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(e) By non-U.S. person acting as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10 or F–80.

[56 FR 30078, July 1, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form F–X, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 269.6 [Reserved]

§ 269.7 Form ID, uniform application for access codes to file on EDGAR.

Form ID must be filed by registrants, third party filers, or their agents, to request the following access codes to permit filing on EDGAR:

(a) Central Index Key (CIK)—uniquely identifies each filer, filing agent, and training agent.

(b) CIK Confirmation Code (CCC)—used in the header of a filing in conjunction with the CIK of the filer to ensure that the filing has been authorized by the filer.

(c) Password (PW)—allows a filer, filing agent or training agent to log on to the EDGAR system, submit filings, and change its CCC.

(d) Password Modification Authorization Code (PMAC)—allows a filer, filing agent or training agent to change its Password.

[69 FR 22710, Apr. 26, 2004, as amended at 86 FR 25805, May 11, 2021]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form ID, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 269.8 Form SE, form for submission of paper format exhibits by electronic filers.

This form shall be used by an electronic filer for the submission of any paper format document relating to an otherwise electronic filing, as provided in Rule 311 of Regulation S-T (§ 232.311 of this chapter).

[58 FR 14687, Mar. 18, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form SE, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 269.9 Form T–6 for application under section 310(a)(1) of the Trust Indenture Act for determination of the eligibility of a foreign person to act as institutional trustee.

This form shall be used for the filing of an application pursuant to rule 10a–1 [§ 260.10a–1 of this chapter] to obtain authorization for a corporation or other person organized and doing business under the laws of a foreign government to act as sole trustee under an indenture qualified or to be qualified under the Act.

[56 FR 22321, May 15, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form T–6, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 269.10 Form TH—Notification of reliance on temporary hardship exemption.

Form TH shall be filed by any electronic filer who submits to the Commission, pursuant to a temporary hardship exemption, a document in paper format that otherwise would be required to be submitted electronically, as prescribed by Rule 201(a) of Regulation S-T (§ 232.201(a) of this chapter).

[58 FR 14687, Mar. 18, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form TH, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Sec.

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majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

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

270.31a–4 Records to be maintained and preserved by registered investment companies relating to fair value determinations.

270.32a–1 Exemption of certain companies from affiliation provisions of section 32(a).

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

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.

270.32a–4 Independent audit committees.

270.34b–1 Sales literature deemed to be misleading.

270.35d–1 Investment company names.

270.38a–1 Compliance procedures and practices of certain investment companies.

270.45a–1 Confidential treatment of names and addresses of dealers of registered investment company securities.

270.55a–1 Investment activities of business development companies.

270.57b–1 Exemption for downstream affiliates of business development companies.

270.60a–1 Exemption for certain business development companies.

AUTHORITY: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

Section 270.0–1 also issued under sec. 38(a) (15 U.S.C. 80a–37(a));

Section 270.0–1(a)(7) is also issued under 15 U.S.C. 80a–10(e);

Section 270.0–11 also issued under secs. 8, 24, 30 and 38, Investment Company Act (15 U.S.C. 80a–8, 80a–24, 80a–29 and 80a–37), secs. 6, 7, 8, 10 and 19(a), Securities Act (15 U.S.C. 77f, 77g, 77h, 77j, 77s(a)) and secs. 3(b), 12, 13, 14, 15(d) and 23(a), Exchange Act (15 U.S.C. 78c(b), 78l, 78m, 78n, 78o(d) and 78w(a));

Section 270.6a–5 is also issued under 15 U.S.C. 80a–6(a)(5)(A)(iv)(I).

Section 270.6c–9 is also issued under secs. 6(c) (15 U.S.C. 80a-6(c)) and 38(a) (15 U.S.C. 80a-37(a));

Section 270.6c–10 is also issued under sec. 6(c) (15 U.S.C. 80a–6(c));

Section 270.6c–11 is also issued under 15 U.S.C. 80a–6(c) and 80a–37(a).

Section 270.6e–3 is also issued under 15 U.S.C. 80a–5(e);

Section 270.8b–11 is also issued under 15 U.S.C. 77s, 80a–8, and 80a–37;

Section 270.10e–1 is also issued under 15 U.S.C. 80a–10(e);

Sections 270.12d1–1, 270.12d1–2, and 270.12d1–3 are also issued under 15 U.S.C. 80a–6(c), 80a–12(d)(1)(J), and 80a–37(a).

