

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Turbomeca: Docket No. 2000-NE-12-AD.

Applicability: This airworthiness directive (AD) is applicable to Arrius Models 2B, 2B1, and 2F engines. These engines are installed on but not limited to Eurocopter France Model EC120B and Eurocopter Deutschland EC135 T1 rotorcraft.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with the following initial and repetitive replacement procedures are required unless already done.

Perform the following actions to prevent engine flameout and the inability to maintain the 2.5 minutes one engine inoperative (OEI) rating due to blockage of the fuel injection manifolds.

Initial Replacement

(a) Replace injector manifolds and borescope—inspect the flame tube and the high pressure turbine area within 30 days after the effective date of this AD, or prior to exceeding 200 hours time-in-service (TIS) since new, whichever is later. Do this in accordance with 2.A. through 2.C.(3) (except for recording requirement) of Turbomeca Alert Service Bulletin (ASB) No. A319 73 2012 for Arrius 2B and 2B1 turboshaft engines, and ASB No. A319 73 4001 for Arrius 2F turboshaft engines.

Repetitive Replacements

(b) Thereafter, replace injector manifolds within 200 hours TIS since last replacement, or prior to further flight after performing a flight manual power check if the power check shows a negative turbine outlet temperature (TOT) or negative T4 margin.

(c) After the effective date of this AD, do not install any injector manifold with 200 hours TIS since new or greater onto an engine.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on November 30, 2000.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

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SECURITIES AND EXCHANGE COMMISSION**17 CFR Part 270**

[Release No. IC-24775; File No. S7-20-00]

RIN 3235-AH57

Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Proposed rule.

SUMMARY: The Commission is proposing amendments to the rule under the Investment Company Act of 1940 that permits a registered investment company ("fund") that has certain affiliations with an underwriting participant to purchase securities during an offering. The proposed amendments would expand the exemption provided by the rule to permit a fund to purchase government securities in a syndicated offering. The proposed amendments also would modify the rule's quantitative limit on purchases, to cover purchases by a fund as well as any account advised by the fund's investment adviser. These amendments are intended to respond to recent changes in the method of offering certain government securities, and to improve the effectiveness of the quantitative limit on fund purchases.

DATES: Comments must be received on or before February 15, 2001.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549-0609. Comments also may be submitted electronically to the following E-mail address: rule-comments@sec.gov. All

comment letters should refer to File No. S7-20-00; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (<http://www.sec.gov>).

FOR FURTHER INFORMATION CONTACT:

Curtis A. Young, Senior Counsel, or C. Hunter Jones, Assistant Director, at (202) 942-0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549-0506.

SUPPLEMENTARY INFORMATION:

The Commission today is requesting public comment on proposed amendments to rule 10f-3 [17 CFR 270.10f-3] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act" or "Act").¹

I. Discussion*A. Background*

Section 10(f) of the Investment Company Act prohibits a fund from purchasing any security during an underwriting or selling syndicate if the fund has certain affiliated relationships with a principal underwriter² for the security ("affiliated underwriter").³ This provision was designed to protect funds and their investors from the "dumping" of unmarketable securities on a fund in order to benefit the fund's affiliated underwriter.⁴ Section 10(f) is a broad

¹ Unless otherwise noted, all references to "rule 10f-3" or any paragraph of the rule will be to 17 CFR 270.10f-3.

² See section 2(a)(29) of the Investment Company Act [15 U.S.C. 80a-2(a)(29)] (definition of principal underwriter).

³ Section 10(f) [15 U.S.C. 80a-10(f)] prohibits the purchase if a principal underwriter of the security is an officer, director, member of an advisory board, investment adviser, or employee of the fund, or is a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person. For purposes of this Release, a person that falls within one of these categories is referred to as an "affiliated underwriter," even though the Investment Company Act defines the term "affiliated person" to include a broader set of relationships. See section 2(a)(3) of the Investment Company Act [15 U.S.C. 80a-2(a)(3)]. Similarly, this Release refers to a fund that is subject to section 10(f) as a result of its relationship with an "affiliated underwriter" as an "affiliated fund."

