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last sale price with respect to such security reported in the consolidated transaction reporting system (“consolidated system”) or the average of the highest current independent bid and lowest current independent offer for such security (reported pursuant to rule 11Ac1-1 under the Securities Exchange Act of 1934 [17 CFR 240.11Ac1-1]) if there are no reported transactions in the consolidated system that day; or

(2) If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange or the average of the highest current independent bid and lowest current independent offer on such exchange if there are no reported transactions on such exchange that day; or

(3) If the security is not a reported security and is quoted in the NASDAQ System, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ; or

(4) For all other securities, the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry;

(c) The transaction is consistent with the policy of each registered investment company and separate series of a registered investment company participating in the transaction, as recited in its registration statement and reports filed under the Act;

(d) No brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with the transaction;

(e) The board of directors of the investment company, including a majority of the directors who are not interested persons of such investment company,

(1) Adopts procedures pursuant to which such purchase or sale transactions may be effected for the company, which are reasonably designed to provide that all of the conditions of this section in paragraphs (a) through (d) have been complied with,

(2) Makes and approves such changes as the board deems necessary, and

(3) Determines no less frequently than quarterly that all such purchases or sales made during the preceding

quarter were effected in compliance with such procedures;

(f)(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; and

(g) The investment company (1) maintains and preserves permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph (e) of this section, and (2) maintains and preserves for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, the terms of the purchase or sale transaction, and the information or materials upon which the determinations described in paragraph (e)(3) of this section were made.

[46 FR 17013, Mar. 17, 1981, as amended at 58 FR 49921, Sept. 24, 1993; 66 FR 3758, Jan. 16, 2001]

**§ 270.17a-8 Mergers of affiliated companies.**

(a) *Exemption of affiliated mergers.* A Merger of a registered investment company (or a series thereof) and one or more other registered investment companies (or series thereof) or Eligible Unregistered Funds is exempt from sections 17(a)(1) and (2) of the Act (15 U.S.C. 80a-17(a)(1)-(2)) if:

(1) *Surviving company.* The Surviving Company is a registered investment company (or a series thereof).

(2) *Board determinations.* As to any registered investment company (or series thereof) participating in the Merger (“Merging Company”):

(i) The board of directors, including a majority of the directors who are not interested persons of the Merging Company or of any other company or series participating in the Merger, determines that:

(A) Participation in the Merger is in the best interests of the Merging Company; and

(B) The interests of the Merging Company's existing shareholders will not be diluted as a result of the Merger.

NOTE TO PARAGRAPH (A)(2)(I): For a discussion of factors that may be relevant to the determinations in paragraph (a)(2)(i) of this section, see Investment Company Act Release No. 25666, July 18, 2002.

(ii) The directors have requested and evaluated such information as may reasonably be necessary to their determinations in paragraph (a)(2)(i) of this section, and have considered and given appropriate weight to all pertinent factors.

(iii) The directors, in making the determination in paragraph (a)(2)(i)(B) of this section, have approved procedures for the valuation of assets to be conveyed by each Eligible Unregistered Fund participating in the Merger. The approved procedures provide for the preparation of a report by an Independent Evaluator, to be considered in assessing the value of any securities (or other assets) for which market quotations are not readily available, that sets forth the fair value of each such asset as of the date of the Merger.

(iv) The determinations required in paragraph (a)(2)(i) of this section and the bases thereof, including the factors considered by the directors pursuant to paragraph (a)(2)(ii) of this section, are recorded fully in the minute books of the Merging Company.

(3) *Shareholder approval.* Participation in the Merger is approved by the vote of a majority of the outstanding voting securities (as provided in section 2(a)(42) of the Act (15 U.S.C. 80a-2(a)(42))) of any Merging Company that is not a Surviving Company, unless—

(i) No policy of the Merging Company that under section 13 of the Act (15 U.S.C. 80a-13) could not be changed without a vote of a majority of its outstanding voting securities, is materially different from a policy of the Surviving Company;

(ii) No advisory contract between the Merging Company and any investment adviser thereof is materially different from an advisory contract between the Surviving Company and any investment adviser thereof, except for the

identity of the investment companies as a party to the contract;

(iii) Directors of the Merging Company who are not interested persons of the Merging Company and who were elected by its shareholders, will comprise a majority of the directors of the Surviving Company who are not interested persons of the Surviving Company; and

(iv) Any distribution fees (as a percentage of the fund's average net assets) authorized to be paid by the Surviving Company pursuant to a plan adopted in accordance with §270.12b-1 are no greater than the distribution fees (as a percentage of the fund's average net assets) authorized to be paid by the Merging Company pursuant to such a plan.

(4) *Board composition; independent directors.* (i) A majority of the directors are not interested persons of the Merging Company and those directors select and nominate any other disinterested directors.

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

(5) *Merger records.* Any Surviving Company preserves written records that describe the Merger and its terms for six years after the Merger (and for the first two years in an easily accessible place).

(b) *Definitions.* For purposes of this section:

(1) *Merger* means the merger, consolidation, or purchase or sale of substantially all of the assets between a registered investment company (or a series thereof) and another company;

(2) *Eligible Unregistered Fund* means:

(i) A collective trust fund, as described in section 3(c)(11) of the Act (15 U.S.C. 80a-3(c)(11));

(ii) A common trust fund or similar fund, as described in section 3(c)(3) of the Act (15 U.S.C. 80a-3(c)(3)); or

(iii) A separate account, as described in section 2(a)(37) of the Act (15 U.S.C. 80a-2(a)(37)), that is neither registered under section 8 of the Act, nor required to be so registered;

(3) *Independent Evaluator* means a person who has expertise in the valuation of securities and other financial assets and who is not an interested person, as defined in section 2(a)(19) of the

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Act (15 U.S.C. 80a-2(a)(19)), of the Eligible Unregistered Fund or any affiliate thereof except the Merging Company; and

(4) *Surviving Company* means a company in which shareholders of a Merging Company will obtain an interest as a result of a Merger.

[67 FR 48518, July 24, 2002]

**§ 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]

**§ 270.17a-10 Exemption for transactions with certain subadvisory affiliates.**

(a) *Exemption.* A person that is prohibited by section 17(a) of the Act (15 U.S.C. 80a-17(a)) from entering into a transaction with a fund solely because such person is, or is an affiliated person of, a subadviser of the fund, or a subadviser of a fund that is under common control with the fund, may nonetheless enter into such transaction, if:

(1) *Prohibited relationship.* The person is not, and is not an affiliated person of, an investment adviser responsible for providing advice with respect to the portion of the fund for which the transaction is entered into, or of any promoter, underwriter, officer, director, member of an advisory board, or employee of the fund.

(2) *Prohibited conduct.* The advisory contracts of the subadviser that is (or whose affiliated person is) entering into the transaction, and any subadviser that is advising the fund (or portion of the fund) entering into the transaction:

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(i) Prohibit them from consulting with each other concerning transactions for the fund in securities or other assets; and

(ii) If both such subadvisers are responsible for providing investment advice to the fund, limit the subadvisers' responsibility in providing advice with respect to a discrete portion of the fund's portfolio.

(b) *Definitions.*

(1) *Fund* means a registered investment company and includes a separate series of a registered investment company.

(2) *Subadviser* means an investment adviser as defined in section 2(a)(20)(B) of the Act (15 U.S.C. 80a-2(a)(20)(B)).

[68 FR 3153, Jan. 22, 2003]

**§ 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-