Section 270.12d3–1 is also issued under 15 U.S.C. 80a-6(c);

Section 270.17a–8 is also issued under 15 U.S.C. 80a–6(c) and 80a–37(a);

Section 270.17d–1 is also issued under 15 U.S.C. 80a–6(c), 80a–17(d), and 80a–37(a);

Section 270.17e–1 is also issued under 15 U.S.C. 80a–6(c), 80a–30(a), and 80a–37(a);

Section 270.17f–5 also issued under sec. 6(c) (15 U.S.C. 80a–6(c);

Section 270.17g–1 is also issued under 15 U.S.C. 80a–6(c), 80a–17(d), 80a–17(g), and 80a–37(a);

Section 270.17j–1 is also issued under secs. 206(4) and 211(a), Investment Advisers Act (15 U.S.C. 80b–6(4) and 80b–11(a));

Section 270.19b–1 is also issued under secs. 6(c) (15 U.S.C. 80a–6(c)), 19 (a) and (b) (15 U.S.C 80a–19 (a) and (b)), and 38(a) (15 U.S.C. 80a–37(a));

Section 270.22c–1 also issued under secs. 6(c), 22(c), and 38(a) (15 U.S.C. 80a–6(c), 80a–22(c), and 80a–37(a));

Section 270.23c–3 also issued under 15 U.S.C. 80a–23(c).

Section 270.24f–2 also issued under 15 U.S.C. 80a–24(f)(4).

Section 270.30a–1 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, and 80a–29.

Section 270.30a–2 is also issued under 15 U.S.C. 78m, 78o(d), 80a-8, 80a-29, 7202, and 7241; and 18 U.S.C. 1350, unless otherwise noted.

Section 270.30a–3 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, and 80a–29, and secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

Section 270.30b1–1 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, and 80a–29.

Section 270.30b2–1 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, and 80a–29, and secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

Section 270.30d–1 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, and 80a–29, and secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

Section 270.30e–1 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78*l*, 78m, 78n, 78o(d), 78w(a), 80a–8, 80a–29, and 80a–37;

Section 270.31a–2 is also issued under 15 U.S.C. 80a–30.

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S-T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S-T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

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§ 270.0–1 Definition of terms used in this part.

(a) As used in the rules and regulations prescribed by the Commission pursuant to the Investment Company Act of 1940, unless the context otherwise requires:

(1) The term *Commission* means the Securities and Exchange Commission.

(2) The term *act* means the Investment Company Act of 1940.

(3) The term *section* refers to a section of the act.

(4) The terms *rule* and *regulations* refer to the rules and regulations adopted by the Commission pursuant to the Act, including the forms for registration and reports and the accompanying instructions thereto.

(5) The term *administrator* means any person who provides significant administrative or business affairs management services to an investment company.

(6)(i) A person is an *independent legal counsel* with respect to the directors who are not interested persons of an investment company (''disinterested directors'') if:

(A) A majority of the disinterested directors reasonably determine in the exercise of their judgment (and record the basis for that determination in the minutes of their meeting) that any representation by the person of the company's investment adviser, principal underwriter, administrator (''management organizations''), or any of their control persons, since the beginning of the fund's last two completed fiscal years, is or was sufficiently limited that it is unlikely to adversely affect the professional judgment of the person in providing legal representation to the disinterested directors; and

(B) The disinterested directors have obtained an undertaking from such person to provide them with information necessary to make their determination and to update promptly that information when the person begins to represent, or materially increases his representation of, a management organization or control person.

(ii) The disinterested directors are entitled to rely on the information obtained from the person, unless they know or have reason to believe that the information is materially false or incomplete. The disinterested directors must re-evaluate their determination no less frequently than annually (and record the basis accordingly), except as provided in paragraph (iii) of this section.

(iii) After the disinterested directors obtain information that the person has begun to represent, or has materially increased his representation of, a management organization (or any of its control persons), the person may continue to be an independent legal counsel, for purposes of paragraph (a)(6)(i) of this section, for no longer than three months unless during that period the disinterested directors make a new determination under that paragraph.

(iv) For purposes of paragraphs (a)(6)(i)–(iii) of this section:

(A) The term *person* has the same meaning as in section 2(a)(28) of the Act (15 U.S.C. 80a–2(a)(28)) and, in addition, includes a partner, co-member, or employee of any person; and

(B) The term *control person* means any person (other than an investment company) directly or indirectly controlling, controlled by, or under common control with any of the investment company's management organizations.

