

§ 270.17f-1 Custody of securities with members of national securities exchanges.

(a) No registered management investment company shall place or maintain any of its securities or similar investments in the custody of a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934 (whether or not such company trades in securities for its own account) except pursuant to a written contract which shall have been approved, or if executed before January 1, 1941, shall have been ratified not later than that date, by a majority of the board of directors of such investment company.

(b) The contract shall require, and the securities and investments shall be maintained in accordance with the following:

(1) The securities and similar investments held in such custody shall at all times be individually segregated from the securities and investments of any other person and marked in such manner as to clearly identify them as the property of such registered management company, both upon physical inspection thereof and upon examination of the books of the custodian. The physical segregation and marking of such securities and investments may be accomplished by putting them in separate containers bearing the name of such registered management investment company or by attaching tags or labels to such securities and investments.

(2) The custodian shall have no power or authority to assign, hypothecate, pledge or otherwise to dispose of any such securities and investments, except pursuant to the direction of such registered management company and only for the account of such registered investment company.

(3) Such securities and investments shall be subject to no lien or charge of any kind in favor of the custodian or any persons claiming through the custodian.

(4) Such securities and investments shall be verified by actual examination at the end of each annual and semi-annual fiscal period by an independent public accountant retained by the investment company, and shall be exam-

ined by such accountant at least one other time, chosen by the accountant, during each fiscal year. A certificate of such accountant stating that an examination of such securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form N-17f-1 (17 CFR 274.219) and transmitted to the Commission promptly after each examination.

(5) Such securities and investments shall, at all times, be subject to inspection by the Commission through its employees or agents.

(6) The provisions of paragraphs (b) (1), (2) and (3) of this section shall not apply to securities and similar investments bought for or sold to such investment company by the company which is custodian until the securities have been reduced to the physical possession of the custodian and have been paid for by such investment company: *Provided*, That the company which is custodian shall take possession of such securities at the earliest practicable time. Nothing in this subparagraph shall be construed to relieve any company which is a member of a national securities exchange of any obligation under existing law or under the rules of any national securities exchange.

(c) A copy of any contract executed or ratified pursuant to paragraph (a) of this section shall be transmitted to the Commission promptly after execution or ratification unless it has been previously transmitted.

(d) Any contract executed or ratified pursuant to paragraph (a) of this section shall be ratified by the board of directors of the registered management investment company at least annually thereafter.

[Rule N-17F-1, 5 FR 4317, Oct. 31, 1940, as amended at 54 FR 32049, Aug. 4, 1989]

§ 270.17f-2 Custody of investments by registered management investment company.

(a) The securities and similar investments of a registered management investment company may be maintained in the custody of such company only in accordance with the provisions of this section. Investments maintained by such a company with a bank or other company whose functions and physical

facilities are supervised by Federal or State authority under any arrangement whereunder the directors, officers, employees or agents of such company are authorized or permitted to withdraw such investments upon their mere receipt, are deemed to be in the custody of such company and may be so maintained only upon compliance with the provisions of this section.

(b) Except as provided in paragraph (c) of this section, all such securities and similar investments shall be deposited in the safekeeping of, or in a vault or other depository maintained by, a bank or other company whose functions and physical facilities are supervised by Federal or State authority. Investments so deposited shall be physically segregated at all times from those of any other person and shall be withdrawn only in connection with transactions of the character described in paragraph (c) of this section.

(c) The first sentence of paragraph (b) of this section shall not apply to securities on loan which are collateralized to the extent of their full market value, or to securities hypothecated, pledged, or placed in escrow for the account of such investment company in connection with a loan or other transaction authorized by specific resolution of its board of directors, or to securities in transit in connection with the sale, exchange, redemption, maturity or conversion, the exercise of warrants or rights, assents to changes in terms of the securities, or other transactions necessary or appropriate in the ordinary course of business relating to the management of securities.

(d) Except as otherwise provided by law, no person shall be authorized or permitted to have access to the securities and similar investments deposited in accordance with paragraph (b) of this section except pursuant to a resolution of the board of directors of such investment company. Each such resolution shall designate not more than five persons who shall be either officers or responsible employees of such company and shall provide that access to such investments shall be had only by two or more such persons jointly, at least one of whom shall be an officer; except that access to such investments shall be permitted (1) to properly au-

thorized officers and employees of the bank or other company in whose safekeeping the investments are placed and (2) for the purpose of paragraph (f) of this section to the independent public accountant jointly with any two persons so designated or with such officer or employee of such bank or such other company. Such investments shall at all times be subject to inspection by the Commission through its authorized employees or agents accompanied, unless otherwise directed by order of the Commission, by one or more of the persons designated pursuant to this paragraph.

