

AMENDMENTS TO RULE 10b-18

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On November 10, 2003, the Securities and Exchange Commission adopted amendments to Rule 10b-18, a “safe harbor” rule that sets forth guidelines for issuers and “affiliated persons” that bid for and purchase the issuer’s common stock or equivalent interests.¹ Purchases made in accordance with the conditions of Rule 10b-18 will not be deemed to violate specified anti-manipulation provisions of the Securities Exchange Act of 1934 (the “Exchange Act”) solely by reason of the time, price or amount of the purchases, or the number of brokers or dealers used in connection with the purchases.

Rule 10b-18 was adopted in 1982. Since that time, there have been significant changes in the trading markets that were not contemplated at the time of the rule’s adoption. As a result, the rule either did not address some elements of the current trading markets, or addressed them using outdated definitions and concepts that made application of certain provisions of the rule unduly complicated or uncertain. In addition, application of the rule in certain contexts, such as during the pendency of a merger or similar transaction, was not well-defined. The amended rules generally reflect a laudable effort by the SEC to bring the safe harbor up to date. Somewhat more controversial, however, is the SEC’s determination to limit the rule’s exclusion of block purchases from the volume limitations of the rule, as explained in more detail below.

Background

In light of the strong interest that issuers have in the market price of their securities, the SEC has long been concerned about the possibility of an issuer manipulating the market for its own securities.

¹ Purchases of Certain Equity Securities by the Issuer and Others, Release No. 33-8335 (November 10, 2003) (the “Rule 10b-18 Amending Release”). Prior to the amendments, the Rule expressly covered transactions in an issuer’s common stock. The amendments clarify that the rule also covers “equivalent interests” to common stock, such as a unit of beneficial interest in a trust or limited partnership or a depository share. In addition, the Rule formerly defined separately a “Rule 10b-18 bid” and a “Rule 10b-18 purchase.” These definitions have been combined in the amended rule so that the term “Rule 10b-18 purchase” relates both to a purchase under the rule and any bid or limit order that would effect such purchase. See Rule 10b-18(a)(13).

There are a number of ways in which an issuer of securities can effect such manipulation. An issuer can employ multiple brokers to purchase securities on its behalf to create the appearance of widespread interest in the securities. An issuer also can purchase securities, at a price higher than the published bids or sales prices, to boost the price of its securities, or it can attempt to lead the market by initiating the opening or closing transactions. In addition, it can dominate the market for its securities through substantial purchasing activity, thereby misleading investors about the integrity of the securities market as an independent pricing mechanism.²

One of the statutory provisions designed to address this conduct is Section 9(a)(2) of the Securities Exchange Act of 1934 (the “Exchange Act”), which, among other things, generally prohibits a person from engaging in transactions in any security registered on a national securities exchange that create actual or apparent active trading in the security, or raise or depress the price of the security, for the purpose of inducing the purchase or sale of such security by others. In addition, Section 10(b) and Rule 10b-5 under the Exchange Act, which are the Exchange Act’s general antifraud provisions, have also been utilized by the SEC in addressing the manipulative activities described above.³

Rule 10b-18 generally provides a safe harbor from violations of Section 9(a)(2), Section 10(b) and Rule 10b-5 predicated solely on the time or price at which an issuer or an “affiliated purchaser” of the issuer⁴ purchases the issuer’s common stock (or equivalent interest), the amount of securities so purchased or the number of brokers or dealers used in connection with such bids or purchases if the issuer or the affiliated purchaser of the issuer meets the requirements of the rule. The rule has express limitations on the manner (i.e., the number of brokers that may be utilized to effect purchases), timing, price and volume of purchases. The effect of the amendments are addressed below.

² See the discussion in the Rule 10b-18 Amending Release, Section II.C.

³ Although Section 9(a)(2) technically applies only to exchange trading, courts have looked to the substantive provisions of Section 9 in analyzing whether conduct is manipulative in violation of Section 10(b) and Rule 10b-5.

⁴ An “affiliated purchaser” generally is (i) a person acting directly or indirectly in concert with the issuer for the purpose of acquiring the issuer’s securities or (ii) an affiliate who, directly or indirectly, controls the issuer’s purchases of such securities, whose purchases are controlled by the issuer or whose purchases are under common control with those of the issuer. See Rule 10b-18(a)(3). References to purchases by an issuer in this article include purchases by an affiliated purchaser.