(7) *Fund governance standards.* The board of directors of an investment company (''fund'') satisfies the *fund governance standards* if:

(i) At least seventy-five percent of the directors of the fund are not interested persons of the fund (''disinterested directors'') or, if the fund has three directors, all but one are disinterested directors;

(ii) The disinterested directors of the fund select and nominate any other disinterested director of the fund;

(iii) Any person who acts as legal counsel for the disinterested directors of the fund is an independent legal counsel as defined in paragraph (a)(6) of this section;

(iv) A disinterested director serves as chairman of the board of directors of the fund, presides over meetings of the board of directors and has substantially the same responsibilities as would a chairman of a board of directors;

(v) The board of directors evaluates at least once annually the performance

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of the board of directors and the committees of the board of directors, which evaluation must include a consideration of the effectiveness of the committee structure of the fund board and the number of funds on whose boards each director serves;

(vi) The disinterested directors meet at least once quarterly in a session at which no directors who are interested persons of the fund are present; and

(vii) The disinterested directors have been authorized to hire employees and to retain advisers and experts necessary to carry out their duties.

(b) Unless otherwise specifically provided, the terms used in the rules and regulations in this part shall have the meaning defined in the Act. The terms ''EDGAR,'' ''EDGAR Filer Manual,'' ''electronic filer,'' ''electronic filing,'' ''electronic format,'' ''electronic submission,'' ''paper format,'' and ''signature'' shall have the meanings assigned to such terms in Regulation S-T—General Rules for Electronic Filings (Part 232 of this chapter).

(c) A rule or regulation which defines a term without express reference to the act or to the rules and regulations, or to a portion thereof, defines such terms for all purposes as used both in the act and in the rules and regulations in this part, unless the context otherwise requires.

(d) Unless otherwise specified or the context otherwise requires, the term ''prospectus'' means a prospectus meeting the requirements of section 10(a) of the Securities Act of 1933 as amended.

(e) Definition of separate account and conditions for availability of exemption under §§ 270.6c–6, 270.6c–7, 270.6c–8, 270.11a–2, 270.14a–2, 270.15a–3, 270.16a–1, 270.22c–1, 270.22d–2, 270.22e–1, 270.26a–1, 270.27i–1, and 270.32a–2 (Rules 6c–6, 6c–7, 6c–8, 11a–2, 14a–2, 15a–3, 16a–1, 22c–1, 22d–2, 22e–1, 26a–1, 27i–1, and 32a–2).

(1) As used in the rules and regulations prescribed by the Commission pursuant to the Investment Company Act of 1940, unless otherwise specified or the context otherwise requires, the term ''separate account'' shall mean an account established and maintained by an insurance company pursuant to the laws of any state or territory of the United States, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains or losses of the insurance company and the term ''variable annuity contract'' shall mean any accumulation or annuity contract, any portion thereof, or any unit of interest or participation therein pursuant to which the value of the contract, either prior or subsequent to annuitization, or both, varies according to the investment experience of the separate account in which the contract participates.

(2) As conditions to the availability of exemptive Rules 6c–6, 6c–7, 6c–8, 11a–2, 14a–2, 15a–3, 16a–1, 22c–1, 22d–2, 22e–1, 26a–1, 27i–1, and 32a–2, the separate account shall be legally segregated, the assets of the separate account shall, at the time during the year that adjustments in the reserves are made, have a value at least equal to the reserves and other contract liabilities with respect to such account, and at all other times, shall have a value approximately equal to or in excess of such reserves and liabilities; and that portion of such assets having a value equal to, or approximately equal to, such reserves and contract liabilities shall not be chargeable with liabilities arising out of any other business which the insurance company may conduct.

[Rule N–1, 5 FR 4316, Oct. 31, 1940, as amended at 19 FR 6730, Oct. 20, 1954; 30 FR 829, Jan. 27, 1965; 48 FR 36098, Aug. 9, 1983; 50 FR 42682, Oct. 22, 1985; 58 FR 14859, Mar. 18, 1993; 66 FR 3757, Jan. 16, 2001; 69 FR 46389, Aug. 2, 2004; 85 FR 26101, May 1, 2020]

§ 270.0–2 General requirements of papers and applications.

(a) *Filing of papers.* All papers required to be filed with the Commission pursuant to the Act or the rules and regulations thereunder shall, unless otherwise provided by the rules and regulations in this part, be delivered through the mails or otherwise to the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Except as otherwise provided by the rules and regulations, the date on which papers are actually received by

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the Commission shall be the date of filing thereof. If the last day for the timely filing of such papers falls on a Saturday, Sunday, or holiday, such papers may be filed on the first business day following.

(b) *Formal specifications respecting applications.* Every application for an order under any provision of the Act, for which a form with instructions is not specifically prescribed, and every amendment to such application shall be filed in quintuplicate. One copy shall be signed by the applicant but the other four copies may have facsimile or typed signatures. Such applications should be on paper no larger than 8½ × 11 inches in size. To the extent that the reduction of larger documents would render them illegible, such documents may be filed on paper larger than 8½ × 11 inches in size. The left margin should be at least 1½ inches wide and, if the application is bound, it should be bound on the left side. All typewritten or printed matter (including deficits in financial statements) should be set forth in black so as to permit photocopying.