(e) Each person when depositing such securities or similar investments in or withdrawing them from the depository or when ordering their withdrawal and delivery from the safekeeping of the bank or other company, shall sign a notation in respect of such deposit, withdrawal or order which shall show (1) the date and time of the deposit, withdrawal or order, (2) the title and amount of the securities or other investments deposited, withdrawn or ordered to be withdrawn, and an identification thereof by certificate numbers or otherwise, (3) the manner of acquisition of the securities or similar investments deposited or the purpose for which they have been withdrawn, or ordered to be withdrawn, and (4) if withdrawn and delivered to another person the name of such person. Such notation shall be transmitted promptly to an officer or director of the investment company designated by its board of directors who shall not be a person designated for the purpose of paragraph (d) of this section. Such notation shall be on serially numbered forms and shall be preserved for at least one year.

(f) Such securities and similar investments shall be verified by actual examination by an independent public accountant retained by the investment company at least three times during each fiscal year, at least two of which shall be chosen by such accountant without prior notice to such company. A certificate of such accountant stating that an examination of such securities and investments has been made, and describing the nature and extent of the examination, shall be attached to a completed Form N-17f-2 (17 CFR

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274.220) and transmitted to the Commission promptly after each examination.

[Rule N-17F-2, 12 FR 6717, Oct. 11, 1947, as amended at 54 FR 32049, Aug. 4, 1989]

§ 270.17f-3 Free cash accounts for investment companies with bank custodians.

No registered investment company having a bank custodian shall hold free cash except, upon resolution of its board or directors, a petty cash account may be maintained in an amount not to exceed \$500: *Provided*, That such account is operated under the imprest system and is maintained subject to adequate controls approved by the board of directors over disbursements and reimbursements including, but not limited to fidelity bond coverage of persons having access to such funds.

(Sec. 17(f), 54 Stat. 815, 15 U.S.C. 80a-17(f), sec. 9, Pub. L. 91-547, 84 Stat. 1420)

[37 FR 9989, May 18, 1972]

§ 270.17f-4 Custody of investment company assets with a securities depository.

(a) *Custody arrangement with a securities depository.* A fund's custodian may place and maintain financial assets, corresponding to the fund's security entitlements, with a securities depository or intermediary custodian, if the custodian:

(1) Is at a minimum obligated to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain such financial assets;

(2) Is required to provide, promptly upon request by the fund, such reports as are available concerning the internal accounting controls and financial strength of the custodian; and

(3) Requires any intermediary custodian at a minimum to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets corresponding to the security entitlements of its entitlement holders.

(b) *Direct dealings with securities depository.* A fund may place and maintain financial assets, corresponding to

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the fund's security entitlements, directly with a securities depository, if:

(1) The fund's contract with the securities depository or the securities depository's written rules for its participants:

(i) Obligate the securities depository at a minimum to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets corresponding to the fund's security entitlements; and

(ii) Requires the securities depository to provide, promptly upon request by the fund, such reports as are available concerning the internal accounting controls and financial strength of the securities depository; and

(2) The fund has implemented internal control systems reasonably designed to prevent unauthorized officer's instructions (by providing at least for the form, content and means of giving, recording and reviewing all officer's instructions).

(c) *Definitions.* For purposes of this section the terms:

(1) *Clearing corporation, financial asset, securities intermediary, and security entitlement* have the same meanings as is attributed to those terms in §§ 8-102, § 8-103, and §§ 8-501 through 8-511 of the Uniform Commercial Code, 2002 Official Text and Comments, which are incorporated by reference in this section pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the Uniform Commercial Code from the National Conference of Commissioners on Uniform State Laws, 211 East Ontario Street, Suite 1300, Chicago, IL 60611. You may inspect a copy at the following addresses: Louis Loss Library, U.S. Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549, and Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(2) *Custodian* means a bank or other person authorized to hold assets for the fund under section 17(f) of the Act (15 U.S.C. 80a-17(f)) or Commission rules in