

use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for small entities.

We do not believe that special compliance, timetable, or reporting requirements or an exemption from coverage of the rule for small entities would be consistent with investor protection. Similarly, any further clarification, consolidation, or simplification of the reporting requirements for small entities could compromise the safeguards embodied in the new rule and amendments. The new rule and rule amendments use performance, rather than design standards, in the sense that they require the fund's board of directors to make certain findings,<sup>93</sup> and the fund's advisory contracts to include certain conditions,<sup>94</sup> rather than specifying the basis for the board's findings, or the specific language to be included in the advisory contracts.

## VII. Statutory Authority

The Commission has adopted amendments to rules 10f-3, 12d3-1, 17a-6, 17d-1, and 17e-1 and new rule 17a-10 under the Investment Company Act pursuant to authority set forth in sections 6(c), 10(f), 17(b), 17(d), 31(a), and 38(a) of the Investment Company Act.

### List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

### Text of Rules

For reasons set forth in the preamble, title 17, chapter II of the Code of Federal Regulations is 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;

\* \* \* \* \*

2. Section 270.10f-3 is amended by:
  - a. Redesignating paragraph (b) as paragraph (c);
  - b. Adding paragraphs (a)(6), (a)(7), (a)(8), and new paragraph (b);
  - c. Revising the paragraph heading in newly redesignated paragraph (c); and
  - d. Revising newly redesignated paragraph (c)(7).

<sup>93</sup> In the case of the amendments to rules 17a-6 and 17d-1(d)(5).

<sup>94</sup> In the case of rule 17a-10 and the amendments to rules 17e-1, 10f-3, and 12d3-1.

The additions and revisions read as follows:

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

(a) \* \* \*

(6) *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.

(7) *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.

(8) *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.*

\* \* \*

(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:

(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:

(1) 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

(2) 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.

\* \* \* \* \*

3. Section 270.12d3-1 is amended by revising paragraph (c) and adding paragraph (d)(9) before the note:

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

\* \* \* \* \*

(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