(c) *Authorizations respecting applications.* (1) Every application for an order under any provision of the act, for which a form with instructions is not specifically prescribed and which is executed by a corporation, partnership, or other company and filed with the Commission, shall contain a concise statement of the applicable provisions of the articles of incorporation, bylaws, or similar documents, relating to the right of the person signing and filing such application to take such action on behalf of the applicant, and a statement that all such requirements have been complied with and that the person signing and filing the same is fully authorized to do so. If such authorization is dependent on resolutions of stockholders, directors, or other bodies, such resolutions shall be attached as an exhibit to, or the pertinent provisions thereof shall be quoted in, the application.

(2) If an amendment to any such application shall be filed, such amendment shall contain a similar statement or, in lieu thereof, shall state that the authorization described in the original application is applicable to the individual who signs such amendment and that such authorization still remains in effect.

(3) When any such application or amendment is signed by an agent or attorney, the power of attorney evidencing his authority to sign shall contain similar statements and shall be filed with the Commission.

(d) *Verification of applications and statements of fact.* Every application for an order under any provision of the Act, for which a form with instructions is not specifically prescribed and every amendment to such application, and every statement of fact formally filed in support of, or in opposition to, any application or declaration shall be verified by the person executing the same. An instrument executed on behalf of a corporation shall be verified in substantially the following form, but suitable changes may be made in such form for other kinds of companies and for individuals:

The undersigned states that he or she has duly executed the attached _____ dated _____, 20 _____ for and on behalf of (*name of company*); that he or she is (*title of officer*) of such company; and that all action by stockholders, directors, and other bodies necessary to authorize the undersigned to execute and file such instrument has been taken. The undersigned further states that he or she is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his or her knowledge, information and belief.

_____

(Signature)

(e) *Statement of grounds for application.* Each application should contain a brief statement of the reasons why the applicant is deemed to be entitled to the action requested with a reference to the provisions of the act and of the rules and regulations under which application is made.

(f) *Name and address.* Every application shall contain the name and address of each applicant and the name and address of any person to whom any applicant wishes any question regarding the application to be directed.

(g) The manually signed original (or in the case of duplicate originals, one duplicate original) of all registrations, applications, statements, reports, or other documents filed under the Investment Company Act of 1940, as amended,

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shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed, or other legible form of notation from the facing page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

[Rule N–2, 5 FR 4316, Oct. 31, 1940, as amended at 33 FR 9391, June 27, 1968; 33 FR 23325, Aug. 29, 1973; 44 FR 4666, Jan. 23, 1979; 47 FR 58239, Dec. 30, 1982; 48 FR 17065, Apr. 21, 1983; 58 FR 14859, Mar. 18, 1993; 73 FR 65525, Nov. 4, 2008; 87 FR 38976, June 30, 2022; 87 FR 41060, July 11, 2022]

§ 270.0–3 Amendments to registration statements and reports.

Registration statements filed with the Commission pursuant to section 8 (54 Stat. 803; 15 U.S.C. 80a–8) and reports filed with the Commission pursuant to section 30 (54 Stat. 836; 15 U.S.C. 80a–35) may be amended in the following manner:

(a) Each amendment shall conform to the requirements for the registration statement or report it amends with regard to filing, number of copies filed, size, paper, ink, margins, binding, and similar formal matters.

(b) Each amendment to a particular statement or report shall have a facing sheet as follows:

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

Amendment No._____

to

Form_____
File No._____
(Describe the nature of the statement or report)
Dated _____, 19___,
Pursuant to Section _____ of the Investment Company Act of 1940

_____
Name of Registrant

_____
Address of Principal Office of Registrant

The facing sheet shall contain in addition any other information required on the facing sheet of the form for the statement or report which is being amended. Amendments to a particular statement or report which is being consecutively in the order in which filed with the Commission.

(c) Each amendment shall contain in the manner required in the original statement or report the text of every item to which it relates and shall set out a complete amended answer to each such item. However, amendments to financial statements may contain only the particular statements or schedules in fact amended.

(d) Each amendment shall have a signature sheet containing the form of signature required in the statement or report it amends.

(Secs. 8, 30, 54 Stat. 803, 74 Stat. 201; 15 U.S.C. 80a–8, 80a–29)

[Rule N–3, 6 FR 3966, Aug. 8, 1941, as amended at 33 FR 3217, Feb. 21, 1968]

§ 270.0–4 Incorporation by reference.

(a) *Registration statements and reports.* Except as provided by this section or in the appropriate form, information may be incorporated by reference in answer, or partial answer, to any item of a registration statement or report. Where an item requires a summary or outline of the provisions of any document, the summary or outline may incorporate by reference particular items, sections, or paragraphs of any exhibit and may be qualified in its entirety by such reference.

