B. Dividend Reinvestment Shares

Shares issued in connection with dividend reinvestment plans ("DRIP shares") generally are not treated as ''sales'' of stock for purposes of registration requirements under the Securities Act, 14 and many funds typically do not include DRIP shares as 'sales'' for purposes of rule 24f-2. Some of these funds, however, include DRIP shares in determining the amount of shares redeemed during the fiscal year for purposes of rule 24f-2's netting provision. This method of counting shares is inconsistent with the purpose of the netting provision, which was intended to recognize that a substantial portion of shares being registered were issued to replace redeemed shares that had previously been registered under the Securities Act. 15

The Commission proposes to amend rule 24f-2 to require funds taking advantage of the rule's netting provisions to include DRIP shares when determining the amount of shares sold and redeemed during the fiscal year.16 This amendment would ensure consistent treatment of DRIP shares without imposing the recordkeeping burdens that might accompany a requirement that these shares be excluded from redeemed shares for purposes of rule 24f-2's netting provision. Comment is requested on alternative approaches that would prevent inconsistent treatment of DRIP shares under rule 24f-2's netting provisions. One approach would require funds to determine the ratio of DRIP shares issued during the period to shares sold in transactions registered under the Securities Act and to apply that ratio to determine the amount of redeemed shares that would be available under the rule's netting provision.

C. Mergers and Other Business Combinations

Paragraph (b)(3) of rule 24f–2 (17 CFR 270.24f–2(b)(3)) requires a fund planning to cease operations to file a post-effective amendment terminating the Rule 24f–2 declaration and file a

Rule 24f-2 Notice "before ceasing operations." In the case of investment company business combination transactions, especially those involving a liquidation, merger, or sale of assets, the operation of the rule is unclear. While in most cases operations cease upon consummation of the transaction, it may be impractical for the fund to file before the transaction since sales and redemptions may be occurring until the time of the transaction. In addition, paragraph (b)(3) is silent as to the applicability of the netting provisions of paragraph (c) when a fund files a Rule 24f-2 Notice in connection with ceasing operations.

The Commission is proposing to amend rule 24f-2 to delete the requirement that a fund file its final Rule 24f-2 Notice prior to ceasing operations and, in its place, provide that if a fund ceases operations, the date it ceases operations is the end of its fiscal year for purposes of rule 24f-2. As a result, a fund (or its successor) would have to file a final Rule 24f-2 Notice within 180 days after ceasing operations and pay registration fees on all shares sold during the fiscal year. If a fund files the Rule 24f–2 Notice within sixty days after ceasing operations, it would be permitted, under paragraph (c), to net redemptions made during the period after the end of the last fiscal year against sales during that period.17

For funds involved in certain business combination transactions, revised paragraph (b)(3) would specify that a fund ceases operations for purposes of rule 24f-2 on the date that the fund's assets are distributed in a liquidation, the effective date of a merger, or, when there has been a sale of all or substantially all of the fund's assets, the date those assets are transferred. The revised paragraph would also clarify that certain other transactionstransactions for the purpose of changing the fund's state of incorporation or form of organization—would not result in the company ceasing operations.18 Instead, under this type of reorganization the successor company would succeed to all assets and liabilities of the fund, including the registration fee liabilities (net of any redemption credits) under rule 24f–2.19

D. Calculation of Time Periods

The Commission is proposing to revise paragraphs (b)(1) and (c) of Rule 24f-2 to replace the "six month" and "two month" time periods with "180 day" and "60 day" time periods, respectively. The current rule's references to "months" has resulted in different periods depending upon the months involved and is inconsistent with the timing provisions in other Commission rules.20 This has, on occasion, caused some confusion among funds about determining filing deadlines. To further clarify how to calculate time periods, a new paragraph (e) would be added to the rule specifying that the first day of the time periods is the first calendar day of the fiscal year following the fiscal year for which the Rule 24f-2 Notice is filed. The Commission is proposing similar amendments to rule 24f-1, which permits funds with effective registration statements to file a notification that has the effect of registering shares sold in excess of the number of shares previously registered.21

III. Form 24F-2

Rule 24f–2 currently specifies the information which funds must include in a Rule 24f–2 Notice, but generally does not require that the information be presented in any particular format.²² The Commission believes that a standard form for Rule 24f–2 Notices will facilitate the calculation of fees due under rule 24f–2 and reduce errors in the calculation of filing fees. The Commission's ability to process Rule 24f–2 Notices and detect errors should also be improved by a standard form.

Proposed Form 24F–2 consists of twelve items.²³ The first four items

electronic filer may request an adjustment of the filing date, and the Commission, or the staff acting pursuant to delegated authority, may grant the request if it appears that such adjustment is appropriate. 17 CFR 232.13(b).

¹⁴ Securities Act Rel. No. 33–929 (July 29, 1936) (11 FR 10957).

¹⁵ See Investment Company Act Rel. No. 9819 (June 16, 1977)[42 FR 31781 (June 23, 1977)] (adopting the netting provision of rule 24e–2 under the Investment Company Act).

¹⁶ The proposed requirement would not affect the Commission's policy as stated in Securities Act Rel. No. 33–929 (Jul. 29, 1936); fund DRIP shares would be included as sales only for purposes of the netting provision of rule 24f–2.

¹⁷This approach is similar to that taken in rule 8f–1 under the 1940 Act (17 CFR 270.8f–1), which requires a registered investment company winding up its affairs or being merged into or consolidated with another investment company to file an application for an order declaring that the company has ceased to be a registered investment company after the transaction has occurred.

¹⁸ These transactions would be limited to those reorganizations under which the successor issuer is permitted to succeed to the registration statement of the fund under rule 414 of Regulation C of the Securities Act (17 CFR 230.414). This provision would codify a longstanding staff interpretation of rule 24f–2(b)(3). See, e.g., Lowry Market Timing Fund, Inc. (pub. avail. Jan. 9, 1985); Frank Russell Investment Company (pub. avail. Dec. 3, 1984).

¹⁹ Rule 414(b) (17 CFR 230.414(b)) requires that the succession result in the successor issuer acquiring all of the assets of and assuming all of the liabilities and obligations of the issuer. In combinations other than this type of reorganization, while the successor company would succeed to the fund's registration fee liabilities (as it would all other liabilities), it may only use the fund's redemption credits against the fund's registration fee liabilities—not those of the successor company.

fee liabilities—not those of the successor company ²⁰ See, e.g., rule 485 under the Securities Act (17 CFR 230.485).

²¹The six month time periods referred to in paragraphs (a) and (c) of the rule (17 CFR 270.24f–1(a), 270.24f–1(c)) would be changed to 180 days.

²² Paragraph (b)(1) of the rule currently specifies the information that must appear in a Rule 24f–2 Notice. Most of these items would be deleted from the rule if the form is adopted.

²³ The proposed Form also contains several instructions concerning completion and filing of the Form which incorporate provisions of the rule. For