⁴ See *Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency*, 76th Cong., 3d Sess. 35 (1940) (statement of Commissioner Healy). An underwriter could, for example, "dump" unmarketable securities on its controlled fund, either by causing the fund to purchase the securities from the underwriter itself,

prohibition, and Congress included in the provision specific authority for the Commission to issue rules or orders exempting transactions from the prohibition, if consistent with the protection of investors.

Rule 10f-3, which the Commission adopted in 1958 and last amended in 1997, permits a fund to purchase securities in a transaction that section 10(f) would prohibit, if certain conditions are met.⁵ The conditions of rule 10f-3 are designed to ensure that the purchases are not likely to raise the concerns that section 10(f) was enacted to address, and are thus consistent with the protection of investors.⁶

B. Purchase of Government Securities

When the Commission first adopted rule 10f-3 in 1958, one of the conditions of the rule was that the securities be registered under the Securities Act of 1933 ("Securities Act") as part of a public offering.⁷ This condition served to assure that the fund did not purchase the securities through a private placement,⁸ and provided the basis for other conditions of the rule concerning the timing and conduct of the public

or by encouraging the fund to purchase securities from another member of the underwriting syndicate. See Exemption for the Acquisition of Securities During the Existence of an Underwriting Syndicate, Investment Company Act Release No. 21838 (Mar. 21, 1996) [61 FR 13630 (Mar. 27, 1996)] ("1996 Release"), at text accompanying n.2.

⁵ Rule 10f-3 currently permits a fund to purchase securities in a transaction that otherwise would violate section 10(f) if, among other things: (i) the securities either are registered under the Securities Act, are municipal securities with certain credit ratings, or are offered in certain foreign or private institutional offerings; (ii) the offering involves a "firm commitment" underwriting; (iii) the fund (together with other funds advised by the same investment adviser) purchases no more than 25 percent of the offering; (iv) the fund purchases the securities from a member of the syndicate other than its affiliated underwriter; (v) if the securities are municipal securities, the purchase is not a group sale; and (vi) the fund's directors have approved procedures for purchases under the rule and regularly review the purchases to determine whether they have complied with the procedures. See rule 10f-3(b).

⁶ See Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 22775 (July 31, 1997) [62 FR 42401 (Aug. 7, 1997)] ("1997 Release").

⁷ See Notice of Proposal to Adopt Rule N-10F-3 Permitting Investment Companies to Purchase Securities Where Affiliates Participate in Underwriting, Investment Company Act Release No. 2744 (July 15, 1958) (noting that proposed conditions were consistent with prior exemptive relief granted by the Commission).

⁸ In private placements at that time, obtaining adequate information about the issuer and a fair price and other favorable terms for the securities depended mostly on the efforts of the purchaser. See Eli Shapiro and Charles R. Wolf, *The Role of Private Placements in Corporate Finance* 1-7 (1972).

offering.⁹ Since then, in response to changes in the methods of offering securities and other developments, we have revised the rule to permit the purchase of certain types of securities that are not registered under the Securities Act, such as municipal securities and securities offered through regulated foreign offerings or private institutional offerings. We determined that the circumstances in which these securities generally are offered, including the availability of relevant information about the issuer and the establishment of a uniform offering price, provided an effective substitute for the Securities Act registration requirement.¹⁰

Government securities,¹¹ including securities issued by agencies or instrumentalities of the U.S. government,¹² are not included in the types of securities that rule 10f-3 permits affiliated funds to purchase. Until recently, there has been little need to exempt the purchase of government securities from section 10(f), because these securities generally have not been offered through "selling syndicates" or underwritings that involve affiliated underwriters to a significant degree.¹³ In

⁹ See, e.g., rule 10f-3(b)(2)(i) (requiring that securities be purchased at no more than the public offering price on the first day of the offering).

¹⁰ See 1996 Release, *supra* note 4, at nn.31-51 and accompanying text. In addition, the other protections of rule 10f-3 continued to apply to purchases of these types of securities.

