

### § 270.31a-3

### 17 CFR Ch. II (4-1-10 Edition)

electronic storage media, the investment company, or person that maintains and preserves records on its behalf, must establish and maintain procedures:

(i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel, the directors of the investment company, and the Commission (including its examiners and other representatives); and

(iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(4) Notwithstanding the provisions of paragraphs (a) through (e) of this section, any record, book or other document may be destroyed in accordance with a plan previously submitted to and approved by the Commission. A plan shall be deemed to have been approved by the Commission if notice to the contrary has not been received within 90 days after submission of the plan to the Commission.

[27 FR 11994, Dec. 5, 1962, as amended at 38 FR 7797, Mar. 26, 1973; 51 FR 42209, Nov. 24, 1986; 53 FR 3880, Feb. 10, 1988; 66 FR 3759, Jan. 16, 2001; 66 FR 29228, May 30, 2001; 69 FR 46390, Aug. 2, 2004]

### § 270.31a-3 Records prepared or maintained by other than person required to maintain and preserve them.

(a) If the records required to be maintained and preserved pursuant to the provisions of §§ 270.31a-1 and 270.31a-2 are prepared or maintained by others on behalf of the person required to maintain and preserve such records, the person required to maintain and preserve such records shall obtain from such other person an agreement in writing to the effect that such records are the property of the person required to maintain and preserve such records and will be surrendered promptly on request.

(b) In cases where a bank or member of a national securities exchange acts as custodian, transfer agent, or dividend disbursing agent, compliance with

this section shall be considered to have been met if such bank or exchange member agrees in writing to make any records relating to such service available upon request and to preserve for the periods prescribed in § 270.31a-2 any such records as are required to be maintained by § 270.31a-1.

(Sec. 31, 54 Stat. 838; 15 U.S.C. 80a-30)

[27 FR 11994, Dec. 5, 1962]

### § 270.32a-1 Exemption of certain companies from affiliation provisions of section 32(a).

A registered investment company shall be exempt from the provisions of paragraph (1) of section 32(a) of the Act (54 Stat. 838; 15 U.S.C. 80a-31), insofar as said paragraph requires that independent public accounts for such company be selected by a majority of certain members of the board of directors, if:

(a) Such company meets the conditions of paragraphs (1) to (8), inclusive, of section 10(d) of the Act (54 Stat. 807; 15 U.S.C. 80a-10); and

(b) Such accountants are selected by a majority of all the members of the board of directors.

[Rule N-32A-1, 6 FR 6631, Dec. 23, 1941]

### § 270.32a-2 Exemption for initial period from vote of security holders on independent public accountant for certain registered separate accounts.

(a) A registered separate account shall be exempt from the requirement under paragraph (2) of section 32(a) of the Act that selection of an independent public accountant shall have been submitted for ratification or rejection at the next succeeding annual meeting of security owners, subject to the following conditions:

(1) Such registered separate account qualifies for exemption from section 14(a) of the Act pursuant to § 270.14a-2, or is exempt therefrom by order of the Commission upon application; and

(2) The selection of such accountant shall be submitted for ratification or rejection to variable annuity contract owners at their first meeting after the effective date of the registration statement under the Securities Act of 1933,

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as amended (15 U.S.C. 77a et seq.), relating to contracts participating in such account: *Provided*, That such meeting shall take place within 1 year after such effective date, unless the time for the holding of such meeting shall be extended by the Commission upon written request showing good cause therefor.

(Sec. 6, 54 Stat. 800; 15 U.S.C. 80a-6)  
[34 FR 12696, Aug. 5, 1969]

### **§ 270.32a-3 Exemption from provision of section 32(a)(1) regarding the time period during which a registered management investment company must select an independent public accountant.**

(a) A registered management investment company ("company") organized in a jurisdiction that does not require it to hold regular annual meetings of its stockholders, and which does not hold a regular annual stockholders' meeting in a given fiscal year, shall be exempt in that fiscal year from the requirement of section 32(a)(1) of the Act (15 U.S.C. 80a-31(a)(1)) that the independent public accountant ("accountant") be selected at a board of directors meeting held within 30 days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year, *provided*, that such company is either:

(1) In a set of investment companies as defined in paragraph (b) of this section, if not all the members of such set have an identical fiscal year end and if such company selects an accountant at a board of directors meeting held within 90 days before or after the beginning of that fiscal year; or

(2) Not in a set of investment companies, or is in a set, each of whose members has the same fiscal year end, and if such company selects an accountant at a board of directors meeting held within 30 days before or 90 days after the beginning of that fiscal year.

(b) For purposes of this rule, "set of investment companies" means any two or more registered management investment companies that hold themselves out to investors as related companies for purposes of investment and investor services, and

(1) That have a common investment adviser or principal underwriter, or

(2) If the investment adviser or principal underwriter of one of the companies is an affiliated person as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a-2(a)(3)(C)) of the investment adviser or principal underwriter of each of the other companies.

[54 FR 31332, July 28, 1989]

### **§ 270.32a-4 Independent audit committees.**

A registered management investment company or a registered face-amount certificate company is exempt from the requirement of section 32(a)(2) of the Act (15 U.S.C. 80a-32(a)(2)) that the selection of the company's independent public accountant be submitted for ratification or rejection at the next succeeding annual meeting of shareholders, if:

(a) The company's board of directors has established a committee, composed solely of directors who are not interested persons of the company, that has responsibility for overseeing the fund's accounting and auditing processes ("audit committee");

(b) The company's board of directors has adopted a charter for the audit committee setting forth the committee's structure, duties, powers, and methods of operation or set forth such provisions in the fund's charter or by-laws; and

(c) The company maintains and preserves permanently in an easily accessible place a copy of the audit committee's charter and any modification to the charter.

[66 FR 3759, Jan. 16, 2001]

### **§ 270.34b-1 Sales literature deemed to be misleading.**

Any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) of the Act [15 U.S.C. 80a-24(b)] ("sales literature") shall have omitted to state a fact necessary in order to make the statements made therein not materially misleading unless the sales literature includes the information specified in paragraphs (a) and (b) of this section.