

CHILE FUND INC
Form 40-APP/A
December 03, 2009

File No. 812-13676

Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the First Amended and Restated Application
Of
THE CHILE FUND, INC.
AND

ABERDEEN ASSET MANAGEMENT INVESTMENT SERVICES LIMITED

c/o Aberdeen Asset Management Inc.
1735 Market Street 32nd Floor
Philadelphia, Pennsylvania 19103

FIRST AMENDED AND RESTATED APPLICATION FOR AN ORDER PURSUANT TO
SECTION 6(c) OF THE INVESTMENT COMPANY ACT OF 1940 FOR EXEMPTION
FROM SECTION 19(b) OF SUCH ACT AND RULE 19b-1 THEREUNDER

December 3, 2009

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UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of : FIRST AMENDED AND RESTATED
 : APPLICATION FOR AN ORDER PURSUANT TO
THE CHILE FUND, INC. : SECTION 6(c) OF THE INVESTMENT COMPANY
 : ACT OF 1940 (THE "ACT") FOR EXEMPTION
ABERDEEN ASSET MANAGEMENT : FROM SECTION 19(b) OF THE ACT AND RULE
INVESTMENT SERVICES : 19b-1 THEREUNDER
LIMITED :
 : File No. 812-13676
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The Chile Fund, Inc. (the "Chile Fund") and Aberdeen Asset Management Investment Services Limited ("Aberdeen" together with the Chile Fund, the "Applicants") hereby submit this First Amended and Restated Application for an order (the "Order") of the Securities and Exchange Commission (the "Commission") pursuant to Section 6(c) of the Act providing the Chile Fund and each registered closed-end investment company currently advised or to be advised in the future by Aberdeen (including any successor in interest)¹ or by an entity controlling, controlled by or under common control (within the meaning of Section 2(a)(9) of the Act) with Aberdeen² that decides in the future to rely on the Order (such investment companies, together with the Chile Fund, are the "Funds," and individually, a "Fund")³ an exemption from the provisions of Section 19(b) of the Act and Rule 19b-1 thereunder, as more fully set forth below.

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- 1 A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.
- 2 Such investment advisers, together with Aberdeen, are referred to herein as the "Advisers." Each Adviser will be registered with the Commission under the Investment Advisers Act of 1940.
- 3 Any Fund that relies on the Order will comply with the terms and conditions of this application. The only registered closed-end investment company that currently intends to rely on the Order is named as an Applicant.

I. Description of Applicants

The Chile Fund is a closed-end management investment company registered under the Act. The Chile Fund is organized as a Maryland corporation. As of December 31, 2008, the Chile Fund had \$112,361,973 in total net assets and 10,167,060 shares of common stock outstanding. The Chile Fund seeks total return, consisting of capital appreciation and income, by investing primarily in Chilean equity and debt securities. The common stock of the Chile Fund is listed on the NYSE Amex. Although the Chile Fund has not issued preferred stock, the board of directors of the Chile Fund (the “Chile Fund Board”) or of another Fund⁴ may authorize the issuance of preferred stock in the future. Aberdeen, an investment adviser registered under the Investment Advisers Act of 1940 and regulated in the United Kingdom by the Financial Services Authority, serves as the investment adviser to the Chile Fund. The Chile Fund has entered into an advisory agreement with Aberdeen pursuant to which Aberdeen provides investment advisory and portfolio management services to the Chile Fund and is responsible for its overall management.⁵ Aberdeen is a direct wholly owned subsidiary of Aberdeen Asset Management PLC (“Aberdeen PLC”). Aberdeen PLC is the parent company of an asset management group managing assets for both institutional and retail clients from offices around the world. As of September 31, 2009, Aberdeen PLC had approximately \$233.8 billion in assets under management.

4 The Chile Fund Board or the board of directors or board of trustees, as the case may be, of a Fund is referred to herein as the “Board.”

5 Prior to July 1, 2009, the date upon which the investment advisory agreement with Aberdeen became effective, Credit Suisse Asset Management, LLC acted as the investment adviser to the Chile Fund pursuant to an advisory agreement. The Chile Fund has also entered into a sub-advisory agreement with Celfin Capital Servicios Financieros S.A. (“Celfin”) pursuant to which Celfin acts as a sub-adviser to that Fund.

