§ 270.0–4 Incorporation by reference.

(a) A registered investment company may, subject to the limitations of §§ 228.10(f) and 229.10(d) of this chapter, incorporate by reference as an exhibit, in any registration statement, application or report filed with the Commission, any document or part thereof previously or concurrently filed with the Commission pursuant to any act administered by the Commission. The incorporation may be made whether the matter incorporated was filed by such registered company or any other person. If any modification has occurred in the text of any such document since the filing thereof, the company shall file with the reference a statement containing the text of any such modification and the date thereof. If the number of copies of any document previously or concurrently filed with the Commission is less than the number required to be filed with the registration statement, application or report which incorporates such document, the company shall file therewith as many additional copies of the document as may be necessary to meet the requirements of the registration statement, application or report.

(b) A registered investment company may, subject to the limitations of §201.24 of this chapter, incorporate by reference, in any registration statement, application or report filed with the Commission any financial statement or part thereof previously or concurrently filed with the Commission pursuant to any act administered by the Commission, if it substantially conforms to the requirements of the form on which such registration statement, application or report is filed. The incorporation may be made whether the matter incorporated was filed by such registered company or any other person. If a certificate of an independent public accountant or accountants is required to accompany a financial statement in any registration statement, application or report, the incorporation by reference of a certificate previously or concurrently filed will not be deemed a compliance with such requirements unless the written consent of the accountant or accountants to such incorporation is filed with the registration statement, application or report.

(c) In each case of incorporation by reference, the matter incorporated shall be clearly identified in the reference. An express statement shall be made to the effect that the specified
matter is incorporated in the registration statement, application or report at the particular place where the information is required.

(d) Notwithstanding any particular provision permitting incorporation by reference, no registration statement, application or report shall incorporate by reference any exhibit or financial statement which:

(1) Has been withdrawn, or

(2) Was filed in connection with a registration statement under the Act, or a registration on a national securities exchange, which has ceased to be effective, or

(3) Is contained in a registration statement or report subject, at the time of the incorporation by reference, to pending proceedings under section 8(b) or 8(d) of the Securities Act of 1933, section 8(e) of the Act, or to an order entered under any of those Sections, or

(4) If it is a document that has been filed in paper with respect to an electronic filer under a temporary hardship exemption (§ 232.201 of this chapter) and an electronic format copy has not been submitted.

(e) Notwithstanding any particular provision permitting incorporation by reference, the Commission may refuse to permit such incorporation in any case in which in its judgment such incorporation would render the registration statement application, or report incomplete, unclear, or confusing.


§ 270.0–5 Procedure with respect to applications and other matters.

The procedure herein below set forth will be followed with respect to any proceeding initiated by the filing of an application, or upon the Commission’s own motion, pursuant to any section of the Act or any rule or regulation thereunder, unless in the particular case a different procedure is provided:

(a) Notice of the initiation of the proceeding will be published in the FEDERAL REGISTER and will indicate the earliest date upon which an order disposing of the matter may be entered. The notice will also provide that any interested person may, within the period of time specified therein, submit to the Commission in writing any facts bearing upon the desirability of a hearing on the matter and may request that a hearing be held, stating his reasons therefor and the nature of his interest in the matter.

(b) An order disposing of the matter will be issued as of course, following the expiration of the period of time referred to in paragraph (a) of this section, unless the Commission thereafter orders a hearing on the matter.

(c) The Commission will order a hearing on the matter, if it appears that a hearing is necessary or appropriate in the public interest or for the protection of investors, (1) upon the request of an interested person or (2) upon its own motion.


§ 270.0–8 Payment of fees.

All payment of fees shall be made by wire transfer, or by certified check, bank cashier's check, United States postal money order, or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. Payment of fees required by this section shall be made in accordance with the directions set forth in §202.3a of this chapter.

[73 FR 6014, Feb. 1, 2008]

§ 270.0–9 [Reserved]

§ 270.0–10 Small entities under the Investment Company Act for purposes of the Regulatory Flexibility Act.

(a) General. For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.) and unless otherwise defined for purposes of a particular rulemaking, the term small business or small organization for purposes of the Investment Company Act of 1940 shall mean an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. For purposes of this section: