

## § 270.17e-1

CFR 270.17d-1), to the extent necessary to permit any such person or principal underwriter to enter into a written agreement with such company whereby the company will make payments in connection with the distribution of its shares, *Provided, That*:

(a) Such agreement is made in compliance with the provisions of § 270.12b-1; and

(b) No other registered management investment company which is either an affiliated person of such company or an affiliated person of such a person is a party to such agreement.

[45 FR 73905, Nov. 7, 1980]

### § 270.17e-1 Brokerage transactions on a securities exchange.

For purposes of section 17(e)(2)(A) of the Act [15 U.S.C. 80a-17(e)(2)(A)], a commission, fee or other remuneration shall be deemed as not exceeding the usual and customary broker's commission, if:

(a) The commission, fee, or other remuneration received or to be received is reasonable and fair compared to the commission, fee or other remuneration received by other brokers in connection with comparable transactions involving similar securities being purchased or sold on a securities exchange during a comparable period of time;

(b) The board of directors, including a majority of the directors of the investment company who are not interested persons thereof:

(1) Has adopted procedures which are reasonably designed to provide that such commission, fee, or other remuneration is consistent with the standard described in paragraph (a) of this section;

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

(3) Determines no less frequently than quarterly that all transactions effected pursuant to this section during the preceding quarter (other than transactions in which the person acting as broker is a person permitted to enter into a transaction with the investment company by § 270.17a-10) were effected in compliance with such procedures;

(c) The board of directors of the investment company satisfies the fund

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governance standards defined in § 270.0-1(a)(7); and

(d) The investment company:

(1) Shall maintain and preserve permanently in an easily accessible place a copy of the procedures (and any modification thereto) described in paragraph (b)(1) of this section; and

(2) Shall maintain and preserve 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 record of each such transaction (other than any transaction in which the person acting as broker is a person permitted to enter into a transaction with the investment company by § 270.17a-10) setting forth the amount and source of the commission, fee or other remuneration received or to be received, the identity of the person acting as broker, the terms of the transaction, and the information or materials upon which the findings described in paragraph (b)(3) of this section were made.

[44 FR 37203, June 26, 1979, as amended at 58 FR 49921, Sept. 24, 1993; 66 FR 3759, Jan. 16, 2001; 68 FR 3154, Jan. 22, 2003; 69 FR 46389, Aug. 2, 2004]

### § 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

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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 examined 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