II.

Relief Requested

Section 19(b) of the Act provides that it shall be unlawful in contravention of such rules, regulations, or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors for any registered investment company to distribute long-term capital gains, as defined in the Internal Revenue Code of 1986, as amended (the “Code”), more often than once every twelve months. Rule 19b-1 under the Act provides that no registered investment company which is a “regulated investment company” as defined in Section 851 of the Code shall make more than (i) one “capital gain dividend”, as defined in Section 852(b)(3)(C) of the Code, with respect to any one taxable year of the company, (ii) one additional capital gain distribution made in whole or in part to avoid payment of excise tax under Section 4982 of the Code plus (iii) one supplemental “clean-up” capital gain dividend otherwise permitted by the Rule or pursuant to Section 855 of the Code, which amount may not exceed 10% of the total amount distributed for the year.

The Applicants believe that Rule 19b-1 should be interpreted to permit a Fund to pay an unlimited number of distributions on its common and any preferred stock so long as it makes the designation necessary under the Code and Rule 19b-1 to transform such distributions into “capital gain dividends” restricted by Rule 19b-1 only as often as is permitted by Rule 19b-1, even if the Code would then require retroactively spreading the capital gain resulting from such designation over more than the permissible number of distributions. However, in order to obtain certainty for the Chile Fund’s proposed distribution policy and distribution policies that may be adopted by other Funds in the future (each, a “Plan”), in the absence of such an interpretation, Applicants hereby request an Order pursuant to Section 6(c) of the Act (see below) granting an exemption from Section 19(b) of the Act and Rule 19b-1 thereunder. The Order would permit each Fund to make periodic capital gain dividends (as defined in Section 852(b)(3)(C) of the

Code), as often as monthly in any one taxable year in respect of its common stock and as often as specified by or determined in accordance with the terms thereof in respect of its preferred stock, if any.

Although Applicants do not currently contemplate implementing a Plan for any preferred stock that may be authorized and issued in the future, the Funds may wish to do so in the event of such future issuance. To retain this flexibility and avoid having to seek additional exemptive relief in the future, Applicants are requesting relief pursuant to Section 6(c) of the Act from the provisions of Section 19(b) of the Act and Rule 19b-1 thereunder to permit a Fund to make periodic long-term capital gains distributions (as described in Section 852(b)(3)(C) of the Code) on any series of its preferred stock. Such distributions would be made as often as are specified in or pursuant to the terms of such series so long as such Fund maintains in effect a Plan with regard to such series of its preferred stock of a specific percentage of liquidation preference of such series of preferred stock, whether such specified percentage is determined at the time the preferred stock is initially issued, pursuant to periodic remarketing or auctions or otherwise.

On June 25, 2009, the Chile Fund Board adopted a Plan with respect to the Chile Fund's common stock (the "Chile Fund Plan") as described in Section III of this Application. At such meeting, the Chile Fund Board, including a majority of the members who are not "interested persons" as defined in Section 2(a)(19) of the Act ("Independent Directors"), found that adoption of the Chile Fund Plan was in the best interests of the Chile Fund's common stockholders. The purpose of the Chile Fund Plan is to permit the Chile Fund to distribute over the course of each year an amount closely approximating the total return of the Chile Fund during such year.

The minimum annual distribution rate under the Chile Fund Plan will be independent of the Chile Fund's performance in any particular period. Except for extraordinary distributions and except for potential increases in the final period (final two periods in the case of pay-out policies that pay more often than quarterly) in light of the Chile Fund's performance for the entire calendar year and to enable the Chile Fund to comply with the distribution requirements of Subchapter M of the Code for the calendar year, each distribution on the common stock would be at the stated rate then in effect, subject to the ability of the Chile Fund Board to change the distribution rate from time to time if it determines that such change is in the best interests of the Chile Fund and its stockholders.

