(v) Alternate procedure for filing Declaration—(1) Scope. An alternate procedure for filing Declarations covering general license shipments (other than temporary exports made under the provisions of General License GTX) § 371.23 of this subchapter) via aircraft or vessel to destinations in Country Group 1, V, or X is established, under which such a Declaration may be delivered to the exporting carrier or his shipping agent at the port of export, or to a domestic airline at or near the point of origin of the cargo, without first having been authenticated by the customs office.

PART 387—ENFORCEMENT

In § 387.11, paragraph (c) is amended to read as follows:

§ 387.11 Recordkeeping.

(c) Records to be kept. The records to be kept pursuant to this § 387.11 shall include memoranda, notes, correspondence, books, export control documents, and other written matter pertaining to the transactions described in paragraph (a) of this section, which may be made or obtained by a person described in paragraph (b) of this section. In addition to the records required to be kept by this § 387.11, the provisions of §§ 382.3, 371.22, 372.1, 372.5, 372.6, 372.9, 372.41, 373.5, 373.5, 373.7, 373.6, 374.1, 370.8, 370.10, 370.2, 370.5, 370.6, and 386.5 of the Export Control Regulations of this subchapter require certain records to be made and kept by persons in the United States or abroad in connection with export transactions. The revocation or revision of any such provision of the Export Control Regulations which requires the making and keeping of records shall not be retroactive in effect unless specifically provided and shall not affect the original requirement to keep such records for the prescribed period.

[FR Doc. 70-17590; Filed, Dec. 30, 1970; 8:49 a.m.]

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Assignment of Functions to Director of Division of Corporation Finance

The Securities and Exchange Commission has amended § 200.18 of Title 17 of the Code of Federal Regulations. This section relates to the assignment of function to the Director of the Commission's Division of Corporation Finance. The amendment authorizes that Division to institute injunctive proceedings arising under sections 13, 16(a), and 16(d) of the Securities Exchange Act of 1934 with the General Counsel retaining supervision over civil litigation. This has been done because it is believed that the Division of Corporation Finance by reason of its familiarity with the facts involved in a particular case is in a position to proceed expeditiously and efficiently with the institution and prosecution of injunctive proceedings. The change will also serve to lighten, somewhat, the workload of the Office of General Counsel. Section 200.18 has also been further amended to clarify the Division's functions with reference to sections 12(g), 14(e), and 15(c) of the Act.

The Commission reemphasizes the necessity for timely compliance by issuers and others with the periodic reporting requirements of the Securities Exchange Act.

Commission action. Section 200.18 of Chapter II of Title 17 of the Code of Federal Regulations is hereby amended as follows:

§ 200.18 Director of the Division of Corporation Finance.

(b) All matters, except those pertaining to Investment companies registered under the Investment Company Act of 1940, arising under the Securities Exchange Act of 1934 in connection with:

(1) The registration of securities pursuant to section 12.

(2) The examination and processing of periodic reports filed pursuant to sections 13 and 15(d).

(c) All matters relating to the examination and processing of statements of beneficial ownership of securities and changes in such ownership filed under section 16(a) of the Securities Exchange Act of 1934, section 17(a) of the Public Utility Holding Company Act of 1935 and section 30(c) of the Investment Company Act of 1940.

(d) The examination and processing of proxy and information material filed under the Public Utility Holding Company Act of 1935 and subject to Regulation 14A (sections 240.14a-1 to 240.14a-12 of this chapter) or Regulation 14C (sections 240.14c-1 to 240.14c-7 of this chapter) issued under the Securities Exchange Act of 1934.

(e) All matters except those pertaining to Investment companies registered under the Investment Company Act of 1940, arising under the Trust Indenture Act of 1939.

The Commission finds that the foregoing amendment involves matters of agency organization, procedure or practice and that notice and procedure pursuant to 5 U.S.C. 553 are not required.

By the Commission, December 21, 1970.

[Seal] ORVAL L. DUHON, Secretary.

[FR Doc. 70-17598; Filed, Dec. 30, 1970; 8:49 a.m.]