¹¹ The term "government securities" is defined by the Investment Company Act as "any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing." 15 U.S.C. 80a-2(a)(16). Government securities are exempt from the registration requirements of the Securities Act and from the reporting and other requirements of the Securities Exchange Act of 1934 ("Exchange Act"). See 15 U.S.C. 77c(a)(2), 78c(a)(12)(A). Offers of or transactions in government securities are subject, however, to the anti-fraud provisions of the Securities Act and Exchange Act. See 15 U.S.C. 77q(a), 78j(b).

¹² Government securities may be issued by government-sponsored enterprises such as the Federal National Mortgage Association ("FNMA") and by government corporations such as the Federal Deposit Insurance Corporation. See 31 U.S.C. 9101 (definition of "government corporation"); A. Michael Froomkin, *Reinventing the Government Corporation*, 1995 U. Ill. L. Rev. 543, 555-56.

¹³ U.S. Treasury securities are sold through a system involving auctions and dealers, while government corporations primarily raise money through the Federal Financing Bank, which is part of the Department of Treasury. See U.S. Department of Treasury, Office of Market Finance, *United States of America: U.S. Treasury Security Auctions* (Aug. 12, 1998); Frank J. Fabozzi, *Treasury and Agency Securities*, in *The Handbook of Fixed Income Securities* 157 (Frank J. Fabozzi ed., 1997). See also 12 U.S.C. 2285 (sale of government corporation securities by Federal Financing Bank). Purchases of

1998, however, at least two government-sponsored enterprises began to offer their securities through syndicated underwritings.¹⁴ Because rule 10f-3 does not provide an exemption from section 10(f) for affiliated funds to purchase government securities, affiliated funds have been unable to purchase securities in those offerings, and investors in those funds have been unable to benefit from the purchases their funds otherwise would have been able to make.¹⁵

The Commission is proposing to amend rule 10f-3 to permit affiliated funds to purchase government securities during the existence of an underwriting or selling syndicate for those securities.¹⁶ Government securities are high-quality investments, and therefore are unlikely to be dumped into a fund. Moreover, the circumstances under which government agencies offer their securities to the public appear to be an effective substitute for Securities Act registration for purposes of rule 10f-3. Government agencies generally must obtain approval from the Department of Treasury concerning the timing, price, and terms of the securities offering.¹⁷ In addition, information about these

government securities in these circumstances therefore probably would not involve an "underwriting or selling syndicate" under section 10(f). See Institutional Liquid Assets, SEC No-Action Letter (Dec. 16, 1981) (staff agreed that the broker-dealer, which participated with other broker-dealers in distributions of Federal Home Loan Bank notes, was not a principal underwriter in an "underwriting or selling syndicate" for purposes of section 10(f)).

¹⁴ See Chris O'Leary, *Fannie Mae to Launch Rival Treasury Note as Benchmark*, Investment Dealer's Digest, Jan. 5, 1998, at 9; Adam Reinebach, *Fannie Mae Sells \$4 Billion Benchmark Notes Offering*, Investment Dealer's Digest, Jan. 19, 1998, at 4, 5; Joshua Brockman, *Wall Street Watch: Second Fannie Benchmark Issue Draws More Europeans*, American Banker, Feb. 10, 1998, at 15; and *Freddie Prices \$400 MM Offering*, National Mortgage News, Mar. 23, 1998, at 2.

In response to these developments in the offering of government securities, the Commission has received a request to permit affiliated funds to purchase these securities in syndicated underwritings. See Memorandum from Brown & Wood to the Division of Investment Management, Securities and Exchange Commission (1998) (available to the public in File No. S7-20-00).

¹⁵ A fund that is unable to purchase securities in a primary offering may be able to purchase the securities in the secondary market, but often at a higher price or with additional transaction costs. See 1997 Release, *supra* note 6, at text accompanying n.13.

¹⁶ Proposed rule 10f-3(b)(1)(ii).