III. Representations of the Applicants

At a meeting of the Chile Fund Board held on June 24-25, 2009, the Chile Fund Board considered the Chile Fund Plan, and the Chile Fund Board, including a majority of the Independent Directors:

- A. Adopted the Chile Fund Plan to make periodic distributions in respect of the Chile Fund's outstanding common stock, based upon a fixed percentage of the net asset value per share ("NAV"). The rate of distribution under the Chile Fund Plan was determined by the Chile Fund Board after consideration of circumstances then existing including, among other things, market conditions and the Chile Fund's discount or premium relative to NAV;
- B. Requested and evaluated, and Aberdeen furnished, such information as the Chile Fund Board believed was reasonably necessary for an informed determination that the Chile Fund Plan should be adopted and implemented;
- C. Determined that adoption and implementation of the Chile Fund Plan was consistent with the Chile Fund's investment objectives and policies and in the best interest of the Chile Fund and its stockholders after considering the information in Item B above, including, without limitation: (a) the purpose(s) of the Chile Fund Plan as stated above in Section II

of this Application; (b) any potential or actual conflicts of interest that Aberdeen, any affiliated person of Aberdeen, or any other affiliated person of the Chile Fund may have relating to the adoption or implementation of the Chile Fund Plan; (c) whether the rate of distribution under the Chile Fund Plan will exceed the Chile Fund's expected total return (in relation to NAV); and (d) the reasonably foreseeable material effects of the Chile Fund Plan on the Chile Fund's long-term total return (in relation to market price and NAV).

Prior to implementing the Chile Fund Plan, the Chile Fund Board will adopt compliance policies and procedures in accordance with Rule 38a-1 under the Act (the "19(a) Monitoring Procedures") that:

1. are reasonably designed to ensure that all notices required to be sent to the Chile Fund's stockholders pursuant to Section 19(a) of the Act, Rule 19a-1 thereunder and condition D below (each a "19(a) Notice") include the disclosure required by Rule 19a-1 and by condition B.1 below, and that all other written communications by the Chile Fund or its agents, as described in condition C below, about the distributions under the Chile Fund Plan include the disclosure required by condition C as set forth under Section V ("Applicants' Conditions") below.
2. require the Chile Fund to keep records that demonstrate compliance with all of the conditions of the Order and that are necessary for the Chile Fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its 19(a) Notices.

The information under Paragraphs A through C above will be recorded along with the information that the Chile Fund Board considered and the basis for its approval of the Chile Fund Plan in the Chile Fund Board's meeting minutes. The records of the actions of the Chile Fund

Board will include its approval and adoption of the 19(a) Monitoring Procedures. Such records must and will be made and preserved for a period of not less than six years from the date of such meetings, the first two years in an easily accessible place, or for such longer period as may otherwise be required by law.

In order to rely on the Order, a Fund must satisfy each of the foregoing representations except that such representations will be made in respect of actions by the Board of such Fund and will be made at a future time, and except that the purpose of its Plan may differ from the purpose of the Chile Fund Plan in that its Plan may be to distribute a fixed amount or a fixed percentage of net asset value or NAV without regard to the level of income, appreciation or total return of such Fund over particular series of dividend periods or with regard to only one or a combination of such elements over such period of time. Notwithstanding the foregoing, under any such Plan such Fund would expect that its distributions would correlate with its total return over time.

IV. Justification for the Requested Relief

Section 6(c) of the Act provides that the Commission may exempt any person or transaction from any provision of the Act or any rule under the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons set forth below, Applicants submit that the requested exemption from Section 19(b) of the Act and Rule 19b-1 thereunder would be consistent with the standards set forth in Section 6(c) of the Act, and would be in the best interests of the Funds and their stockholders.

1. Stockholder Interests and Market Perception

Applicants believe that, in general, the common stockholders of a Fund that would rely on the Order are conservative, dividend sensitive investors who desire current income

periodically. Common stock of a closed-end fund often trades in the marketplace at a discount to its net asset value. In the view of the Applicants, the discount at which a Fund's common stock may trade may be reduced if such Fund, consistent with its investment objectives and policies, is permitted to pay a level dividend with respect to its common stock, which may require the payment of capital gain dividends more frequently than is permitted under Rule 19b-1 in order to avoid a return of capital.

2. Each Fund's stockholders would receive information sufficient to clearly inform them of the nature of the distributions they are receiving.

