

the public announcement by an issuer of a repurchase program is often followed by a rise in the issuer's stock price.<sup>109</sup> Studies have also shown that some issuers publicly announce repurchase programs, but do not purchase any shares or purchase only a small portion of the publicly disclosed amount.<sup>110</sup> Thus, disclosure of an issuer's actual repurchases will inform investors whether, and to what extent, the issuer had followed through on its original plan.<sup>111</sup> Investors also will have information regarding an issuer's repurchase activity in order to assess its possible impact on the issuer's stock price, similar to periodic disclosure of issuer earnings and dividend payouts.<sup>112</sup> Finally, investors also will be apprised of when an issuer

information prior to effecting any repurchases. See Proposed Rule 13e-2(d)(1). See 1980 Proposing Release, *supra* note 4, 45 FR at 70897. Issuers also would have been required to disclose this information to the exchange on which the stock was listed for trading or to the NASD if the stock was authorized for quotation on Nasdaq. See Proposed Rule 13e-2(d)(2). The Commission did not act on these proposals.

<sup>109</sup> See Comment, R. and Jarrell, G., "The Relative Signaling Power of Dutch-Auction and Fixed-Price Self-Tender Offers and Open-Market Share Repurchases," *Journal of Finance* 46 (1991), pp. 1243-71; Asquith, P. and Mullins, D., "Signaling with Dividends, Stock Repurchases and Equity Issues," *Financial Management* 15 (1986), pp. 27-44; Vermaelen, T., "Common Stock Repurchases and Market Signaling," *Journal of Financial Economics* 9 (1981), pp. 139-83; and Dann, L., "The Effects of Common Stock Repurchase on Security Holder's Returns," *Journal of Financial Economics* 9 (1981), pp. 101-138.

<sup>110</sup> *Id.* If an issuer announced a repurchase program, but had no intention to make purchases, it may violate the anti-fraud and anti-manipulation provisions of the federal securities laws.

<sup>111</sup> See, e.g., Ikenberry, David, et al., "Stock Repurchases in Canada: Performance and Strategic Trading," *Journal of Finance* 55 (October 2000), pp. 2373-97 (noting that the fraction of shares actually repurchased in connection with Canadian stock repurchase programs is surprisingly low, for example, at termination of the program, roughly a quarter of the firms did not repurchase any shares). Under Canadian law, issuers must report each month the number of shares they actually repurchase. *Id.*

<sup>112</sup> See, e.g., Grullon, G. and Ikenberry, D., "What Do We Know About Stock Repurchases," *Journal of Applied Corporate Finance* 13 (2000), pp. 31, 40-41 (discussing how corporations have been substituting repurchases for dividends, as economic equivalent means of returning excess capital to shareholders). Moreover, requiring such disclosure would be analogous to the requirement that corporate insiders disclose their own transactions involving the company's stock. See, e.g., *id.* at 48 (emphasizing the need to regulate consistently economically equivalent practices, the authors note that "[a]lthough firms repurchasing stock are not required to disclose any of their trades, if management makes the same decision on a personal account, details about the trades must be promptly disclosed to the SEC and then made public in short order"). See also Cook, Douglas et al., SEC Guidelines for Executing Open Market Repurchases," *The Journal of Business*, 2003, vol. 76, no. 2) (questioning the regulatory effectiveness of safe harbors without mandatory disclosure).

repurchase plan has expired, has been terminated, or when the issuer has determined not to make further purchases under a repurchase plan.

The importance of requiring disclosure of issuer repurchases was made more apparent when the Commission temporarily afforded emergency relief regarding Rule 10b-18 following the September 11, 2001 attacks.<sup>113</sup> The Commission's emergency action, which temporarily modified Rule 10b-18's timing and volume limitations, was designed to provide for potential additional liquidity in order to facilitate the reopening of the U.S. equities markets on September 17, 2001, and the continued orderly operation of the markets during the weeks following. However, because Rule 10b-18 does not require disclosure, it was difficult to assess precisely how much of the purchasing activity was attributable to issuer repurchases and how much was attributable to non-issuer trading activity. Requiring issuers to disclose their repurchases in their periodic reports will provide investors with important information regarding the company's purchasing activity. It also will provide the Commission with useful information in assessing the level and market impact of issuer repurchases, as well as in responding to future market emergencies.