¹⁷ The Department of Treasury establishes a general calendar for securities offerings that includes sale announcement, pricing, trading release, and settlement dates. See Department of the Treasury, Securities and Exchange Commission, and Board of Governors of the Federal Reserve System, Joint Report on the Government Securities Market D-1 (1992). See also 12 U.S.C. 2286 (Treasury authorization of issuance of government securities); 31 U.S.C. 9108 (same).

securities typically is available to the public through prospectuses or similar offering documents,¹⁸ and these securities trade actively in the secondary market.¹⁹ Under the proposed amendments, the other restrictions of rule 10f-3, such as limitations on the price and quantity of securities purchased, would apply to the purchase of government securities by the fund.²⁰

The Commission requests comment on the proposed amendments related to government securities. Should the rule include limitations on the purchase of government securities that do not apply to other securities purchased under the rule? For example, should rule 10f-3 require that government securities receive a certain credit rating from a Nationally Recognized Statistical Rating Organization ("NRSRO"), as is required for municipal securities?²¹ Should any of the limitations included in rule 10f-3 not apply to purchases of government securities?

C. Purchases Covered by the Percentage Limit

One of the key conditions of rule 10f-3 is that a fund, together with any other fund advised by the fund's adviser, purchase no more than 25 percent of an offering ("percentage limit"). The purpose of the percentage limit is to provide an indication that a significant portion of an offering is being purchased by persons acting independently of the adviser. The existence of these purchasers demonstrates that the securities are not being "dumped" and suggests that the price of the securities is based on market forces.

Since amending rule 10f-3 in 1997, we have become aware of a possible "loophole" in the rule that could permit an investment adviser to circumvent the percentage limit and compromise the effectiveness of the rule. Although the percentage limit requires that an adviser aggregate the purchases of all the funds that it advises, the rule does not require that the adviser also aggregate purchases by its other (*i.e.*, non-fund) clients. As a result, if an adviser purchases most or all of an offering for its fund clients and non-fund clients, the percentage limit may not provide a reliable indicator of

market forces.²² The adviser could use these controlled accounts to assure the success of the affiliated underwriting, thus undermining an important protection that section 10(f) provides fund shareholders.

In order to assure the effectiveness of the percentage limit of rule 10f-3, we are proposing to amend the rule to include purchases by any other account over which the adviser has discretionary authority or exercises control. Therefore, if a fund purchases securities in reliance on rule 10f-3, the fund's purchases, aggregated with purchases by any other fund advised by the fund's adviser, and any other account over which the fund's adviser has discretionary authority or otherwise exercises control, could not exceed 25 percent of the offering.²³

The Commission requests comment on the proposed amendment to the percentage limit. Should we increase the percentage in light of the changes that we are now proposing?

II. General Request for Comments

Any interested persons wishing to comment on the rule changes that are the subject of this Release, to suggest additional changes, or to comment on other matters that might have an effect on the proposals contained in this Release, are requested to submit written comments. Comment is specifically requested whether the Commission should amend or eliminate conditions in rule 10f-3 other than those addressed in this Release.

The Commission also requests comment whether the proposals, if adopted, would promote efficiency, competition, and capital formation. Comments will be considered by the Commission in satisfying its responsibilities under section 2(c) of the Investment Company Act.²⁴ For

²² The adviser, for example, could arrange for its fund clients to purchase 25 percent of an offering and for its non-fund clients to purchase the remaining 75 percent of the offering.

²³ See proposed rule 10f-3(b)(7). In a different context, the Gramm-Leach-Bliley Act recently amended section 2(a)(19) of the Investment Company Act to include language that is parallel to the proposed rule amendments. As amended, a person is an "interested person" of a fund or adviser (and is therefore disqualified from being an independent director) if, among other things, she (or her affiliate) has executed portfolio transactions for the fund, any other fund advised by the fund's adviser, or "any account over which the [fund's] adviser has brokerage placement discretion." Pub. L. No. 106-102, 113 Stat. 1338 (1999), to be codified at 15 U.S.C. 6801-6809.