One of the concerns leading to the enactment of Section 19(b) and adoption of Rule 19b-1 was that stockholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income.⁶ However, Rule 19a-1 under the Act effectively addresses this concern by requiring that distributions (or the confirmation of the reinvestment thereof) estimated to be sourced in part from capital gains or capital be accompanied by a separate statement showing the sources of the distribution (e.g., estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital). The same information is included in the Funds' annual reports to stockholders and on IRS Form 1099-DIV, which is sent to each common and preferred stockholder who received distributions during a particular year (including stockholders who have sold stock during the year). In addition, each Fund will make the additional disclosures required by the conditions set forth in Section V of this Application below, and the Funds have adopted compliance policies and procedures in accordance with Rule 38a-1 under the Act to ensure that all required 19(a)

⁶See Securities and Exchange Commission 1966 Report to Congress on Investment Company Growth (H.R. Rep. No. 2337, 89th Cong., 2d Sess. 190-95 (1966)); S. Rep. No. 91-184, 91st Cong., 1st Sess. 29 (1969); H.R. Rep. No. 91-1382, 91st Cong., 2d Sess. 29 (1970) (the "Report").

Notices and disclosures are sent to stockholders.

Section 19(a), Rule 19a-1, the Plan adopted by a Fund, the conditions in Section V below, and the compliance policy and procedures ensure that each Fund's stockholders would be provided sufficient information to understand that periodic distributions are not tied to the Fund's net investment income (which for this purpose is the Fund's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Further, compliance with each Fund's compliance procedures and condition C below will ensure that prospective stockholders and third parties are provided with the same information. Accordingly, continuing to subject the Funds to Section 19(b) and Rule 19b-1 would afford stockholders no extra protection. In addition, the Funds will undertake to request intermediaries to forward 19(a) Notices to their customers and to reimburse them for the costs of forwarding. Such forwarding may occur in any manner permitted by statute, rule, order or the staff.

3. Rule 19b-1, under certain circumstances, gives rise to improper influence on portfolio management decisions, with no offsetting benefit to stockholders.

Rule 19b-1, when applied to a periodic fixed distribution policy, actually gives rise to one of the concerns that Rule 19b-1 was intended to avoid, i.e., inappropriate influence on portfolio management decisions. Funds that pay long-term capital gain distributions only once per year in accordance with Rule 19b-1 impose no pressure on management to realize long-term capital gains at any time when purely investment considerations would not dictate doing so. However, in the absence of an exemption from Rule 19b-1, periodic distribution policies impose pressure on management (i) not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with Rule 19b-1 and (ii) not to realize any net long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and

accordingly would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term capital gains at different times or in different amounts. No purpose would appear to be served by the distortion in the normal operation of a Plan required in order to comply with Rule 19b-1. There is no reason or logic in requiring any Fund that adopts a Plan either to retain (and pay taxes on) long-term capital gains (with the resulting additional tax return complexities for the Fund's stockholders) or to avoid designating its distributions as capital gain dividends for tax purposes (thereby avoiding a Rule 19b-1 problem but providing distributions taxable at ordinary income rates rather than the much lower long-term capital gain rates for non-corporate stockholders and being required to pay income tax on the amount of such income). The desirability of avoiding these anomalous results creates pressure to limit the realization of long-term capital gains that otherwise would be taken for purely investment considerations.

The Order requested by the Applicants would minimize these anomalous effects of Rule 19b-1 by enabling the Funds to realize long-term capital gain as often as investment considerations dictate without fear of violating Rule 19b-1.

4. Other concerns leading to adoption of Rule 19b-1 are not applicable.

Another concern that led to the enactment of Section 19(b) of the Act and adoption of Rule 19b-1 was that frequent capital gain distributions could facilitate improper fund sales practices, including, in particular, the practice of urging an investor to purchase stocks of a fund on the basis of an upcoming capital gain dividend ("selling the dividend"), where the dividend would result in an immediate corresponding reduction in net asset value and is in effect a taxable return of the investor's capital. Applicants submit that this concern should not apply to closed-end investment companies, such as the Funds, that do not continuously distribute shares.

Furthermore, if the underlying concern extends to secondary market purchases of stocks of a Fund that are subject to a large upcoming capital gain dividend, adoption of a Plan actually helps minimize the concern by avoiding, through periodic distributions, any build-up of large end-of-the-year distributions.