The rule specifically applies to “Rule 10b-18 purchases.” As defined in the amended rule, a Rule 10b-18 purchase “means a purchase (or any bid or limit order that would effect such purchase) of an issuer’s common stock (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depositary share) by or for the issuer or any affiliated purchaser . . .”.⁵ The definition specifically excludes a number of specified purchase transactions. While the general nature of the excluded purchases has not changed, the SEC has provided additional clarity in respect of purchases made by an issuer during a period in which a merger or similar transaction is pending.

Purchases Covered by the Rule

Prior to the amendments, the definition of “Rule 10b-18 Purchase” excluded purchases effected “pursuant to a merger, acquisition or similar transaction involving a recapitalization” (referred to below as a “merger or other covered transaction”). However, the rule did not provide guidance as to the precise time at which the rule would no longer be available for purchases by an issuer engaged in such a transaction, or the point at which the rule would once again become available. The SEC amended this exclusion to clarify that the safe harbor will not be available for Rule 10b-18 purchases that are effected during the period from the time of the public announcement⁶ of a merger or other covered transaction

⁵ Rule 10b-18(a)(13). The SEC also added a provision to the definition of “Rule 10b-18 purchase” to clarify that it applies to “riskless principal transactions.” These are transactions that involve a broker-dealer’s market purchase, after receiving a buy order from the issuer, of issuer securities for the broker-dealer’s account and the issuer’s repurchase of the shares from the broker-dealer at the same price as the broker-dealer’s purchase price (exclusive of any explicitly disclosed markup or markdown, commission equivalent or other fee). The SEC noted that “the safe harbor should apply only to those riskless principal transactions where both legs [of the transaction] are effected at the same price and only one leg is reported to the market (e.g., transactions that would qualify for trade reporting under the NASD riskless principal trade-reporting rules, which require that only the first leg of the transaction be reported, and not the offsetting sale to the issuer), provided that this first leg of the transaction meets all of the conditions of Rule 10b-18.” Rule 10b-18 Amending Release, Section III.B.5. In addition, the broker-dealer must have policies to ensure that, at a minimum, the issuer’s buy order was received prior to the offsetting transaction; the offsetting transaction must have been allocated to a riskless principal account or the issuer’s account within 60 seconds of the execution; and the broker-dealer must have supervisory systems in place to produce records that enable the broker-dealer to accurately and readily reconstruct, in a time-sequenced manner, all orders effected on a riskless principal basis. All of these concepts are embodied in the definition of “riskless principal transaction” in Rule 10b-18(a)(12).

⁶ The rule utilizes the definition of “public announcement” set forth in Rule 165 under the Securities Act, namely, any oral or written communication by any participant that is reasonably designed to, or has the effect of, informing the public or security holders in general about the business combination transaction. Rule 10b-18 Amending Release, note 27.

until the earlier of the completion of the transaction or the completion of the vote by target shareholders.⁷

There are two exceptions to this exclusion. First, recognizing that cash mergers are unlikely to raise the manipulation concerns that could arise in a stock-for-stock transaction, the SEC included a provision in the rule stating that if the transaction involves solely cash consideration and there is no valuation period, then the rule will remain available for issuer purchases during the pendency of the transaction. In addition, the SEC also provided a concession to issuers that were effecting Rule 10b-18 purchases prior to the public announcement of the merger or other covered transaction. In that circumstance, the issuer may effect purchases under the rule, provided that the volume of purchases effected on a single day does not exceed the lesser of 25% of the security's four-week ADTV⁸ or the issuer's average daily Rule 10b-18 purchases during the three full calendar months preceding the date of the announcement of the transaction.⁹ Since this test involves the lesser of the two purchase amounts, an issuer that has not effected Rule 10b-18 purchases during the three full calendar month period prior to the public announcement will not be able to make any purchases under the rule during the period that purchases in connection with a merger or other covered transaction would otherwise be restricted. In addition, if the issuer effected block purchases in accordance with the rule, it may effect block purchases during the pendency of the merger or other covered transaction so long as such purchases do not exceed the average size and frequency of block purchases effected during the three full calendar months

⁷ If, following the vote by target shareholders, the market price of the security will be a factor in determining the consideration to be paid in the transaction, purchases may not again commence until that period is completed. Rule 10b-18 Amending Release, Section III.A.3.