PART 211—INTERPRETATIVE RELEASES RELATING TO ACCOUNTING MATTERS (ACCOUNTING SERIES RELEASES)

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND RULES AND REGULATIONS THEREUNDER

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND RULES AND REGULATIONS THEREUNDER

PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND RULES AND REGULATIONS THEREUNDER

Accounting for Investment Securities by Registered Investment Companies

The Securities and Exchange Commission today announced the publication of its views relating to some of the more important questions concerning the accounting by registered investment companies for income and gains and financial statements and in the periodic computations of net asset value for the purpose of pricing their shares. The questions relate both to the amounts at which
investment securities should be carried and to the circumstances under which individual securities may be included among the assets. This release discusses certain accounting matters in order to give additional guidance to the management of investment companies, as well as certain related auditing procedures which are considered appropriate for the guidance of independent auditors. A release described as part of an independent auditor's report on October 21, 1969 on the specific subject of the problems relating to so-called "restricted securities," i.e., those which must be registered under section 8 of the Securities Act of 1933 prior to public sales, and the discussion of valuation herein does not alter any of the special considerations applicable to such securities as discussed in that release.

The statements of assets and liabilities of established and acceptable practice securities other than those required by Rule 6-02-1 (17 CFR 210.6-02-1) and (b). To the extent that any obligations in respect of the required basis for computing independent of directors • • • , "value" is defined in pertinent part as: (I) With respect to securities for which market quotations are readily available, the market value of such securities; and (II) with respect to other securities and assets, fair value or determined good faith based on "• • • ." This definition is also used in Rule 2a-4 (17 CFR 270.2a-4) under the Act as the fair basis for computing independent of the provisions of the Investment Company Act, the certificate of the company's independent accountant in the course of an audit by inspection of such securities or by obtaining confirmation from a custodian which maintains the securities in custody pursuant to clause (1) of section 17(f) of the Act. When securities contracted to be purchased but not yet received are included in the statement of assets and liabilities, confirmation of the contract to purchase should be obtained from the broker, or other person responsible for the delivery of such securities. Where satisfactory confirmation has been received, audit procedures normally need not be extended to obtain evidence of subsequent receipt of the securities by the company or its custodian unless additional substantiation is considered necessary by the independent accountant under the circumstances. Where satisfactory confirmation has not been received, subsequent receipt of such securities should be substantiated by other appropriate procedures.

In accordance with section 30(c) of the Act, the certificate of the company's independent accountant should include a brief statement concerning the substantiation of securities owned. Except for securities contracted to be purchased but not received, the certificate should state that the securities were either inspected by the independent accountant or, where the company's securities were maintained in custody pursuant to clause (1) of section 17(f) of the Act, were confirmed to him by the custodian. In the case of securities contracted to be purchased but not received by the company or its custodian, reference should be made to confirmation by banks, brokers, or others to the extent necessary for such transactions, as appropriate in the circumstances.

Valuation of securities. Under Rule 6-02-5 (17 CFR 210.6-02-5) of Regulation S-X, the statement of assets and liabilities of open-end investment companies must reflect all assets at value, showing cost parenthetically, while closed-end investment companies must either show this basis or to reflect all assets at cost, showing value parenthetically.

"Value" is defined in section 2(a)(39) of the Act. For purposes of determining the amounts at which securities and other assets are carried in the statements of assets and liabilities included in annual and other reports and in registration statements filed by investment companies, "value" is defined in pertinent part as: (I) With respect to securities for which market quotations are readily available, the market value of such securities; and (II) with respect to other securities and assets, fair value or determined good faith based on "• • • ." This definition is also used in Rule 2a-4 (17 CFR 270.2a-4) under the Act as the fair basis for computing independent of the provisions of the Investment Company Act, the certificate of the company's independent accountant in the course of an audit by inspection of such securities or by obtaining confirmation from a custodian which maintains the securities in custody pursuant to clause (1) of section 17(f) of the Act. When securities contracted to be purchased but not yet received are included in the statement of assets and liabilities, confirmation of the contract to purchase should be obtained from the broker, or other person responsible for the delivery of such securities. Where satisfactory confirmation has been received, audit procedures normally need not be extended to obtain evidence of subsequent receipt of the securities by the company or its custodian unless additional substantiation is considered necessary by the independent accountant under the circumstances. Where satisfactory confirmation has not been received, subsequent receipt of such securities should be substantiated by other appropriate procedures.

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investment securities should be carried and to the circumstances under which individual securities may be included among the assets. This release discusses certain accounting matters in order to give additional guidance to the management of investment companies, as well as certain related auditing procedures which are considered appropriate for the guidance of independent auditors. A release described as part of an independent auditor's report on October 21, 1969 on the specific subject of the problems relating to so-called "restricted securities," i.e., those which must be registered under section 8 of the Securities Act of 1933 prior to public sales, and the discussion of valuation herein does not alter any of the special considerations applicable to such securities as discussed in that release.

