

Securities and Exchange Commission

§ 270.17a-6

§ 270.17a-4 Exemption of transactions pursuant to certain contracts.

Transactions pursuant to a contract shall be exempt from section 17(a) of the Act if at the time of the making of the contract and for a period of at least six months prior thereto no affiliation or other relationship existed which would operate to make such contract or the subsequent performance thereof subject to the provisions of said section 17(a).

[Rule N-17A-4, 12 FR 5008, July 29, 1947]

§ 270.17a-5 Pro rata distribution neither "sale" nor "purchase."

When a company makes a pro rata distribution in cash or in kind among its common stockholders without giving any election to any stockholder as to the specific assets which such stockholders shall receive, such distribution shall not be deemed to involve a sale to or a purchase from such distributing company as those terms are used in section 17(a) of the Act.

[20 FR 7447, Oct. 6, 1955]

§ 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 trans-

action 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,