⁸ ADTV means the average daily trading volume reported for the security during the four calendar weeks preceding the week in which the Rule 10b-18 purchase is to be effected (as discussed below, this amount may exclude certain block transactions). Rule 10b-18(a)(1). The 25% of the ADTV standard is a key component of the rule's volume limitations, discussed below.

⁹ Rule 10b-18(a)(13)(iv)(B)(1).

preceding the date of the announcement of such transaction.¹⁰ Here again, if the issuer did not effect any block purchases in reliance on the rule during the three full calendar months preceding the public announcement of the merger or other covered transaction, it may not effect Rule 10b-18 purchases during the pendency of the transaction.¹¹

Manner of Purchases

Number of Brokers or Dealers – As has always been the case under the rule, issuers generally are limited to using only one broker or dealer per day in connection with their Rule 10b-18 purchases. Amendments to this provision clarify that an issuer can effect a purchase through an electronic communication network (ECN) or another alternative trading systems (ATS) in connection with the one broker-dealer per day requirement. However, if an issuer uses an ECN or other ATS to effect Rule 10b-18 purchases, it may not effect Rule 10b-18 purchases through any other broker-dealer on the same day.¹² However, a non-ECN or ATS broker-dealer effecting transactions on behalf of an issuer may access an ECN or other ATS to execute purchases on behalf of the issuer.¹³

A significant revision to Rule 10b-18 involves new guidance with respect to after-hours trading (from the close of the primary trading session until the termination of the period in which last

¹⁰ Rule 10b-18(a)(13)(iv)(B)(2). In illustrating the application of this provision, the SEC articulated the following example:

[If an] issuer purchased three blocks over the course of the three full calendar months prior to a merger announcement (an average of one block per month) and the average block size was 7,800 shares, then the issuer could purchase a block no larger than 7,800 shares each month during the post-announcement period . . .

Rule 10b-18 Amending Release, note 38. Changes in the treatment of block purchases under the rule are discussed below.

¹¹ Moreover, an issuer may not utilize the exception if the purchase is otherwise restricted or prohibited (such as during Regulation M's one or five day restricted period). Rule 10b-18(a)(13)(iv)(B)(3).

¹² See Rule 10b-18 Amending Release, Section III.B.1. ECNs and ATSs are registered as broker-dealers.

¹³ Rule 10b-18(b)(1)(iii).

sale prices are reported in the consolidated system.)¹⁴ As part of this revision, and in recognition of the fact that it may not be possible to use the same broker for after-hours trading as was used during normal trading hours, the rule now permits an issuer to use one additional broker-dealer for after-hours trading.¹⁵

Time of Purchase – Prior to the amendments, Rule 10b-18 generally prohibited an issuer from effecting purchases at the opening or during the last one-half hour of trading on the relevant trading markets. The rule amendments continue to prohibit an issuer purchase that would constitute the opening purchase on the consolidated system. However, because transactions by issuers of highly liquid securities are less likely to influence market prices and volume, the SEC amended the rule to shorten the end of trading day limitation for such issuers from 30 minutes to 10 minutes. The issuers that are subject to the shortened restriction are those with an ADTV¹⁶ of \$1 million or more and a public float value (the aggregate market value of voting and non-voting common equity held by non-affiliates) of \$150 million or more. All other issuers would remain subject to the prohibition on trading during the last 30 minutes of trading. The last 10 minute or 30 minute restriction applies to the scheduled close of trading on the primary trading session both in the principal market for the security and in the market where the purchase is made.¹⁷

The rule amendments address timing limitations in connection with after-hours trading.¹⁸ Subject to the manner of sale limitation discussed above and the price limitations discussed below, an

¹⁴ The rule defines the “consolidated system” as a consolidated transaction or quotation reporting system that collects and publicly disseminates on a current and continuous basis transaction or quotation information in common equity securities pursuant to an effective transaction reporting plan (as defined in Rule 11Aa3-1 under the Exchange Act) or a national market system plan (as defined in Rule 11Aa3-2 under the Exchange Act). In effect, the consolidated system is a mechanism that consolidates in one data stream last sale reports from all United States securities markets that trade a particular security.

¹⁵ Rule 10b-18(b)(2)(iv).

