

§ 270.17a-9

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company who are not interested persons of any registered investment company participating in the transaction, determine:

(1) That participation in the transaction is in the best interests of that registered investment company; and

(2) That the interests of existing shareholders of that registered investment company will not be diluted as a result of its effecting the transaction;

(b) Such findings, and the basis upon which the findings were made, are recorded fully in the minute books of each registered investment company; and

(c)(1) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

[45 FR 12409, Feb. 26, 1980, as amended at 66 FR 3758, Jan. 16, 2001]

§ 270.17a-9 Purchase of certain securities from a money market fund by an affiliate, or an affiliate of an affiliate.

The purchase of a security that is no longer an Eligible Security (as defined in paragraph (a)(10) of § 270.2a-7) from an open-end investment company holding itself out as a “money market” fund shall be exempt from section 17(a) of the Act [15 U.S.C. 80a-17(a)], provided that:

(a) The purchase price is paid in cash; and

(b) The purchase price is equal to the greater of the amortized cost of the security or its market price (in each case, including accrued interest).

[61 FR 13983, Mar. 28, 1996, as amended at 62 FR 64986, Dec. 9, 1997]

§ 270.17d-1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.

(a) No affiliated person of or principal underwriter for any registered investment company (other than a company of the character described in section 12(d)(3) (A) and (B) of the Act) and no affiliated person of such a person or

principal underwriter, acting as principal, shall participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which any such registered company, or a company controlled by such registered company, is a participant, and which is entered into, adopted or modified subsequent to the effective date of this rule, unless an application regarding such joint enterprise, arrangement or profit-sharing plan has been filed with the Commission and has been granted by an order entered prior to the submission of such plan or modification to security holders for approval, or prior to such adoption or modification if not so submitted, except that the provisions of this rule shall not preclude any affiliated person from acting as manager of any underwriting syndicate or other group in which such registered or controlled company is a participant and receiving compensation therefor.

(b) In passing upon such applications, the Commission will consider whether the participation of such registered or controlled company in such joint enterprise, joint arrangement or profit-sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

(c) “Joint enterprise or other joint arrangement or profit-sharing plan” as used in this section shall mean any written or oral plan, contract, authorization or arrangement, or any practice or understanding concerning an enterprise or undertaking whereby a registered investment company or a controlled company thereof and any affiliated person of or a principal underwriter for such registered investment company, or any affiliated person of such a person or principal underwriter, have a joint or a joint and several participation, or share in the profits of such enterprise or undertaking, including, but not limited to, any stock option or stock purchase plan, but shall not include an investment advisory contract subject to section 15 of the Act.