Closed-end funds will provide the required disclosure regarding their repurchases semi-annually on Form N-CSR. We believe that, as with other issuers, additional disclosure regarding repurchases by closed-end funds will be useful to investors.<sup>114</sup>

We are eliminating the current requirement for closed-end funds to disclose information regarding privately negotiated repurchases of their securities on Form N-23C-1. One commenter noted that the current requirement would be duplicative, in light of the new disclosure required on Form N-CSR, and we agree.<sup>115</sup> Currently, closed-end funds are required to file Form N-23C-1 no later than the tenth day of the calendar month following the month in which the

purchase occurs.<sup>116</sup> Elimination of the requirement to file Form N-23C-1 will remove an unnecessary regulatory burden for closed-end funds and will apply a uniform disclosure requirement to closed-end funds and other issuers.<sup>117</sup>

We are also adopting a conforming technical amendment to Rule 23c-1 under the Investment Company Act. Currently, Rule 23c-1(a)(11) requires a closed-end fund to file a copy of any written solicitation to purchase securities under the rule sent or given during the prior month by or on behalf of the fund to 10 or more persons together with Form N-23C-1. Because we are eliminating Form N-23C-1, we are amending Rule 23c-1 and Form N-CSR to require closed-end funds to use Form N-CSR to comply with the requirement to file such a solicitation.<sup>118</sup>

## VII. Paperwork Reduction Act

The adopted amendments to Regulations S-K, S-B, Forms 10-Q, 10-QSB, 10-K, 10-KSB, 20-F, and N-CSR contain collection of information requirements within the meaning of the Paperwork Reduction Act of 1995.<sup>119</sup> We published a notice requesting comment on the collection of information requirements in the Proposing Release, and submitted these requirements to the Office of Management and Budget (OMB) for review. OMB has approved these requests. There is no collection of information requirement within the meaning of the Paperwork Reduction Act for Rule 10b-18.

Compliance with the adopted amendments to Regulations S-K, S-B, Forms 10-Q, 10-QSB, 10-K, 10-KSB, 20-F, and N-CSR will be mandatory. The Commission will not keep the information required by the amendments confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB

<sup>116</sup> Rule 23c-1(a)(11) under the Investment Company Act, 17 CFR 270.23c-1(a)(11); Form N-23C-1, 17 CFR 274.201. Of 125 Form N-23C-1 filings made during the year ending September 30, 2002, it appears that at least 37 of these filings were not required under Rule 23c-1 (no repurchases occurred in the prior month or repurchases on the open market).

<sup>117</sup> Closed-end funds will continue to be required to respond to Item 86 of Form N-SAR, 17 CFR 249.330; 17 CFR 274.101, which requires disclosure of the aggregate number of shares and net consideration paid for all repurchases and redemptions of a closed-end fund's common and preferred stock.

<sup>118</sup> Item 10(a)(3) of Form N-CSR; Rule 23c-1(a)(11) under the Investment Company Act.

<sup>119</sup> 44 U.S.C. 3501.

<sup>113</sup> See text accompanying *supra* note 93.

<sup>114</sup> See generally Thomas J. Herzfeld, *Market Shakeout Leads to Unprecedented Number of Share Buyback Announcements*, Investor's Guide to Closed-End Funds (Oct. 1998) (discussing actual buybacks after announcements and the use of buybacks to reduce closed-end fund discounts and noting that "many funds maintain the authorization to repurchase their own shares in the open market, but only a handful buy back significant numbers of shares").

<sup>115</sup> See comment letter from ICI.