¹⁶ See note 8.

¹⁷ Rule 10b-18(b)(2)(ii) and (iii).

¹⁸ In fact, although amendments to the rule address manner of sale, timing and price restrictions in connection with after-hours trading, all of the amended rule’s provisions relating to after-hours trading are included in the timing provision, which is contained in Rule 10b-18(b)(2).

issuer may repurchase its securities following the close of the primary trading session until the termination of the period in which last sale prices are reported in the consolidated system. However, the issuer's Rule 10b-18 purchase may not be the opening transaction of the session following the close of the primary trading session.¹⁹

Price of Purchases – Prior to the adoption of the amendments, Rule 10b-18 had a complicated structure governing the price at which issuers could repurchase their securities. These provisions have been greatly simplified and are designed to address changes in market structure during the 20 years since Rule 10b-18 was initially adopted.²⁰

As amended, the rule's pricing provisions are as follows:

- For issuer securities that are quoted or reported in the consolidated system, Rule 10b-18 purchases must be effected at a purchase price that does not exceed the greater of the highest independent bid or last independent transaction price at the time the Rule 10b-18 purchase is effected.
- For issuers whose securities are not quoted or reported in the consolidated system, Rule 10b-18 purchases must be effected a purchase price that does not exceed the greater of highest independent bid or the last independent transaction price displayed and disseminated or any national securities exchange or any inter-dealer quotation system that displays at least two priced quotations for the security, at the time the Rule 10b-18 purchase is effected.

¹⁹ Rule 10b-18(b)(2)(iv). The issuer can effect purchases until the termination of the period in which last sales prices are reported in the consolidated system. Rule 10b-18 Adopting Release, Section IV.

²⁰ The application of the price provisions prior to adoption of the amendments depended on whether the security was a "reported security," "exchange traded security," "Nasdaq security" or "other security," The SEC recognized that these categories were "outdated." Rule 10b-18 Amending Release, Section III.B.3.

- For issuers whose securities are not covered by the foregoing categories, the Rule 10b-18 purchase must be effected at a price that does not exceed the highest independent bid obtained from three independent dealers.²¹

The purchase price of issuer purchases during after-hours trading may be no greater than the lesser of the closing price of the primary trading session in the principal market for the security and any lower bids or sale prices subsequently reported in the consolidated system.²²

Volume of Purchases – Perhaps the most significant change effected by the SEC in amending Rule 10b-18 is the treatment of block purchases under the rule. Prior to the amendments, issuers of securities reported in the consolidated system or otherwise on a national securities exchange or Nasdaq were required to limit Rule 10b-18 purchases, other than block purchases, on any single day to the higher of (i) one round lot,²³ and (ii) the number of round lots closest to 25% of the trading volume for the security.²⁴ The term “block” means a quantity of stock that either: (i) has a purchase price of \$200,000 or more; (ii) is at least 5,000 shares and has a purchase price of at least \$50,000; or (iii) is at least 20 round lots of the security and totals 150% or more of the trading volume for that security. If trading volume data is unavailable, a “block” is at least 20 round lots of the security and totals at least one-tenth of one percent of the outstanding shares of the security, exclusive of any shares held by an affiliate. However, if a broker or dealer, acting as principal, has accumulated shares for the purpose of a sale or resale to the issuer or to any affiliated purchaser of the issuer, and the issuer or the affiliated purchaser knows or has reason to know that the shares were accumulated for that purpose, the shares will not be considered a “block.” In addition, a block will not include any amount of shares that a

²¹ Rule 10b-18(b)(3).

²² Rule 10b-18(b)(2)(iv).

²³ A round lot was defined as meaning 100 shares or other customary trading unit for a security. The rule, as amended, no longer contains this definition, although the term continues to be used in connection with the definition of the term, “block.”

