

§ 270.12d1-3

(b) *Definitions.* For purposes of this section, money market fund has the same meaning as in § 270.12d1-1(d)(2).

[71 FR 36655, June 27, 2006]

§ 270.12d1-3 Exemptions for investment companies relying on section 12(d)(1)(F) of the Act.

(a) *Exemption from sales charge limits.* A registered investment company (“acquiring fund”) that relies on section 12(d)(1)(F) of the Act (15 U.S.C. 80a-12(d)(1)(F)) to acquire securities issued by an investment company (“acquired fund”) may offer or sell any security it issues through a principal underwriter or otherwise at a public offering price that includes a sales load of more than 1½ percent if any sales charges and service fees charged with respect to the acquiring fund’s securities do not exceed the limits set forth in rule 2830 of the Conduct Rules of the NASD applicable to a fund of funds.

(b) *Definitions.* For purposes of this section, the terms *fund of funds*, sales charge, and *service fee* have the same meanings as in rule 2830(b) of the Conduct Rules of the NASD.

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§ 270.12d2-1 Definition of insurance company for purposes of sections 12(d)(2) and 12(g) of the Act.

For purposes of sections 12(d)(2) and 12(g) of the Act [15 U.S.C. 80a-12(d)(2) and 80a-12(g)], *insurance company* shall include a foreign insurance company as that term is used in rule 3a-6 under the Act (17 CFR 270.3a-6).

[56 FR 56300, Nov. 4, 1991]

§ 270.12d3-1 Exemption of acquisitions of securities issued by persons engaged in securities related businesses.

(a) Notwithstanding section 12(d)(3) of the Act, a registered investment company, or any company or companies controlled by such registered investment company (“acquiring company”) may acquire any security issued by any person that, in its most recent fiscal year, derived 15 percent or less of its gross revenues from securities related activities unless the acquiring company would control such person after the acquisition.

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(b) Notwithstanding section 12(d)(3) of the Act, an acquiring company may acquire any security issued by a person that, in its most recent fiscal year, derived more than 15 percent of its gross revenues from securities related activities, *provided that:*

(1) Immediately after the acquisition of any equity security, the acquiring company owns not more than five percent of the outstanding securities of that class of the issuer’s equity securities;

(2) Immediately after the acquisition of any debt security, the acquiring company owns not more than ten percent of the outstanding principal amount of the issuer’s debt securities; and

(3) Immediately after any such acquisition, the acquiring company has invested not more than five percent of the value of its total assets in the securities of the issuer.

(c) Notwithstanding paragraphs (a) and (b) of this section, this section does not exempt the acquisition of:

(1) A general partnership interest; or

(2) A security issued by the acquiring company’s promoter, principal underwriter, or any affiliated person of such promoter, or principal underwriter; or

(3) A security issued by the acquiring company’s investment adviser, or an affiliated person of the acquiring company’s investment adviser, other than a security issued by a subadviser or an affiliated person of a subadviser of the acquiring company provided that:

(i) *Prohibited relationships.* The subadviser that is (or whose affiliated person is) the issuer is not, and is not an affiliated person of, an investment adviser responsible for providing advice with respect to the portion of the acquiring company that is acquiring the securities, or of any promoter, underwriter, officer, director, member of an advisory board, or employee of the acquiring company;

(ii) *Advisory contract.* The advisory contracts of the Subadviser that is (or whose affiliated person is) the issuer, and any Subadviser that is advising the portion of the acquiring company that is purchasing the securities:

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(A) Prohibit them from consulting with each other concerning transactions of the acquiring company in securities or other assets, other than for purposes of complying with the conditions of paragraphs (a) and (b) of this section; and

(B) Limit their responsibility in providing advice to providing advice with respect to a discrete portion of the acquiring company's portfolio.

(d) For purposes of this section:

(1) *Securities related activities* are a person's activities as a broker, a dealer, an underwriter, an investment adviser registered under the Investment Advisers Act of 1940, as amended, or as an investment adviser to a registered investment company.

(2) An issuer's gross revenues from its own securities related activities and from its ratable share of the securities related activities of enterprises of which it owns 20 percent or more of the voting or equity interest should be considered in determining the degree to which an issuer is engaged in securities related activities. Such information may be obtained from the issuer's annual report to shareholders, the issuer's annual reports or registration statement filed with the Commission, or the issuer's chief financial officer.

(3) *Equity security* is as defined in § 240.3a-11 of this chapter.

(4) *Debt security* includes all securities other than equity securities.

(5) Determination of the percentage of an acquiring company's ownership of any class of outstanding equity securities of an issuer shall be made in accordance with the procedures described in the rules under § 240.16 of this chapter.

(6) Where an acquiring company is considering acquiring or has acquired options, warrants, rights, or convertible securities of a securities related business, the determination required by paragraph (b) of this section shall be made as though such options, warrants, rights, or conversion privileges had been exercised.

(7) The following transactions will not be deemed to be an acquisition of securities of a securities related business:

(i) Receipt of stock dividends on securities acquired in compliance with this section;

(ii) Receipt of securities arising from a stock-for-stock split on securities acquired in compliance with this section;

(iii) Exercise of options, warrants, or rights acquired in compliance with this section;

(iv) Conversion of convertible securities acquired in compliance with this section; and

(v) Acquisition of Demand Features or Guarantees, as these terms are defined in §§ 270.2a-7(a)(8) and 270.2a-7(a)(15) respectively, provided that, immediately after the acquisition of any Demand Feature or Guarantee, the company will not, with respect to 75 percent of the total value of its assets, have invested more than ten percent of the total value of its assets in securities underlying Demand Features or Guarantees from the same institution. For the purposes of this section, a Demand Feature or Guarantee will be considered to be from the party to whom the company will look for a payment of the exercise price.

(8) Any class or series of an investment company that issues two or more classes or series of preferred or special stock, each of which is preferred over all other classes or series with respect to assets specifically allocated to that class or series, shall be treated as if it is a registered investment company.

(9) *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)).

[58 FR 49427, Sept. 23, 1993, as amended at 61 FR 13982, Mar. 28, 1996; 62 FR 64986, Dec. 9, 1997; 66 FR 36162, July 11, 2001; 68 FR 3152, Jan. 22, 2003]

§ 270.13a-1 Exemption for change of status by temporarily diversified company.

A change of its subclassification by a registered management company from that of a diversified company to that of a nondiversified company shall be exempt from the provisions of section 13(a)(1) of the Act (54 Stat. 811; 15 U.S.C. 80a-13), if such change occurs under the following circumstances:

(a) Such company was a non-diversified company at the time of its registration pursuant to section 8(a) (54