²⁴ Section 2(c) requires the Commission, when it engages in rulemaking and is required to consider whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. 15 U.S.C. 80a-2(c).

purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,²⁵ the Commission also requests information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide data to support their views.

III. Cost-Benefit Analysis

A. Purchase of Government Securities

The proposed amendments to rule 10f-3 should, if adopted, increase the ability of funds to purchase securities during the existence of a syndicate in which an affiliated underwriter participates. The benefits to funds would include the ability to purchase government securities in syndicates involving an underwriter affiliated with the fund's investment adviser, without having to seek an exemptive order from the Commission. The potential benefits to fund investors would include better investment performance, and possibly lower fund expenses.

The costs to funds and investors of the proposed amendments should be small. Funds would be required to determine whether purchases of government securities comply with the conditions of the rule. The additional cost of determining compliance with the rule's conditions, as applied to purchases of government securities, should be minimal. Funds also would be required to (i) maintain a written record of each purchase of government securities made in reliance on the proposed amendments and (ii) report those transactions on Form N-SAR. Rule 10f-3 currently requires funds relying on the rule to comply with these recordkeeping and reporting requirements. The additional costs of complying with these requirements with respect to purchases of government securities made in reliance on the proposed amendments would be minimal and likely would be justified by the potential benefits to funds and investors described above.

B. Purchases Covered by the Percentage Limit

The proposed amendments would require that the total of the fund's purchases in any offering purchased by the fund in reliance on the rule, aggregated with purchases in the offering by any other fund advised by the fund's adviser, and purchases in the offering by any other account over which the fund's adviser has discretionary authority or otherwise exercises control, not exceed 25 percent

²⁵ Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹⁸ See U.S. General Accounting Office, Government-Sponsored Enterprises: Changes in Securities Distribution Process and Use of Derivative Products 48-49 (1993).

¹⁹ Frank J. Fabozzi, *Treasury and Agency Securities*, in *The Handbook of Fixed Income Securities* 158 (Frank J. Fabozzi ed., 1997). See also B.J. Reed and John W. Swain, *Public Finance Administration* 227 (1997).

²⁰ See rule 10f-3(b).

²¹ See rule 10f-3(a)(3).

of the offering. The proposed amendments will benefit funds and their investors by closing a loophole in the percentage limit. By doing so, the rule will reduce the likelihood that the fund's adviser is circumventing the percentage limit, and will thereby minimize the risk that fund investors will be harmed by the dumping of unmarketable securities into their funds.²⁶ With respect to costs, the proposed amendments will require a fund or its adviser to monitor the purchases of non-fund accounts over which the fund's adviser has discretionary authority or otherwise exercises control. The cost of this monitoring is likely to be minimal, because this information should be readily available to the fund's adviser.

C. Request for Comments

The Commission requests comment on the potential costs and benefits of the proposed amendments and any suggested alternatives to the proposal. Data are requested concerning these costs and benefits.

IV. Paperwork Reduction Act

Certain provisions of the proposed amendments to rule 10f-3 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) ("PRA"), and the Commission is submitting the proposed amendments to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d). The title for the collection of information is "Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate." Rule 10f-3 contains currently approved collections of information under OMB control number 3235-0226. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Purchase of Government Securities

Rule 10f-3 permits a fund to purchase securities, from an unaffiliated underwriter, in an underwriting of securities in which an affiliated underwriter is a member of the underwriting or selling syndicate. The proposed amendments to rule 10f-3 would permit a fund to purchase government securities under the conditions of the rule.

Rule 10f-3 requires the board of directors of a fund relying on the rule to approve procedures that are

reasonably designed to ensure compliance with the conditions of the rule, and to approve changes to these procedures as necessary. The fund must maintain these procedures permanently in an easily accessible place. A fund that chooses to rely on the proposed amendments also may need to amend these procedures to account for purchases of government securities. The fund also must report on Form N-SAR any transactions under the rule and attach a written record of each transaction, and the board must review the transactions quarterly to determine compliance with the fund's procedures.²⁷ Finally, a fund must retain written records of the rule 10f-3 transactions and of the information reviewed by the board, for at least six years from the end of the fiscal year in which the transactions occurred. A fund would need to comply with these recordkeeping requirements in order to obtain the benefit of exemption from section 10(f) of the Act for purchases of government securities under the proposed amendments.