²⁴ Under Rule 10b-18 prior to the amendments, the term “trading volume” was a complicated definition separately addressing the average daily volume during the four calendar weeks preceding a Rule 10b-18 bid or purchase of “reported securities,” “exchange traded securities” and “NASDAQ securities” that were not also “exchange traded securities.”

broker or dealer has sold short to the issuer or to any affiliated purchaser of the issuer, if the issuer or the affiliated purchaser knows or has reason to know that the sale was a short sale.²⁵

In the years following the adoption of Rule 10b-18, block purchases have grown in significance. The SEC noted that: “Block transactions today represent one-half of all market activity; accordingly, these transactions are not the exception, and they have a substantial impact on market prices.”²⁶ As a result, the SEC initially proposed to eliminate the block purchase exemption (although it also proposed to permit an issuer to include all block purchases in calculating its ADTV). As a result, the rule would have limited Rule 10b-18 purchases in any day to an amount equal to 25% of the ADTV (including block purchases) for the security.²⁷

All comment letters addressing the proposed elimination of the exemption opposed the proposal. The SEC however, was unconvinced: “We believe eliminating the current block exemption is essential if we are to maintain a limit on the amount of repurchase activity that is protected under the safe harbor.”²⁸ Nevertheless, the SEC did respond to concerns that eliminating the block exemption would make the rule largely unavailable to issuers that have relatively low ADTVs and therefore have relied heavily on the block purchase exemption to be able to effect Rule 10b-18 purchases. As amended, the rule permits issuers to make one block purchase per week, provided that the issuer makes no other Rule 10b-18 purchases on the day the block purchase is effected. In addition, issuer block purchases

²⁵ The definition of “block” was substantively unchanged by the amendments to Rule 10b-18. The definition is now included in Rule 10b-18(a)(5).

²⁶ Rule 10b-18 Amending Release, Section III.6.c. The SEC also cited a 2002 *Business Week* article reporting that many companies were spending more than half of their net income on buyback programs “intended to boost share prices.” Rule 10b-18 Amending Release, note 79 and accompanying text.

²⁷ To accommodate issuers of thinly traded securities, the SEC proposed to permit issuers to purchase up to 500 shares per day as an alternative to the 25% of ADTV volume limitation. In light of the limited accommodation regarding block trades discussed below, the SEC did not adopt this proposed alternative. Rule 10b-18 Amending Release, note 83.

²⁸ Rule 10b-18 Amending Release, Section III.6.c.

made in reliance on this provision may not be included when calculating the ADTV of the issuer's security for purposes of the rule.²⁹

Non-Applicability to Repurchases Outside of the United States - The SEC determined not to extend the safe harbor to repurchases effected of outside the United States. In this regard, ADTV calculations are also limited to transactions in the United States public markets.³⁰

Special Provisions Following Market-Wide Trading Suspension – Following the events of September 11, 2001, the SEC issued emergency orders temporarily increasing the rule's volume limitation from 25% to 100% of the security's ADTV. Recognizing "the extreme market volatility that would trigger a circuit breaker and the desirability of facilitating liquidity in that context," the SEC adopted amendments to the rule providing for an increase in the daily volume of Rule 10b-18 purchases from 25% to 100% of the security's ADTV during the trading session immediately following a market-wide trading suspension.³¹ In addition, limitations on the timing of purchases also would not apply from the reopening of trading until the scheduled close of trading on the same day if the suspension is lifted before the close of trading on that day. If the trading suspension lasts through the end of the trading day, the waiver of the timing of purchase conditions will be in effect from the opening of trading on the next trading day until the close of trading on that day. In other words, following a trading suspension, an issuer may effect the first purchase in reliance on the rule after the suspension is lifted (or at the opening of the next trading day if the suspension was not lifted until after the close of the market) and the issuer may continue to trade until the end of the session (i.e., the 10 minute or 30 minute prior to closing restriction would not apply).³²

²⁹ Rule 10b-18(b)(4). Block purchases that are made during any other trading date during the week will count towards the 25% of ADTV volume limitation, but may also be included in ADTV calculations for purposes of the rule.

³⁰ Rule 10b-18 Amending Release, Section III.A.4; Rule 10b-18 Amending Release, note 69.

³¹ Rule 10b-18(c)(2); Rule 10b-18 Amending Release, Section V.A. A market-wide trading suspension means a market-wide trading halt of 30 minutes or more that is (i) imposed under the rules of a national securities exchange or a national securities association in response to a market-wide decline during a single trading session or (ii) declared by the SEC pursuant to its authority under Section 12(k) of the Exchange Act. Rule 10b-18(a)(7).

³² Rule 10b-18(c)(1).

“Safe Harbor” Considerations – One of the more interesting aspects of the release is the SEC’s discussion of its policy considerations in adopting a “safe harbor,” particularly in the face of commentors’ unanimous disapproval of elimination of the block purchase exception to the volume limitations of Rule 10b-18. The SEC rejected the argument that there was an absence of evidence that block transactions are manipulative, adversely effect share prices, or are otherwise abusive, stating: “We believe that safe harbors should facilitate only those activities that clearly present no cause for regulatory concern. In the case of the block exception, there is cause for regulatory concern.”³³ Moreover, in discussing its rejection of certain commentors’ suggestions for additional flexibility in the context of mergers, acquisitions and similar transactions involving a recapitalization, the SEC noted that “issuers argue that they are reluctant to repurchase outside of the safe harbor.” Nevertheless, the SEC stated that it does “not find that argument sufficiently persuasive to make the safe harbor available where there is a heightened potential for issuer manipulation.”³⁴

The release is notable for the number of times that the SEC repeated a statement to the effect that issuers have the flexibility to effect transactions outside of the safe harbor.³⁵ It is possible, therefore, that issuers, though reluctant to effect transactions outside of the safe harbor, may give greater consideration to effecting such transactions, provided that there is sufficient comfort that a finding of manipulative abuse would not occur.

On a more general level, some issuers and others may reconsider whether or not adherence to safe harbors such as Rule 144 and Regulation S should be deemed mandatory (as has been the case for many issuers, despite the nature of those regulations as “safe harbors.”) Perhaps, based on the SEC’s very narrow articulation of the scope of activities covered by safe harbors (“only...those activities that

³³ Rule 10b-18 Amending Release, Section III.A.6.c.

³⁴ Rule 10b-18 Amending Release, Section 3.A.3. The SEC also stated that, “Rule 10b-18 is intended to protect issuer repurchases from manipulation changes when the issuer has no special incentive to interfere with ordinary forces of supply and demand affecting its stock price. Therefore, it is not appropriate for the safe harbor to be available when the issuer has a heightened incentive to manipulate its share price.

³⁵ Statements noting the ability of issuers to purchase outside of the safe harbor appeared no less than five times in the narrative portion of the release. Rule 10b-18(d) states that no presumption that an issuer or an affiliated person violated the anti-manipulation provisions of Section 9(a)(2), Section 10(b) or Rule 10b-5 will arise if purchases do not meet the applicable conditions of Rule 10b-18.

clearly present no cause for regulatory concern”), additional consideration may be given to a transaction outside of these safe harbors where the transactions could nevertheless be deemed not to raise the legal or regulatory concerns addressed by the safe harbors.

New Reporting Provisions – In addition to the amendments to Rule 10b-18, the SEC adopted new quarterly reporting provisions relating to issuer repurchases. Whether or not the purchases are effected under Rule 10b-18, issuers will be required to report, in their Forms 10-Q and 10-K, all repurchases (including repurchases made by any “affiliated purchaser”) of any class of the issuer’s equity securities registered under Section 12 of the Exchange Act.³⁶ If such purchases occurred during the quarter covered by a Form 10-Q or during the last quarter of the period covered by a Form 10-K, issuers must present information, in tabular form, for each month during quarterly period regarding the total number of shares purchased, the average price per share, and the total number of shares purchased as part of a publicly announced repurchase plan. In addition, the issuer must disclose the maximum number (or dollar value) of shares that may yet be purchased under publicly announced repurchase plans. The new requirements also call for additional footnote detail regarding publicly announced repurchase plans and transactions effected outside of such plans.

Conclusion

The amendments to Rule 10b-18 may well be deemed to be a mixed blessing. The scaling back of the block purchase exemption is an unfavorable development from the standpoint of issuers whose common stock is thinly traded. However, the SEC’s repeated advice that issuers have the flexibility to purchase outside of the safe harbor without a presumption of manipulation is somewhat helpful. Moreover, the SEC’s revisions to update many provisions of the rule and provide clarity and additional guidance in the application of several provisions is a positive development that should be viewed favorably by (particularly larger) issuers.

³⁶ Item 703 of Regulation S-K; Form 10-K, Item 5(c); Form 10-Q, Item 2(e). See also Preliminary Note 2 to Rule 10b-18. Foreign private issuers will be required to provide this information on an annual basis on Form 20-F. Closed-end investment companies will be required to provide this information semi-annually on Form N-CSR.