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prices are available, the valuation in such circumstances should be within the range of these quoted prices. Some companies as a matter of general policy use the bid price, others use the mean of the bid and asked prices, and still others use a valuation within the range considered best. In all cases it is a matter of fair value in the circumstances; each of these policies is acceptable if consistently applied. Normally, it is not acceptable to use the asked price alone. Where, on the valuation date, only a bid price or an asked price is quoted or the spread between bid and asked prices is substantial, quotations for several days should be reviewed. If sales have been infrequent or there is a thin market in the security, further consideration should be given to whether security should be quoted as "not readily available." If it is decided that they are not readily available, the alternative method of valuation prescribed by section 2(a)(3) of the Act ("fair value as determined in good faith by the board of directors") should be used.

Over-the-counter securities. Quotations are available from various sources for most unlisted securities traded regularly in the over-the-counter market. These sources include tabulations in the financial press, publications of the National Quotation Bureau and the "Blue List" of municipal bond offerings, several financial reporting services, and individual broker-dealers. These quotations generally are in the form of inter-dealer bid and asked prices. Because of the availability of multiple sources, a company frequently has a greater number of options open to it in valuing securities than it does with a thinly traded security. The circumstances of each individual case. As a general principle, the current "fair value" of an issue of securities would appear to be the amount which the owner might reasonably expect to receive for them upon their current sale. Methods which are used in accord with this principle may, for example, be based on a multiple of earnings, or a discount from market of a similar freely traded security, or the fair value of the debt issues, or a combination of these and other methods. Some of the general factors which the directors should consider in determining a valuation method for an individual issue of securities include: (1) the fundamental analytical data relating to the investment, (2) the nature and duration of restrictions on disposition of the securities, and (3) an evaluation of the forces which influence the market in which these securities are purchased and sold, plus the more specific factors which are to be considered are: type of security, financial statements, costs at date of purchase, size, or by its fillings with the Commission. If such restrictions are met by a narrow margin, the independent accountant may need to exercise extra care in satisfying himself that the evidence indicates that the security valuation determinations were not biased to meet those restrictions.

Investments in affiliates or affiliated persons. Various rules of Regulations S-X (17 CFR Part 210) require that the financial statements of an investment company state separately investments in, investment income from, gain or loss on sales of securities of, and management or other service fees payable to, (a) controlled companies and (b) other "affiliates." As stated in Rule 6-02-4 (17 CFR 210.6-02-4) of Regulation S-X, the term "affiliate" means an affiliated person as defined in section 2(a)(3) of the Act, and the term "control" has the meaning given in section 2(a) (9) of the Act. The term "affiliated person" is defined in section 2(a)(9) of the Act, and in such a manner as to encompass such control relationships and also the direct or indirect ownership of 5 percent or more of the outstanding voting securities of any issuer. An affiliated person as defined also includes any officer, director, partner, copartner, or employee of, or with respect to any company, any investment advisor or member of an advisory board thereof.

The release does not purport to delineate all factors which may be considered. The directors should take into consideration all indications of value available to them in determining the "fair value" assigned to a particular security. The directors should consider together with, to the extent practicable, judgment factors considered by the board of directors in reaching its decision, all appropriate factors relevant to the value of securities for which market quotations are not readily available. The valuation should be documented in the minutes of the directors' meeting and the supporting data retained for the inspection of the company's independent accountant.
In ascertaining the existence of any such affiliations, the independent accounting matters; and his working papers should include written representations from the management as evidence of such inquiries. The representations should be in the form of a statement that the company, except to the extent indicated, (i) does not own any securities either of persons who are directly affiliated, or, to the best information and belief of management, of persons who are indirectly affiliated, (ii) has not received income from or realized gain or loss on sales of investments in or indebtedness of such persons, (iii) has not incurred expenses for management or other service fees payable to such persons, and (iv) has not otherwise engaged in transactions with such persons. Where there is a question as to the existence of an affiliation, a written opinion of legal counsel should be obtained by the company’s management, made available to the independent accountant, and a copy included in the working papers.

Regulation S-X (17 CFR Part 210) requires disclosure in the financial statements or notes thereto of details of such investments and transactions.

By the Commission, December 23, 1970.

Orval L. Dubois, Secretary.

[FED. Reg. 70-77557; Filed, Dec. 30, 1970; 8:48 a.m. —]

[Release Nos. 46-5847, AS-118]

PART 211—INTERPRETATIVE RELEASERELATING TO ACCOUNTING MATTERS (ACCOUNTING SERIES RELEASES)

PART 217—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND RULES AND REGULATIONS THEREUNDER

Restricted Securities

The Securities and Exchange Commission today made public the following statement.

"Restricted securities", the Commission is aware that many investment companies have been acquiring substantial quantities of securities that cannot be offered to the public for sale without being registered under the Securities Act of 1933 ("restricted securities"). For the year 1968, annual reports filed by registered investment companies indicate that open-end and closed-end companies together held in excess of $2.3 billion of restricted equity securities. Open-end companies—excluding exchange funds—accounted for about $3.2 billion of these restricted securities which represented 4.4 percent of their total net asset values. The acquisition by investment companies of such securities raises certain problems under the securities laws of which share-

holders, distributors, managers and directors of these companies should be aware. To assist in their solution, the Commission is aWjXe that many investment companies are now making public the following statement.

Problems for the seller. Section 4(2) of the Securities Act of 1933 exempts from the registration requirements of that Act "transactions by an issuer not involving any public offering." This is the so-called "private offering" provision in the Securities Act. The securities involved in transactions effected pursuant to this exemption are referred to as restricted securities because they cannot be resold to the public without prior registration.

The private offering exemption of section 4(2) of the Securities Act is available only where the offeree does not need the protections afforded by the registration procedure. As the Court of Appeals for the Second Circuit recently stated in Katz v. Amos Treat & Co., CCH Fed'1. Sec. Law Rep. paragraph 92,409 (1969):

"The Supreme Court has instructed that the applicability of the exemption to a sale should be determined by the facts of the particular case. While a perusal of the purchase order, the invoice or the investment letter or whatever the particular class of persons affected need the protection of the Act, SEC v. Reliance Pubco, Co., 466 F.2d 110, 119 (2d Cir. 1972).

The test of the availability of the section 4(2) exemption is whether the offeree is in such a position with respect to the issuer as to have access to the kind of information that would be made available in a registration statement filed pursuant to the Securities Act. This test is no different when the offeree is an investment company."

Problems for the buyer—1. The problems of valuation. It is critically important that an investment company properly value its portfolio securities. It is obvious, for example, that any distortion in the valuation of a restricted security held by an investment company will distort the price at which the shares of the investment company are sold or redeemed. It is also clear that investment managers who are compensated on the basis of net asset value or performance may be unduly compensated if a restricted security, purchased at a discount from the market quotation for unrestricted securities of the same class, is overvalued. In such a case, investors may also be misled by the reported performance of the investment company.

The acquisition of restricted securities by an investment company creates serious problems of valuation. Section 2(a)(39) of the Investment Company Act of 1940 and Rule 2a-4 (17 CFR 270.2a-4) thereunder requires that in determining net asset value, "securities for which market quotations are readily available" must be valued at current market value while other securities and assets must be valued at "fair value as determined in good faith by the board of directors."

Readily available market quotations refer to reports of current public quotations for securities similar in all respects to the securities in question. No such current public quotations can exist in the case of restricted securities. For valuation purposes, therefore, restricted securities constitute securities for which market quotations are not readily available. Accordingly, their fair values must be determined in good faith by the board of directors and this obligation necessarily continues throughout the period those securities are retained in the company's portfolio.

Restricted securities should be included in the portfolio of a company and valued to the nearest whole dollar at the net asset value on the date that the investment company has an enforceable right to demand the securities from the seller.

Where the investment company negotiates the acquisition of restricted securities directly with the owner of the securities, there are three significant dates. The first occurs when the investment company and the seller agree upon the price and the amount of the securities (the "handshake date"). At this point, there would not seem to be any enforceable right of the investment company to demand the securities from the seller since, in most States, particularly those which have adopted the Uniform Commercial Code, there is no enforceable right unless there exists some writing "sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price" (section 3-319(a) of the Uniform Commercial Code). If the terms of the oral understanding do not contemplate compliance with any condition by the seller, it is suggested that the investment company procure, from the seller, a signed memorandum forth the price and quantity of securities to be sold. Upon receipt of that memorandum, an enforceable right would be obtained. The securities should be valued as of that date.

In those situations where the oral understanding contemplates the execution of a formal contract of purchase and sale, no enforceable right exists until the time the formal contract is signed (the "contract date"). If the formal contract does not require compliance with any condition by the seller, an enforceable right is then obtained, and the securities should be valued as of that date.

Where a formal contract requires compliance with stated conditions by the investment company believes should not be waived, no enforceable right is obtained until the stated conditions are satisfied. The closing date should be the date upon which the conditions are satisfied (the "closing date").

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