The collections of information are necessary to provide the Commission with information regarding compliance with rule 10f-3. The Commission may review this information during periodic examinations or with respect to investigations. Except for the information required to be kept under paragraph (b)(11)(ii) of rule 10f-3, none of the information required to be collected or disclosed for PRA purposes will be kept confidential. If the records required to be kept under these rules are requested by and submitted to the Commission, they will be kept confidential to the extent permitted by relevant statutory and regulatory provisions.

The Division of Investment Management estimates that 300 funds rely upon rule 10f-3 each year, and that 70 of those funds purchase government securities (although not all 70 funds would likely need to rely upon rule 10f-3 to purchase government securities). It is estimated that the recordkeeping burden for funds that rely on the proposed amendments to purchase government securities would increase by an estimated 0.25 hours per fund per year.²⁸

²⁷ The written record must state (i) from whom the securities were acquired, (ii) the identity of the underwriting syndicate's members, (iii) the terms of the transactions, and (iv) the information or materials on which the fund's board of directors has determined that the purchases were made in compliance with procedures established by the board. See rule 10f-3(b)(9).

²⁸ The total additional burden of the proposed amendments concerning the purchase of

B. Purchases Covered by the Percentage Limit

The recordkeeping burden for funds that rely on rule 10f-3 may minimally increase due to the condition that the total of the fund's purchases in any offering, aggregated with purchases of any other fund advised by the fund's adviser, and purchases by any other account over which the fund's adviser has discretionary authority or otherwise exercises control, not exceed 25 percent of the offering.

C. Comments

The Commission solicits comments under 44 U.S.C. 3506(c)(2)(B) concerning: whether the proposed collection of information is necessary for the proper performance of the function of the Commission, including whether the information will have practical utility; the accuracy of the staff's estimate of the burden of the proposed collection of information; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget ("OMB"), Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th St., NW., Washington, DC 20549-0609 with reference to File No. S7-20-00. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7-20-00, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 5th Street, NW., Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to the OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

government securities is estimated to be 17.5 hours per year. This estimate is based on the following: 70 funds x 0.25 hours = 17.5 hours.

²⁶ See *supra* Section I.C.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding amendments to rule 10f-3 under the Investment Company Act. The following summarizes the IRFA.

Section 10(f) prohibits investment companies from purchasing government securities from an affiliated underwriter during the existence of an underwriting or selling syndicate for that security, and authorizes the Commission to exempt transactions by rule or order from the prohibition. The Commission adopted rule 10f-3 to permit a fund to purchase securities from an unaffiliated member of an underwriting or selling syndicate when an affiliated underwriter is a member of the underwriting or selling syndicate. We are proposing amendments to rule 10f-3 in response to the recent syndicated underwriting of government securities issued by government-sponsored enterprises.²⁹ The proposed amendments are designed to permit funds to purchase government securities in syndicated offerings, in accordance with other conditions of rule 10f-3.³⁰ We are also proposing amendments in response to concerns that purchases by advisory clients other than funds may undercut the effectiveness of the percentage limit of the rule. To address this concern the Commission is proposing that the total of the fund's purchases in any offering, aggregated with purchases of any other fund advised by the fund's adviser, and purchases by any account over which the fund's adviser has discretionary authority or otherwise exercises control, not exceed 25 percent of the offering.

A small business or small organization (collectively, "small entity") for purposes of the Investment Company Act is a fund that, together with other funds 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.³¹ Of approximately 3900 active funds, 339 are small entities. Any of these 339 funds would be able to rely on the proposed amendments to rule 10f-3. It appears that the proposed amendments would affect small entities in the same manner as other entities subject to section 10(f), and that the proposed

amendments increase flexibility for all funds.

