

CFR › Title 17 › Chapter II › Part 270 › Section 270.17d-1

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

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

(a) No affiliated person of or principal underwriter for any registered investment company (other than a company of the character described in section 12(d)(3) (A) and (B) of the Act) and no affiliated person of such a person or principal underwriter, acting as principal, shall participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which any such registered company, or a company controlled by such registered company, is a participant, and which is entered into, adopted or modified subsequent to the effective date of this rule, unless an application regarding such joint enterprise, arrangement or profit-sharing plan has been filed with the Commission and has been granted by an order entered prior to the submission of such plan or modification to security holders for approval, or prior to such adoption or modification if not so submitted, except that the provisions of this rule shall not preclude any affiliated person from acting as manager of any underwriting syndicate or other group in which such registered or controlled company is a participant and receiving compensation therefor.

(b) In passing upon such applications, the Commission will consider whether the participation of such registered or controlled company in such joint enterprise, joint arrangement or profit-sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

(c) “Joint enterprise or other joint arrangement or profit-sharing plan” as used in this section shall mean any written or oral plan, contract, authorization or arrangement, or any practice or understanding concerning an enterprise or undertaking whereby a registered investment company or a controlled company thereof and any affiliated person of or a principal underwriter for such registered investment company, or any affiliated person of such a person or principal underwriter, have a joint or a joint and several participation, or share in the profits of such enterprise or undertaking, including, but not limited to, any stock option or stock purchase plan, but shall not include an investment advisory contract subject to section 15 of the Act.

(d) Notwithstanding the requirements of paragraph (a) of this section, no application need be filed pursuant to this section with respect to any of the following:

(1) Any profit-sharing, stock option or stock purchase plan provided by any controlled company which is not an investment company for its officers, directors or employees, or the purchase of stock or the granting, modification or exercise of options pursuant to such a plan, provided:

(i) No individual participates therein who is either:

(a) An affiliated person of any investment company which is an affiliated person of such controlled company; or

(b) An affiliated person of the investment adviser or principal underwriter of such investment company; and

(ii) No participant has been an affiliated person of such investment company, its investment adviser or principal underwriter during the life of the plan and for six months prior to, as the case may be:

(a) Institution of the profit-sharing plan;

(b) The purchase of stock pursuant to a stock purchase plan; or

(c) The granting of any options pursuant to a stock option plan.

(2) Any plan provided by any registered investment company or any controlled company for its officers or employees if such plan has been qualified under section 401 of the Internal Revenue Code of 1954 and all contributions paid under said plan by the employer qualify as deductible under section 404 of said Code.

(3) Any loan or advance of credit to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of the foregoing ("Investments"), made by a bank and a small business investment company (SBIC) licensed under the Small Business Investment Act of 1958, whether such transactions are contemporaneous or separated in time, where the bank is an affiliated person of either (i) the SBIC or (ii) an affiliated person of the SBIC; but reports containing pertinent details as to Investments and transactions relating thereto shall be made at such time, on such forms and by such persons as the Commission may from time to time prescribe.

(4) The issuance by a registered investment company which is licensed by the Small Business Administration pursuant to the Small Business Investment Act of 1958 of stock options which qualify under section 422 of the Internal Revenue Code, as amended, and which conform to § 107.805(b) of Chapter I of Title 13 of the Code of Federal Regulations.

(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;

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

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

(5) 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;

(6) An interest of a bank arising from a loan to a person who is an officer, director, or executive of a company which is a participant in the joint 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 participant in the joint transaction;

(7) An interest acquired in a transaction described in paragraph (d)(3) of this section; or

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

(B) 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 investment company's participation in the enterprise, or in which it will acquire a financial interest pursuant to an arrangement in existence at the time of the investment company's participation in the enterprise.

(6) The receipt of securities and/or cash by an investment company or a controlled company thereof and an affiliated person of such investment company or an affiliated person of such person pursuant to a plan of reorganization: *Provided*, That no person

identified in § 270.17a-6(a)(1) or any company in which such a person has a direct or indirect financial interest (as defined in paragraph (d)(5)(ii) of this section):

(i) Has a direct or indirect financial interest in the corporation under reorganization, except owning securities of each class or classes owned by such investment company or controlled company;

(ii) Receives pursuant to such plan any securities or other property, except securities of the same class and subject to the same terms as the securities received by such investment company or controlled company, and/or cash in the same proportion as is received by the investment company or controlled company based on securities of the company under reorganization owned by such persons; and

(iii) Is, or has a direct or indirect financial interest in any person (other than such investment company or controlled company) who is:

(A) Purchasing assets from the company under reorganization; or

(B) Exchanging shares with such person in a transaction not in compliance with the standards described in this paragraph (d)(6).

(7) Any arrangement regarding liability insurance policies (other than a bond required pursuant to rule 17g-1 (§ 270.17g-1) under the Act); *Provided*, That

(i) The investment company's participation in the joint liability insurance policy is in the best interests of the investment company;

(ii) The proposed premium for the joint liability insurance policy to be allocated to the investment company, based upon its proportionate share of the sum of the premiums that would have been paid if such insurance coverage were purchased separately by the insured parties, is fair and reasonable to the investment company;

(iii) The joint liability insurance policy does not exclude coverage for bona fide claims made against any director who is not an interested person of the investment company, or against the investment company if it is a co-defendant in the claim with the disinterested director, by another person insured under the joint liability insurance policy;

(iv) The board of directors of the investment company, including a majority of the directors who are not interested persons with respect thereto, determine no less frequently than annually that the standards described in paragraphs (d)(7)(i) and (ii) of this section have been satisfied; and

(v) The board of directors of the investment company satisfies the fund governance standards defined in § 270.0-1(a)(7).

(8) An investment adviser's bearing expenses in connection with a merger, consolidation or purchase or sale of substantially all of the assets of a company which involves a registered investment company of which it is an affiliated person.

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