

an advisory board, or employee of the acquiring company;

(ii) *Advisory contract.* The advisory contracts of the Subadviser that is (or whose affiliated person is) the issuer, and any Subadviser that is advising the portion of the acquiring company that is purchasing the securities;

(A) Prohibit them from consulting with each other concerning transactions of the acquiring company in securities or other assets, other than for purposes of complying with the conditions of paragraphs (a) and (b) of this section; and

(B) Limit their responsibility in providing advice to providing advice with respect to a discrete portion of the acquiring company's portfolio.

(d) \* \* \*

(9) *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)).

\* \* \* \* \*

4. Section 270.17a-6 is revised to read as follows:

**§ 270.17a-6 Exemption for transactions with portfolio affiliates.**

(a) *Exemption for transactions with portfolio affiliates.* A transaction to which a fund, or a company controlled by a fund, and a portfolio affiliate of the fund are parties is exempt from the provisions of section 17(a) of the Act (15 U.S.C. 80a-17(a)), provided that none of the following persons is a party to the transaction, or has a direct or indirect financial interest in a party to the transaction other than the fund:

(1) An officer, director, employee, investment adviser, member of an advisory board, depositor, promoter of or principal underwriter for the fund;

(2) A person directly or indirectly controlling the fund;

(3) A person directly or indirectly owning, controlling or holding with power to vote five percent or more of the outstanding voting securities of the fund;

(4) A person directly or indirectly under common control with the fund, other than:

(i) A portfolio affiliate of the fund; or

(ii) A fund whose sole interest in the transaction or a party to the transaction is an interest in the portfolio affiliate; or

(5) An affiliated person of any of the persons mentioned in paragraphs (a)(1)–(4) of this section, other than the fund or a portfolio affiliate of the fund.

(b) *Definitions.* (1) *Financial interest.*

(i) The term *financial interest* as used in this section does not include:

(A) Any interest through ownership of securities issued by the fund;

(B) Any interest of a wholly-owned subsidiary of a fund;

(C) Usual and ordinary fees for services as a director;

(D) An interest of a non-executive employee;

(E) An interest of an insurance company arising from a loan or policy made or issued by it in the ordinary course of business to a natural person;

(F) An interest of a bank arising from a loan or account made or maintained by it in the ordinary course of business to or with a natural person, unless it arises from a loan to a person who is an officer, director or executive of a company which is a party to the transaction, or from a loan to a person who directly or indirectly owns, controls, or holds with power to vote, five percent or more of the outstanding voting securities of a company which is a party to the transaction;

(G) An interest acquired in a transaction described in paragraph (d)(3) of § 270.17d-1; or

(H) Any other interest that the board of directors of the fund, including a majority of the directors who are not interested persons of the fund, finds to be not material, provided that the directors record the basis for that finding in the minutes of their meeting.

(ii) A person has a financial interest in any party in which it has a financial interest, in which it had a financial interest within six months prior to the transaction, or in which it will acquire a financial interest pursuant to an arrangement in existence at the time of the transaction.

(2) *Fund* means a registered investment company or separate series of a registered investment company.

(3) *Portfolio affiliate of a fund* means a person that is an affiliated person (or an affiliated person of an affiliated person) of a fund solely because the fund, a fund under common control with the fund, or both:

(i) Controls such person (or an affiliated person of such person); or

(ii) Owns, controls, or holds with power to vote five percent or more of the outstanding voting securities of such person (or an affiliated person of such person).

5. Section 270.17a-10 is added to read as follows:

**§ 270.17a-10 Exemption for transactions with certain subadvisory affiliates.**

(a) *Exemption.* A person that is prohibited by section 17(a) of the Act (15 U.S.C. 80a-17(a)) from entering into a transaction with a fund solely because such person is, or is an affiliated person of, a subadviser of the fund, or a subadviser of a fund that is under common control with the fund, may

nonetheless enter into such transaction, if:

(1) *Prohibited relationship.* The person is not, and is not an affiliated person of, an investment adviser responsible for providing advice with respect to the portion of the fund for which the transaction is entered into, or of any promoter, underwriter, officer, director, member of an advisory board, or employee of the fund.

(2) *Prohibited conduct.* The advisory contracts of the subadviser that is (or whose affiliated person is) entering into the transaction, and any subadviser that is advising the fund (or portion of the fund) entering into the transaction:

(i) Prohibit them from consulting with each other concerning transactions for the fund in securities or other assets; and

(ii) If both such subadvisers are responsible for providing investment advice to the fund, limit the subadvisers' responsibility in providing advice with respect to a discrete portion of the fund's portfolio.

(b) *Definitions.*

(1) *Fund* means a registered investment company and includes a separate series of a registered investment company.

(2) *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)).

6. Section 270.17d-1 is amended by revising paragraphs (d)(5) and (d)(6) to read as follows:

**§ 270.17d-1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.**

\* \* \* \* \*

(d) \* \* \*

(5) Any joint enterprise or other joint arrangement or profit-sharing plan ("joint enterprise") in which a registered investment company or a company controlled by such a company, is a participant, and in which a portfolio affiliate (as defined in § 270.17a-6(b)(3)) of such registered investment company is also a participant, provided that:

(i) None of the persons identified in § 270.17a-6(a) is a participant in the joint enterprise, or has a direct or indirect financial interest in a participant in the joint enterprise (other than the registered investment company);

(ii) *Financial interest.*

(A) The term *financial interest* as used in this section does not include:

(1) Any interest through ownership of securities issued by the registered investment company;

(2) Any interest of a wholly owned subsidiary of the registered investment company;