Applicants also submit that the “selling the dividend” concern is not applicable to preferred stock, which entitles a holder to no more than a specified periodic dividend at a fixed rate, a rate determined by reference to an objective rate or index, or a rate determined by the market, and, like a debt security, is priced based upon its liquidation value, credit quality, dividend rate and frequency of payment. Investors buy preferred stock for the purpose of receiving specific payments at the frequency bargained for, and any application of Rule 19b-1 to preferred stock would be contrary to the expectation of investors. There is also currently a tax rule that provides that any loss realized by a shareholder upon sale of shares of a regulated investment company which were held for six months or less be treated as a long-term capital loss to the extent of any long-term capital gain paid on such shares, to avoid the selling of dividends.⁷

5. Further Limitations of Rule 19b-1

Subparagraphs (a) and (f) of Rule 19b-1 limit the number of capital gain dividends, as described in Section 852(b)(3)(C) of the Code (“capital gain dividends”), that each Fund may make with respect to any one taxable year to one, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under Section 4982 of the Code, plus a supplemental “clean-up” capital gain dividend made pursuant to Section 855 of the Code not exceeding 10% of the total amount distributed for the year.

Applicants assert that by limiting the number of capital gain dividends that a Fund may

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See Section 852(b)(4)(A) of the Code.

make it with respect to any one year, Rule 19b-1 may prevent the normal and efficient operation of a periodic distribution plan whenever a Fund's realized net long-term capital gains in any year exceed the total of the periodic distributions that may include such capital gains under the Rule. Rule 19b-1 thus may force the fixed regular periodic distributions to be funded with returns of capital⁸ (to the extent net investment income and realized short term capital gains are insufficient to fund the distribution), even though realized net long term capital gains otherwise would be available. To distribute all of a Fund's long-term capital gains within the limits in Rule 19b-1, a Fund may be required to make total distributions in excess of the annual amount called for by its periodic distribution plan or to retain and pay taxes on the excess amount. Applicants believe that the application of Rule 19b-1 to a Fund's periodic distribution plan may create pressure to limit the realization of long-term capital gains based on considerations unrelated to investment goals.

Revenue Ruling 89-81 under the Code requires that a fund that seeks to qualify as a regulated investment company under the Code and that has both common stock and preferred stock outstanding designate the types of income, e.g., investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of Revenue Ruling 89-81, whenever a fund has realized a long term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred stock dividends. Although Rule 19b-1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under Rule 19b-1 for a tax year and still need to distribute additional capital gains allocated to the preferred stock to comply with

8 These would be returns of capital for financial accounting purposes and not for tax accounting purposes.

Revenue Ruling 89-81.

The potential abuses addressed by Section 19(b) and Rule 19b-1 do not arise with respect to preferred stock issued by a closed-end fund. Such distributions are either fixed or are determined in periodic auctions by reference to short-term interest rates rather than by reference to performance of the issuer, and Revenue Ruling 89-81 determines the proportion of such distributions that are comprised of the long-term capital gains.

The proposed Order will assist the Funds in avoiding these Rule 19b-1 problems.

6.

General

The relief requested—to permit periodic distributions of capital gain dividends as often as monthly in respect of common stock and in respect of preferred stock, if any, as often as specified in its terms—could provide the Funds with flexibility in meeting potential investor interest in particular kinds of funds in receiving more frequent distributions. By reducing the amount of individual periodic distributions even further, implementation of the additional relief would actually ameliorate the concerns that gave rise to Section 19(b) and Rule 19b-1 and help avoid the “selling of dividends” problem, which Section 19(b) and Rule 19b-1 are not effective in preventing.

The potential issues under Rule 19b-1 are basically not relevant to distributions on preferred stock. Not only are such distributions fixed or determined in periodic auctions or remarketings by reference to short-term interest rates rather than by reference to performance of the issuer but also the long-term capital gain component is mandated by the Internal Revenue Service to be the same proportion as the proportion of long-term gain dividends bears to the total distributions in respect of the common stock and consequently the long-term gain component cannot even be known until the last dividend of the year. In these circumstance it would be very difficult for any of the potential abuses reflected in Rule 19b-1’s restrictions to occur.

