

§ 270.17a-1

§ 270.17a-1 Exemption of certain underwriting transactions exempted by § 270.10f-1.

Any transaction exempted pursuant to § 270.10f-1 shall be exempt from the provisions of section 17(a)(1) of the Act (54 Stat. 815; 15 U.S.C. 80a-17).

[Rule N-17A-1, 6 FR 1191, Feb. 28, 1941]

§ 270.17a-2 Exemption of certain purchase, sale, or borrowing transactions.

Purchase, sale or borrowing transactions occurring in the usual course of business between affiliated persons of registered investment companies shall be exempt from section 17(a) of the Act provided (a) the transactions involve notes, drafts, time payment contracts, bills of exchange, acceptance or other property of a commercial character rather than of an investment character; (b) the buyer or lender is a bank; and (c) the seller or borrower is a bank or is engaged principally in the business of installment financing.

[Rule N-17A-2, 12 FR 5008, July 29, 1947]

§ 270.17a-3 Exemption of transactions with fully owned subsidiaries.

(a) The following transactions shall be exempt from section 17(a) of the Act:

(1) Transactions solely between a registered investment company and one or more of its fully owned subsidiaries or solely between two or more fully owned subsidiaries of such company.

(2) Transactions solely between any subsidiary of a registered investment company and one or more fully owned subsidiaries of such subsidiary or solely between two or more fully owned subsidiaries of such subsidiary.

(b) The term *fully owned subsidiary* as used in this section, means a subsidiary (1) all of whose outstanding securities, other than directors' qualifying shares, are owned by its parent and/or the parent's other fully owned subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent's other fully owned subsidiaries in an amount which is material in relation to the particular subsidiary, excepting (i) indebtedness incurred in the ordinary course of business which is not overdue and which

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matures within one year from the date of its creation, whether evidenced by securities or not, and (ii) any other indebtedness to one or more banks or insurance companies.

[Rule N-17A-3, 12 FR 3442, May 28, 1947]

§ 270.17a-4 Exemption of transactions pursuant to certain contracts.

Transactions pursuant to a contract shall be exempt from section 17(a) of the Act if at the time of the making of the contract and for a period of at least six months prior thereto no affiliation or other relationship existed which would operate to make such contract or the subsequent performance thereof subject to the provisions of said section 17(a).

[Rule N-17A-4, 12 FR 5008, July 29, 1947]

§ 270.17a-5 Pro rata distribution neither "sale" nor "purchase."

When a company makes a pro rata distribution in cash or in kind among its common stockholders without giving any election to any stockholder as to the specific assets which such stockholders shall receive, such distribution shall not be deemed to involve a sale to or a purchase from such distributing company as those terms are used in section 17(a) of the Act.

[20 FR 7447, Oct. 6, 1955]

§ 270.17a-6 Exemption for transactions with portfolio affiliates.

(a) *Exemption for transactions with portfolio affiliates.* A transaction to which a fund, or a company controlled by a fund, and a portfolio affiliate of the fund are parties is exempt from the provisions of section 17(a) of the Act (15 U.S.C. 80a-17(a)), provided that none of the following persons is a party to the transaction, or has a direct or indirect financial interest in a party to the transaction other than the fund:

(1) An officer, director, employee, investment adviser, member of an advisory board, depositor, promoter or principal underwriter for the fund;

(2) A person directly or indirectly controlling the fund;

(3) A person directly or indirectly owning, controlling or holding with power to vote five percent or more of

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the outstanding voting securities of the fund;

(4) A person directly or indirectly under common control with the fund, other than:

(i) A portfolio affiliate of the fund; or
(ii) A fund whose sole interest in the transaction or a party to the transaction is an interest in the portfolio affiliate; or

(5) An affiliated person of any of the persons mentioned in paragraphs (a)(1)–(4) of this section, other than the fund or a portfolio affiliate of the fund.

(b) *Definitions.* (1) *Financial interest.* (i) The term *financial interest* as used in this section does not include:

(A) Any interest through ownership of securities issued by the fund;

(B) Any interest of a wholly-owned subsidiary of a fund;

(C) Usual and ordinary fees for services as a director;

(D) An interest of a non-executive employee;

(E) An interest of an insurance company arising from a loan or policy made or issued by it in the ordinary course of business to a natural person;

(F) An interest of a bank arising from a loan or account made or maintained by it in the ordinary course of business to or with a natural person, unless it arises from a loan to a person who is an officer, director or executive of a company which is a party to the transaction, or from a loan to a person who directly or indirectly owns, controls, or holds with power to vote, five percent or more of the outstanding voting securities of a company which is a party to the transaction;

(G) An interest acquired in a transaction described in paragraph (d)(3) of § 270.17d-1; or

(H) Any other interest that the board of directors of the fund, including a majority of the directors who are not interested persons of the fund, finds to be not material, provided that the directors record the basis for that finding in the minutes of their meeting.

(ii) A person has a financial interest in any party in which it has a financial interest, in which it had a financial interest within six months prior to the transaction, or in which it will acquire a financial interest pursuant to an ar-

rangement in existence at the time of the transaction.

(2) *Fund* means a registered investment company or separate series of a registered investment company.

(3) *Portfolio affiliate of a fund* means a person that is an affiliated person (or an affiliated person of an affiliated person) of a fund solely because the fund, a fund under common control with the fund, or both:

(i) Controls such person (or an affiliated person of such person); or

(ii) Owns, controls, or holds with power to vote five percent or more of the outstanding voting securities of such person (or an affiliated person of such person).

[68 FR 3153, Jan. 22, 2003]

§ 270.17a-7 Exemption of certain purchase or sale transactions between an investment company and certain affiliated persons thereof.

A purchase or sale transaction between registered investment companies or separate series of registered investment companies, which are affiliated persons, or affiliated persons of affiliated persons, of each other, between separate series of a registered investment company, or between a registered investment company or a separate series of a registered investment company and a person which is an affiliated person of such registered investment company (or affiliated person of such person) solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers, is exempt from section 17(a) of the Act; *Provided, That:*

(a) The transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available;

(b) The transaction is effected at the independent current market price of the security. For purposes of this paragraph the “current market price” shall be:

(1) If the security is a “reported security” as that term is defined in rule 11Aa3-1 under the Securities Exchange Act of 1934 [17 CFR 240.11Aa3-1], the