(b) *Financial information.* Except as provided in the Commission's rules, financial information required to be given in comparative form for two or more fiscal years or periods must not be incorporated by reference unless the information incorporated by reference includes the entire period for which the comparative data is given. In the financial statements, incorporating by reference, or cross-referencing to, information outside of the financial statements is not permitted unless otherwise specifically permitted or required by the Commission's rules or by U.S. Generally Accepted Accounting Principles or International Financial Reporting Standards as issued by the International Accounting Standards Board, whichever is applicable.

(c) *Exhibits.* Any document or part thereof, including any financial statement or part thereof, filed with the Commission pursuant to any Act administered by the Commission may be

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incorporated by reference as an exhibit to any registration statement, application, or report filed with the Commission by the same or any other person. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the registrant must file with the reference a statement containing the text of any such modification and the date thereof.

(d) *Hyperlinks.* Include an active hyperlink to information incorporated into a registration statement, application, or report by reference if such information is publicly available on the Commission's Electronic Data Gathering, Analysis and Retrieval System (''EDGAR'') at the time the registration statement, application, or report is filed. For hyperlinking to exhibits, please refer to the appropriate form.

(e) *General.* Include an express statement clearly describing the specific location of the information you are incorporating by reference. The statement must identify the document where the information was originally filed or submitted and the location of the information within that document. The statement must be made at the particular place where the information is required, if applicable. Information must not be incorporated by reference in any case where such incorporation would render the disclosure incomplete, unclear, or confusing. For example, unless expressly permitted or required, disclosure must not be incorporated by reference from a second document if that second document incorporates information pertinent to such disclosure by reference to a third document.

[84 FR 12732, Apr. 2, 2019]

§ 270.0–5 Procedure with respect to applications and other matters.

The procedure herein below set forth will be followed with respect to any proceeding initiated by the filing of an application, or upon the Commission's own motion, pursuant to any section of the Act or any rule or regulation thereunder, unless in the particular case a different procedure is provided:

(a) Notice of the initiation of the proceeding will be published in the FEDERAL REGISTER and will indicate the earliest date upon which an order disposing of the matter may be entered. The notice will also provide that any interested person may, within the period of time specified therein, submit to the Commission in writing any facts bearing upon the desirability of a hearing on the matter and may request that a hearing be held, stating his reasons therefor and the nature of his interest in the matter.

(b) An order disposing of the matter will be issued as of course, following the expiration of the period of time referred to in paragraph (a) of this section, unless the Commission thereafter orders a hearing on the matter.

(c) The Commission will order a hearing on the matter, if it appears that a hearing is necessary or appropriate in the public interest or for the protection of investors, (1) upon the request of an interested person or (2) upon its own motion.

(d)(1) An applicant may request expedited review of an application if such application is substantially identical to two other applications for which an order granting the requested relief has been issued within three years of the date of the application's initial filing.

(2) For purposes of this section, ''substantially identical'' applications are applications requesting relief from the same sections of the Act and this part, containing identical terms and conditions, and differing only with respect to factual differences that are not material to the relief requested.

(e) An application submitted for expedited review must include:

(1) A notation on the cover page of the application that states prominently, ''EXPEDITED REVIEW REQUESTED UNDER 17 CFR 270.0–5(d)'';

(2) Exhibits with marked copies of the application showing changes from the final versions of the two applications identified as substantially identical under paragraph (e)(3) of this section; and

(3) An accompanying cover letter, signed, on behalf of the applicant, by the person executing the application:

(i) Identifying two substantially identical applications and explaining why the applicant chose those particular applications, and if more recent applications of the same type have been approved, why the applications

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chosen, rather than the more recent applications, are appropriate; and

(ii) Certifying that the applicant believes the application meets the requirements of paragraph (d) of this section and that the marked copies required by paragraph (e)(2) of this section are complete and accurate.

(f)(1) No later than 45 days from the date of filing of an application for which expedited review is requested:

(i) Notice of an application will be issued in accordance with paragraph (a) of this section; or

(ii) The applicant will be notified that the application is not eligible for expedited review because it does not meet the criteria set forth in paragraph (d) or (e) of this section or because additional time is necessary for appropriate consideration of the application.

(2) For purposes of paragraph (f)(1) of this section:

(i) The 45-day period will stop running upon:

(A) Any request for modification of an application and will resume running on the 14th day after the applicant has filed an amended application responsive to such request, including a marked copy showing any changes made and a certification signed by the person executing the application that such marked copy is complete and accurate;

(B) Any unsolicited amendment of the application and will resume running on the 30th day after such an amendment, provided that the amendment includes a marked copy showing changes made and a certification signed by the person executing the application that such marked copy is complete and accurate; and

(C) Any irregular closure of the Commission's Washington, DC office to the public for normal business, including, but not limited to, closure due to a lapse in Federal appropriations, national emergency, inclement weather, or ad hoc Federal holiday, and will resume upon the reopening of the Commission's Washington, DC office to the public for normal business.

