§ 270.10f–2 Spread, concession or other profit not less than the amount allowed to such principal underwriter, exclusive of any amounts received by such principal underwriter as a management fee from other principal underwriters.

(e) Such agreement is authorized by resolution adopted by a vote of not less than a majority of the board of directors of such registered company, none of which majority is an affiliated person of such principal underwriter, of the issuer of the securities underwritten pursuant to such agreement or of any person engaged in a business described in paragraph (a)(1) of this section.

(f) The resolution required in paragraph (e) of this section shall state that it has been adopted pursuant to this section, and shall incorporate the terms of the proposed agreement by attaching a copy thereof as an exhibit or otherwise.

(g) A copy of the resolution required in paragraph (e) of this section, signed by each member of the board of directors of the registered company who voted in favor of its adoption, shall be transmitted to the Commission not later than the fifth day succeeding the date on which such agreement is executed.

[Rule N–10F–1, 6 FR 1191, Feb. 28, 1941]

§ 270.10f–3 Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.

(a) Definitions—(1) Domestic Issuer means any issuer other than a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country.

(2) Eligible Foreign Offering means a public offering of securities, conducted under the laws of a country other than the United States, that meets the following conditions:

(i) The offering is subject to regulation by a “foreign financial regulatory authority,” as defined in section 2(a)(50) of the Act [15 U.S.C. 80a–2(a)(50)], in such country;

(ii) The securities are offered at a fixed price to all purchasers in the offering (except for any rights to purchase securities that are required by law to be granted to existing security holders of the issuer);

(iii) Financial statements, prepared and audited in accordance with standards required or permitted by the appropriate foreign financial regulatory authority in such country, for the two years prior to the offering, are made available to the public and prospective purchasers in connection with the offering; and

(iv) If the issuer is a Domestic Issuer, it meets the following conditions:

(A) It has a class of securities registered pursuant to section 12(b) or 12(g) of the Securities Exchange Act of 1934 [15 U.S.C. 78l(b) or 78l(g)] or is required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78o(d)]; and

(B) It has filed all the material required to be filed pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(a) or 78o(d)] for a period of at least twelve months immediately preceding the sale of securities made in reliance upon this (or for such shorter period that the issuer was required to file such material).

(3) Eligible Municipal Securities means “municipal securities,” as defined in section 3(a)(29) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(29)), that are sufficiently liquid that they...
can be sold at or near their carrying value within a reasonably short period of time and either:

(i) Are subject to no greater than moderate credit risk; or

(ii) If the issuer of the municipal securities, or the entity supplying the revenues or other payments from which the issue is to be paid, has been in continuous operation for less than three years, including the operation of any predecessors, the securities are subject to a minimal or low amount of credit risk.

(4) Eligible Rule 144A Offering means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(2)], rule 144A thereunder [§230.144A of this chapter], or rules 501–508 thereunder [§§230.501–230.508 of this chapter];

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in §230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to §230.144A of this chapter.

(5) Managed portion of a portfolio of a registered investment company means a discrete portion of a portfolio of a registered investment company for which a subadviser is responsible for providing investment advice, provided that:

(i) The subadviser is not an affiliated person of any investment adviser, promoter, underwriter, officer, director, member of an advisory board, or employee of the registered investment company; and

(ii) The subadviser’s advisory contract:

(A) Prohibits it from consulting with any subadviser of the investment company that is a principal underwriter or an affiliated person of a principal underwriter concerning transactions of the investment company in securities or other assets; and

(B) Limits its responsibility in providing advice to providing advice with respect to such portion.

(6) Series of a series company means any class or series of a registered 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.

(7) 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)).

(b) Exemption for purchases by series companies and investment companies with managed portions. For purposes of this section and section 10(f) of the Act (15 U.S.C. 80a–10(f)), each Series of a Series Company, and each Managed Portion of a registered investment company, is deemed to be a separate investment company. Therefore, a purchase or acquisition of a security by a registered investment company is exempt from the prohibitions of section 10(f) of the Act if section 10(f) of the Act would not prohibit such purchase if each Series and each Managed Portion of the company were a separately registered investment company.

(c) Exemption for other purchases. Any purchase of securities by a registered investment company prohibited by section 10(f) of the Act (15 U.S.C. 80a–10(f)) shall be exempt from the provisions of such section if the following conditions are met:

(1) Type of Security. The securities to be purchased are:

(i) Part of an issue registered under the Securities Act of 1933 (15 U.S.C. 77a—aa) that is being offered to the public;

(ii) Part of an issue of government securities, as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16));

(iii) Eligible Municipal Securities;

(iv) Securities sold in an Eligible Foreign Offering; or

(v) Securities sold in an Eligible Rule 144A Offering.

(2) Timing and Price. (i) The securities are purchased prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities
(except, in the case of an Eligible Foreign Offering, for any rights to purchase that are required by law to be granted to existing security holders of the issuer); and

(ii) If the securities are offered for subscription upon exercise of rights, the securities shall be purchased on or before the fourth day preceding the day on which the rights offering terminates.

(3) Reasonable reliance. For purposes of determining compliance with paragraphs (c)(1)(v) and (c)(2)(i) of this section, an investment company may reasonably rely upon written statements made by the issuer or a syndicate manager, or by an underwriter or seller of the securities through which such investment company purchases the securities.

(4) Continuous operation. If the securities to be purchased are part of an issue registered under the Securities Act of 1933 (15 U.S.C. 77a-aa) that is being offered to the public, are government securities (as defined in section 2(a)(16) of the Act (15 U.S.C. 78a-2(a)(16))), or are purchased pursuant to an Eligible Foreign Offering or an Eligible Rule 144A Offering, the issuer of the securities must have been in continuous operation for not less than three years, including the operations of any predecessors.

(5) Firm Commitment Underwriting. The securities are offered pursuant to an underwriting or similar agreement under which the underwriters are committed to purchase all of the securities being offered, except those purchased by others pursuant to a rights offering, if the underwriters purchase any of the securities.

(6) Reasonable commission. The commission, spread or profit received or to be received by the principal underwriters is reasonable and fair compared to the commission, spread or profit received by other such persons in connection with the underwriting of similar securities being sold during a comparable period of time.

(7) Percentage limit—(i) Generally. The amount of securities of any class of such issue to be purchased by the investment company, aggregated with purchases by any other investment company advised by the investment company’s investment adviser, and any purchases by another account with respect to which the investment adviser has investment discretion if the investment adviser exercised such investment discretion with respect to the purchase, does not exceed the following limits: and

(A) If purchased in an offering other than an Eligible Rule 144A Offering, 25 percent of the principal amount of the offering of such class; or

(B) If purchased in an Eligible Rule 144A Offering, 25 percent of the total of:

(I) The principal amount of the offering of such class sold by underwriters or members of the selling syndicate to qualified institutional buyers, as defined in §230.144A(a)(1) of this chapter; plus

(II) The principal amount of the offering of such class in any concurrent public offering.

(ii) Exemption from percentage limit. The requirement in paragraph (c)(7)(i) of this section applies only if the investment adviser of the investment company is, or is an affiliated person of, a principal underwriter of the security; and

(iii) Separate aggregation. The requirement in paragraph (c)(7)(i) of this section applies independently with respect to each investment adviser of the investment company that is, or is an affiliated person of, a principal underwriter of the security.

(8) Prohibition of Certain Affiliate Transactions. Such investment company does not purchase the securities being offered directly or indirectly from an officer, director, member of an advisory board, investment adviser or employee of such investment company or from a person of which any such officer, director, member of an advisory board, investment adviser or employee is an affiliated person; provided, that a purchase from a syndicate manager shall not be deemed to be a purchase from a specific underwriter if:

(i) Such underwriter does not benefit directly or indirectly from the transaction; or

(ii) In respect to the purchase of Eligible Municipal Securities, such purchase is not designated as a group sale or otherwise allocated to the account
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of any person from whom this para-

(9) Periodic reporting. The existence of

any transactions effected pursuant to

this section shall be reported on the

Form N-SAR (§ 274.101 of this chapter)
of the investment company and a writ-
ten record of each such transaction, set-

forth from whom the securities

were acquired, the identity of the un-
derwriting syndicate's members, the
terms of the transaction, and the in-
formation or materials upon which the de-
termination described in paragraph
(c)(10)(iii) of this section was made

§ 270.11a–1 Definition of “exchange” for purposes of section 11 of the Act.

(a) For the purposes of section 11 of
the Act, the term “exchange” as used
therein shall include the issuance of
any security by a registered invest-
ment company in an amount equal to
the proceeds, paid or payable—
(1) Upon the repurchase, by or at the
instance of such issuer, of an out-
standing security the terms of which
provide for its termination, retirement
or cancellation, or
(2) Upon the termination, retirement
or cancellation of an outstanding secu-

(b) A security shall not be deemed to
have been repurchased by or at the in-
stance of the issuer, or terminated, re-
tired or canceled in accordance with
the terms of the security if—
(1) The security was redeemed or re-
purchased at the instance of the hold-
er; or
(2) A security holder's account was
closed for failure to make payments as
prescribed in the security or instru-
ments pursuant to which the security
was issued, and notice of intention to
close the account was mailed to the se-
curity holder, and he had a reasonable
time in which to meet the deficiency;
or
(3) Sale of the security was restricted
to a specified, limited group of persons
and, in accordance with the terms of
the security or the instruments pursu-
ant to which the security was issued,
upon its being transferred by the hold-
er to a person not a member of the

(c) The provisions of paragraph (a) of
this section shall not apply if, fol-
lowing the repurchase of an out-
standing security by or at the instance

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