In summary, Rule 19b-1 in the circumstances referred to above distorts the effective and proper functioning of a Fund's Plan and gives rise to the very pressures on portfolio management decisions that Rule 19b-1 was intended to avoid. These distortions forced by Rule 19b-1 would appear to serve no purpose and are not in the best interests of stockholders. The Board believes that obtaining the exemptive relief requested is in the best interests of the Fund's stockholders.

V. Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. Compliance Review and Reporting. The Fund's chief compliance officer will:

1. report to the Board, no less frequently than once every three months or at the next regularly scheduled quarterly Board meeting, whether:
 - (a) the Fund and its Adviser have complied with the conditions of the Order and
 - (b) a material compliance matter (as defined in Rule 38a-1(e)(2) under the Act) has occurred with respect to such conditions; and
2. review the adequacy of the policies and procedures adopted by the Board no less frequently than annually.

B. Disclosures to Fund Stockholders.

1. Each 19(a) Notice disseminated to the holders of the Fund's common stock, in addition to the information required by Section 19(a) and Rule 19a-1:

(a) Will provide, in a tabular or graphical format:

- (1) the amount of the distribution, on a per common stock basis, together with the amounts of such distribution amount, on a per common stock basis and as a percentage of such distribution amount, from estimated: (A) net

investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

- (2) the fiscal year-to-date cumulative amount of distributions, on a per common stock basis, together with the amounts of such cumulative amount, on a per common stock basis and as a percentage of such cumulative amount of distributions, from estimated: (A) net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;
- (3) the average annual total return in relation to the change in NAV for the 5-year period (or, if the Fund's history of operations is less than five years, the time period commencing immediately following the Fund's first public offering) ending on the last day of the month ended immediately prior to the most recent distribution record date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date; and
- (4) the cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution record date compared to the fiscal year-to-date-cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date;

Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

(b) Will include the following disclosure:

- (1) “You should not draw any conclusions about the Fund’s investment performance from the amount of this distribution or from the terms of the Fund’s Plan”;
- (2) “The Fund estimates that it has distributed more than its income and capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur, for example, when some or all of the money that you invested in the Fund is paid back to you. A return of capital distribution does not necessarily reflect the Fund’s investment performance and should not be confused with ‘yield’ or ‘income’”;⁹ and
- (3) “The amounts and sources of distributions reported in this 19(a) Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for tax reporting purposes will depend upon the Fund’s investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The Fund will send you a Form 1099-DIV for the calendar year that will tell you how to report these distributions for federal income tax purposes.”

Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the 19(a) Notice and placed on the same page in close proximity to the amount and the sources of the distribution;

- (c) On the inside front cover of each report to stockholders under Rule 30e-1 under the Act, the Fund will:
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⁹The disclosure in this condition B.1(b)(2) will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

(1) describe the terms of the Plan (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

(2) include the disclosure required by condition B.1(b)(1) above;

(3) state, if applicable, that the Plan provides that the Board may amend or terminate the Plan at any time without prior notice to Fund stockholders; and

(4) describe any reasonably foreseeable circumstances that might cause the Fund to terminate the Plan and any reasonably foreseeable consequences of such termination; and

(d) Each report provided to stockholders under Rule 30e-1 under the Act and each prospectus filed with the Commission on Form N-2 under the Act, will provide the Fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the Fund's total return.

C. Disclosure to Stockholders, Prospective Stockholders and Third Parties.

1. The Fund will include the information contained in the relevant 19(a) Notice, including the disclosure required by condition B.1(b) above, in any written communication (other than a communication on Form 1099) about the Plan or distributions under the Plan by the Fund, or agents that the Fund has authorized to make such communication on the Fund's behalf, to any Fund common stockholder, prospective common stockholder or third-party information provider;
2. The Fund will issue, contemporaneously with the issuance of any 19(a) Notice, a press release containing the information in the 19(a) Notice and file with the

Commission the information contained in such 19(a) Notice, including the disclosure required by condition B.1(b) above, as an exhibit to its next filed Form N-CSR; and

3. The Fund will post prominently a statemen