(ii) If the applicant does not file an amendment responsive to any request for modification within 30 days of receiving such request, including a marked copy showing any changes made and a certification signed by the person executing the application that such marked copy is complete and accurate, the application will be deemed withdrawn.

(g) If an applicant has not responded in writing to any request for clarification or modification of an application filed under this section, other than an application that is under expedited review under paragraphs (d) and (e) of this section, within 120 days after the request, the application will be deemed withdrawn.

[38 FR 23325, Aug. 29, 1973, as amended at 61 FR 49961, Sept. 24, 1996; 86 FR 57107, Sept. 15, 2020]

§ 270.0–8 Payment of filing fees.

All payment of filing fees shall be made by wire transfer, debit card, credit card, or via the Automated Clearing House Network. Payment of filing fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

[86 FR 70262, Dec. 9, 2021]

§ 270.0–9 [Reserved]

§ 270.0–10 Small entities under the Investment Company Act for purposes of the Regulatory Flexibility Act.

(a) *General.* For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 *et seq.*) and unless otherwise defined for purposes of a particular rulemaking, the term *small business* or *small organization* for purposes of the Investment Company Act of 1940 shall mean an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. For purposes of this section:

(1) In the case of a management company, the term *group of related investment companies* shall mean two or more management companies (including series thereof) that:

(i) Hold themselves out to investors as related companies for purposes of investment and investor services; and

(ii) Either:

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(A) Have a common investment adviser or have investment advisers that are affiliated persons of each other; or

(B) Have a common administrator; and

(2) In the case of a unit investment trust, the term *group of related investment companies* shall mean two or more unit investment trusts (including series thereof) that have a common sponsor.

(b) *Special rule for insurance company separate accounts.* In determining whether an insurance company separate account is a *small business* or *small entity* pursuant to paragraph (a) of this section, the assets of the separate account shall be cumulated with the assets of the general account and all other separate accounts of the insurance company.

(c) *Determination of net assets.* The Commission may calculate its determination of the net assets of a group of related investment companies based on the net assets of each investment company in the group as of the end of such company's fiscal year.

[63 FR 35514, June 30, 1998]

§ 270.0–11 Customer identification programs.

Each registered open-end company is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation at 31 CFR 103.131, which requires a customer identification program to be implemented as part of the anti-money laundering program required under subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. Where 31 CFR 103.131 and this chapter use different definitions for the same term, the definition in 31 CFR 103.131 shall be used for the purpose of compliance with 31 CFR 103.131. Where 31 CFR 103.131 and this chapter require the same records to be preserved for different periods of time, such records shall be preserved for the longer period of time.

[68 FR 25146, May 9, 2003]

§ 270.2a–1 Valuation of portfolio securities in special cases.

(a) Any investment company whose securities are qualified for sale, or for whose securities application for such qualification has been made, in any State in which the securities owned by such company are required by applicable State law or regulations to be valued at cost or on some other basis different from that prescribed by clause (A) of section 2(a)(41) of the Act for the purpose of determining the percentage of its assets invested in any particular type or classification of securities or in the securities of any one issuer, may, in valuing its securities for the purposes of sections 5 and 12 of the Act, use the same basis of valuation as that used in complying with such State law or regulations in lieu of the method of valuation prescribed by clause (A) of section 2(a)(41) of the Act.

(b) Any open-end company which has heretofore valued its securities at cost for the purpose of qualifying as a ''mutual investment company'' under the Internal Revenue Code, prior to its amendment by the Revenue Act of 1942, shall henceforth, for the purposes of sections 5 and 12 of the Act, value its securities in accordance with the method prescribed in clause (A) of section 2(a)(41) of the Act unless such company is permitted under paragraph (a) of this section to use a different method of valuation.

(c) A registered investment company which has adopted for the purposes of sections 5 and 12 of the Act a method of valuation permitted by paragraph (a) of this section, shall state in its registration statement filed pursuant to section 8 (54 Stat. 803; 15 U.S.C. 80a–8) of the Act, or in a report filed pursuant to section 30 (54 Stat. 836; 15 U.S.C. 80a–30) of the Act, the method of valuation adopted and the facts which justify the adoption of such method. A registered investment company which has adopted for the purposes of sections 5 and 12 of the Act a method of valuation permitted by paragraph (a) of this section, unless it shall have adopted such method for the purpose or partly for the purpose of qualifying as a ''mutual investment company'' under the Internal Revenue Code, shall continue to use that method until it has notified the

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Commission of its desire to use a different method, and has received from the Commission permission for such change. Such permission may be made effective on a fixed date or within such reasonable time thereafter as may be deemed advisable under the circumstances.

(d) If at any time it appears that the method of valuation adopted by any company pursuant to paragraph (a) of this section is no longer justified by the facts, the Commission may require a change in the method of valuation within a reasonable period of time either to the method prescribed in clause (A) of section 2(a)(41) of the Act or to some other method permitted by paragraph (a) of this section which is justified by the existing facts.

[Rule N–2A–1, 8 FR 3567, Mar. 24, 1943, as amended at 38 FR 8593, Apr. 4, 1973]

§ 270.2a–2 Effect of eliminations upon valuation of portfolio securities.

During any fiscal quarter in which elimination of securities from the portfolio of an investment company occur, the securities remaining in the portfolio shall, for the purpose of sections 5 and 12 of the Act (54 Stat. 800, 808; 15 U.S.C. 80a–5, 80a–12), be so valued as to give effect to the eliminations in accordance with one of the following methods:

(a) Specific certificate,
(b) First in—first out,
(c) Last in—first out, or
(d) Average value.

For these purposes, a single method of elimination shall be used consistently with respect to all portfolio securities. In giving effect to eliminations pursuant to this section values shall be computed in accordance with section 2(a)(41)(A) of the Act (54 Stat. 790; 15 U.S.C. 80a–2(a)(41)(A)).

[38 FR 8593, Apr. 4, 1973]

§ 270.2a3–1 Investment company limited partners not deemed affiliated persons.

PRELIMINARY NOTE TO § 270.2a3–1: This § 270.2a3–1 excepts from the definition of affiliated person in section 2(a)(3)) (15 U.S.C. 80a–2(a)(3)) those limited partners of investment companies organized in limited partnership form that are affiliated persons solely because they are partners under section 2(a)(3)(D) (15 U.S.C. 80a–2(a)(3)(D)). Reliance on this § 270.2a3–1 does not except a limited partner that is an affiliated person by virtue of any other provision.

No limited partner of a registered management company or a business development company, organized as a limited partnership and relying on § 270.2a19–2, shall be deemed to be an affiliated person of such company, or any other partner of such company, solely by reason of being a limited partner of such company.

[58 FR 45838, Aug. 31, 1993]

§ 270.2a–4 Definition of "current net asset value" for use in computing periodically the current price of redeemable security.

(a) The current net asset value of any redeemable security issued by a registered investment company used in computing periodically the current price for the purpose of distribution, redemption, and repurchase means an amount which reflects calculations, whether or not recorded in the books of account, made substantially in accordance with the following, with estimates used where necessary or appropriate.

(1) Portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company.

(2) Changes in holdings of portfolio securities shall be reflected no later than in the first calculation on the first business day following the trade date.

(3) Changes in the number of outstanding shares of the registered company resulting from distributions, redemptions, and repurchases shall be reflected no later than in the first calculation on the first business day following such change.

(4) Expenses, including any investment advisory fees, shall be included to date of calculation. Appropriate provision shall be made for Federal income taxes if required. Investment companies which retain realized capital gains designated as a distribution to shareholders shall comply with paragraph (h) of § 210.6–03 of Regulation S-X.

(5) Dividends receivable shall be included to date of calculation either at

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ex-dividend dates or record dates, as appropriate.

(6) Interest income and other income shall be included to date of calculation.

(b) The items which would otherwise be required to be reflected by paragraphs (a) (4) and (6) of this section need not be so reflected if cumulatively, when netted, they do not amount to as much as one cent per outstanding share.

(c) Notwithstanding the requirements of paragraph (a) of this section, any interim determination of current net asset value between calculations made as of the close of the New York Stock Exchange on the preceding business day and the current business day may be estimated so as to reflect any change in current net asset value since the closing calculation on the preceding business day.

(Secs. 7, 19(a), 48 Stat. 78, 85, 908, 15 U.S.C. 77g, 77s(a); secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 3, 8, 49 Stat. 1377, 1379, secs. 3, 4, 78 Stat. 569, 570, secs. 1, 2, 82 Stat. 454, 15 U.S.C. 78l, 78m, 78o(d), 78w(a); secs. 8, 22, 30, 31(c), 38(a), 54 Stat. 803, 823, 836, 838, 841, 15 U.S.C. 80a–8, 80a–22, 80a–29, 80a–30(c))

[29 FR 19101, Dec. 30, 1964, as amended at 35 FR 314, Jan. 8, 1970; 47 FR 56844, Dec. 21, 1982]

§ 270.2a–5 Fair value determination and readily available market quotations.