The IRFA states that purchases of government securities made in reliance on rule 10f-3 would be subject to the existing and amended reporting and recordkeeping requirements of the rule.³² There are no rules that duplicate, overlap, or conflict with the proposed amendments. The IRFA also discusses the absence of any viable alternatives considered by the Commission in connection with the proposed amendments that might minimize the effect on small entities.

The Commission encourages the submission of comments on matters discussed in the IRFA. Comment specifically is requested on the number of small entities that would be affected by the proposed rule amendments. Comment is also requested on the effect of the rule amendments on investment advisers and funds that are small entities. Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of the effect. These comments will be placed in the same public file as comments on the proposed rule amendments. A copy of the IRFA may be obtained by contacting Curtis A. Young, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549-0506.

VI. Statutory Authority

The Commission is proposing to amend rule 10f-3 under the authority set forth in sections 10(f), 31(a) and 38(a) of the Investment Company Act [15 U.S.C. 80a-10(f), 80a-30(a), 80a-37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, 80a-39 unless otherwise noted;

* * * * *

³² A fund would be required to report purchases of government securities on Form N-SAR, attach a written record of each transaction, and keep a copy of the written records of those transactions. See rule 10f-3(b).

2. Amend § 270.10f-3 by revising paragraphs (b)(1), (b)(4) and (b)(7).

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

* * * * *

(b) *Conditions.* Any purchase of securities by a registered investment company prohibited by section 10(f) of the Act (15 U.S.C. 80a-10(f)) will be exempt from the provisions of that 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.

* * * * *

(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. 80a-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.

* * * * *

(7) *Percentage limit.* The amount of securities of any class of such issue purchased by the investment company, aggregated with purchases by any other investment company advised by the investment company's investment adviser, and purchases by any other account over which such adviser has discretionary authority or otherwise exercises control, do not exceed the following limits:

(i) 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

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

(A) 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

²⁹ See *supra* note 14.

³⁰ The amendments to rule 10f-3 are proposed by the Commission under the authority set forth in sections 10(f), 31(a) and 38(a) of the Investment Company Act.

³¹ Rule 0-10 [17 CFR 270.0-10].

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

* * * * *

By the Commission.

Dated: November 29, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-30975 Filed 12-5-00; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-116495-99]

RIN 1545-AX68

Loans From a Qualified Employer Plan to Plan Participants or Beneficiaries; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of public hearing on proposed regulations relating to loans made from a qualified employer plan to plan participants or beneficiaries.

DATES: The public hearing is being held on January 17, 2001 at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by December 27, 2000.

ADDRESSES: The public hearing is being held in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: Regulations Unit CC (REG-116495-99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Hand deliver outlines Monday through Friday between the hours of 8 a.m. and 5 p.m. to: Regulations Unit CC (REG-116495-99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Submit outlines electronically to the IRS Internet site at http://www.irs.gov/tax_regs/regslst.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the

hearing, contact Sonya M. Cruse at (202) 622-7805 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed regulations (REG-116495-99) that was published in the **Federal Register** on July 31, 2000 (65 FR 46677).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who have submitted written comments and wish to present oral comments at the hearing, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic by December 27, 2000.

A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia Grigsby,

Chief, Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning).

[FR Doc. 00-31083 Filed 12-5-00; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG-114423-00]

RIN 1545-AY47

Federal Employment Tax Deposits—De Minimis Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: These proposed regulations affect taxpayers required to make deposits of Federal employment taxes. This document contains proposed regulations which change the de minimis deposit rule for quarterly and annual return periods.

In the Rules and Regulations section of this issue of the **Federal Register**, the

IRS is issuing temporary regulations relating to the deposit of Federal employment taxes. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronically generated comments and requests for a public hearing must be received by March 6, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG-114423-00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG-114423-00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslst.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Brinton T. Warren, (202) 622-4940; concerning submissions of comments and requests for a public hearing, Treena Garrett of the Regulations Unit at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Employment Tax and Collection of Income Tax at Source Regulations (26 CFR part 31) relating to section 6302. The temporary regulations change the de minimis rule for the deposit of Federal employment taxes. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed