is proposing amendments to the rule under the Investment Company Act of 1940 that permits certain registered open-end management investment companies ("mutual funds") to impose contingent deferred sales loads. The proposed amendments would allow funds to offer investors a wider variety of deferred sales loads, including installment loads, and would eliminate certain requirements in the rule. The Commission also is proposing amendments to the registration form for mutual funds, and publishing for comment a staff guide to the registration form. These amendments modify the requirements for disclosing deferred sales loads in mutual fund prospectuses to reflect the changes made in the proposed rule amendments.

**DATES:** Comments must be received on or before April 17, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6–9, Washington, DC 20549. All comment letters should refer to File No. S7–8–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Nadya B. Roytblat, Staff Attorney, (202) 942–0693, or Robert G. Bagnall, Assistant Chief, (202) 942–0686, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 10–6, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is requesting public comment on proposed amendments to rule 6c–10 (17 CFR 270.6c–10) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Investment Company Act" or the "Act"), and on

proposed amendments to Form N-1A (17 CFR 239.15A, 274.11A) under the Securities Act of 1933 (15 U.S.C. 77a-77aa) (the "Securities Act") and the Investment Company Act.<sup>1</sup>

## **Executive Summary**

The Commission is proposing amendments to rule 6c-10 (17 CFR 270.6c-10) under the Investment Company Act to allow mutual funds to impose deferred sales loads other than contingent deferred sales loads ("CDSLs"), and to remove certain requirements in the rule. Rule 6c–10, which allows mutual funds to impose CDSLs, was adopted today in a companion release.<sup>2</sup> The proposed amendments would allow mutual funds to assess sales charges such as those paid at redemption ("back-end loads") that differ from CDSLs, as well as loads paid after purchase during the term of a shareholder's investment in a fund, for example, in installments ("installment loads"). These new forms of deferred sales load would be an alternative to the existing sales load structures. Although mutual funds to date have not used installment loads or back-end loads other than CDSLs, the Commission has permitted back-end loads under the rules for certain variable insurance products, and has issued installment load exemptive orders to separate accounts and unit investment trusts.

Rule 6c-10 provisions for back-end loads other than CDSLs and installment loads were part of proposed rule 6c–10 as originally proposed in 1988.3 That proposal would have codified for deferred sales loads generally the exemptions and the requirements in the CDSL exemptive orders granted to date. Rule 6c-10 was adopted today to allow CDSLs essentially as proposed. Some commenters on the original proposal suggested that, because mutual fund sales charges are regulated by the National Association of Securities Dealers, Inc. (the "NASD"), it is unnecessary for the Commission to impose specific requirements on deferred loads, other than requirements governing prospectus disclosure. The Commission is proposing amendments to rule 6c-10 to follow such an approach for CDSLs and other deferred loads by removing most of the

requirements in rule 6c–10. Under the new approach, the terms of any deferred sales load would be subject to specific disclosure requirements and would be covered by the overall limits in the NASD rule governing the amount of mutual fund sales charges ("NASD Sales Charge Rule"). The Commission also is proposing revised prospectus disclosure requirements that reflect the proposed changes to rule 6c–10.

## I. Background

The Commission first proposed rule 6c-10 allowing mutual funds to impose deferred sales loads on November 2, 1988.4 Under the 1988 proposal, mutual funds would have been able to assess deferred loads under the terms and conditions contained in CDSL exemptive orders granted to individual funds as of the date of the proposal. The proposed rule would have permitted mutual funds to charge not only CDSLs,5 but also loads paid at redemption whose amount remains the same or changes in a manner different than a CDSL, as well as loads paid in one or more installments during the term of a shareholder's investment in a fund. In accordance with the CDSL exemptive orders, the rule as proposed in 1988 would have specified load calculation requirements; prohibited deferred loads on reinvested distributions; and allowed scheduled load variations. Rule 6c-10 as adopted today to allow CDSLs contains these requirements.

The Commission received 33 comment letters on the 1988 proposal.<sup>6</sup>

<sup>&</sup>lt;sup>1</sup> Exemption for Certain Open-End Management Investment Companies to Impose Contingent Deferred Sales Loads, Investment Company Act Release No. 20916 (Feb. 23, 1995) [hereinafter Rule 6c–10 Adopting Release].

<sup>&</sup>lt;sup>2</sup> Supra note 1.

<sup>&</sup>lt;sup>3</sup> Exemptions for Certain Registered Open-End Management Investment Companies To Impose Deferred Sales Loads, Investment Company Act Release No. 16619 (Nov. 2, 1988), 53 FR 45275 [hereinafter 1988 Proposing Release].

<sup>&</sup>lt;sup>4</sup>1988 Proposing Release, *supra* note 3.

 $<sup>{}^{\</sup>scriptscriptstyle 5}\hspace{0.05cm} A$  CDSL is paid at redemption, but declines to zero if the shares are held for a certain period of time. Mutual funds typically impose a CDSL in combination with an asset-based distribution fee charged in accordance with rule 12b-1 under the Act [17 CFR 270.12b-1] ("rule 12b-1 fee"), in an arrangement commonly called a "spread load." Under this arrangement, a fund's principal underwriter initially pays the fund's sales and promotional expenses, including commissions to persons who sell the fund's shares. The underwriter then recovers these expenses through a distribution fee paid to it by the fund out of the fund's assets. Should a shareholder redeem his or her shares before the underwriter has been fully reimbursed, the CDSL paid by the shareholder upon redemption compensates the underwriter for the balance

<sup>&</sup>lt;sup>6</sup>The commenters included the American Bar Association Subcommittee on Investment Companies and Investment Advisers (the "ABA Subcommittee"); the American Council of Life Insurance; Deutsche Bank AG New York Branch ("Deutsche Bank") (commenting outside the comment period); Fidelity Management and Research Company; Gaston & Snow; IDS Financial Services, Inc. ("IDS Financial"); IDS Mutual Fund Group; the Investment Company Institute (the "ICI") (commenting both within and outside the comment period); the Keystone Group, Inc. ("Keystone"); the National Association of Securities Dealers, Inc.; NASL Financial Services, Inc. (commenting outside the comment period); NYLIFE