(a) *Fair value determination.* For purposes of section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)) and § 270.2a–4, determining fair value in good faith with respect to a fund requires:

(1) *Assess and manage risks.* Periodically assessing any material risks associated with the determination of the fair value of fund investments (''valuation risks''), including material conflicts of interest, and managing those identified valuation risks;

(2) *Establish and apply fair value methodologies.* Performing each of the following, taking into account the fund's valuation risks:

(i) Selecting and applying in a consistent manner an appropriate methodology or methodologies for determining (and calculating) the fair value of fund investments, provided that a selected methodology may be changed if a different methodology is equally or more representative of the fair value of fund investments, including specifying the key inputs and assumptions specific to each asset class or portfolio holding;

(ii) Periodically reviewing the appropriateness and accuracy of the methodologies selected and making any necessary changes or adjustments thereto; and

(iii) Monitoring for circumstances that may necessitate the use of fair value;

(3) *Test fair value methodologies.* Testing the appropriateness and accuracy of the fair value methodologies that have been selected, including identifying the testing methods to be used and the minimum frequency with which such testing methods are to be used; and

(4) *Evaluate pricing services.* Overseeing pricing service providers, if used, including establishing the process for approving, monitoring, and evaluating each pricing service provider and initiating price challenges as appropriate.

(b) *Performance of fair value determinations.* The board of the fund must determine fair value in good faith for any or all fund investments by carrying out the functions required in paragraph (a) of this section. The board may choose to designate the valuation designee to perform the fair value determination relating to any or all fund investments, which shall carry out all of the functions required in paragraph (a) of this section, subject to the requirements of this paragraph (b).

(1) *Oversight and reporting.* The board oversees the valuation designee, and the valuation designee reports to the fund's board, in writing, including such information as may be reasonably necessary for the board to evaluate the matters covered in the report, as follows:

(i) *Periodic reporting.* (A) At least quarterly:

(*1*) Any reports or materials requested by the board related to the fair value of designated investments or the valuation designee's process for fair valuing fund investments; and

(*2*) A summary or description of material fair value matters that occurred in the prior quarter, including:

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(*i*) Any material changes in the assessment and management of valuation risks required under paragraph (a)(1) of this section, including any material changes in conflicts of interest of the valuation designee (and any other service provider);

(*ii*) Any material changes to, or material deviations from, the fair value methodologies established under paragraph (a)(2) of this section; and

(*iii*) Any material changes to the valuation designee's process for selecting and overseeing pricing services, as well as any material events related to the valuation designee's oversight of pricing services; and

(B) At least annually, an assessment of the adequacy and effectiveness of the valuation designee's process for determining the fair value of the designated portfolio of investments, including, at a minimum:

(*1*) A summary of the results of the testing of fair value methodologies required under paragraph (a)(3) of this section; and

(*2*) An assessment of the adequacy of resources allocated to the process for determining the fair value of designated investments, including any material changes to the roles or functions of the persons responsible for determining fair value under paragraph (b)(2) of this section; and

(ii) *Prompt board notification and reporting*. The valuation designee notifies the board of the occurrence of matters that materially affect the fair value of the designated portfolio of investments, including a significant deficiency or material weakness in the design or effectiveness of the valuation designee's fair value determination process, or material errors in the calculation of net asset value, (any such matter or error, a ''material matter'') within a time period determined by the board (but in no event later than five business days after the valuation designee becomes aware of the material matter), with such timely follow-on reporting as the board may determine appropriate; and

(2) *Specify responsibilities*. The valuation designee specifies the titles of the persons responsible for determining the fair value of the designated investments, including by specifying the particular functions for which they are responsible, and reasonably segregates fair value determinations from the portfolio management of the fund such that the portfolio manager(s) may not determine, or effectively determine by exerting substantial influence on, the fair values ascribed to portfolio investments.

(c) *Readily available market quotations*. For purposes of section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)), a market quotation is readily available only when that quotation is a quoted price (unadjusted) in active markets for identical investments that the fund can access at the measurement date, provided that a quotation will not be readily available if it is not reliable.

(d) *Unit investment trusts*. If the fund is a unit investment trust, and the initial deposit of portfolio securities into the unit investment trust occurs *after* March 8, 2021, the fund's trustee or depositor must carry out the requirements of paragraph (a) of this section. If the initial deposit of portfolio securities into the unit investment trust occurred *before* March 8, 2021, and an entity other than the fund's trustee or depositor has been designated to carry out the fair value determination, that entity must carry out the requirements of paragraph (a) of this section.

(e) *Definitions*. For purposes of this section:

(1) *Fund* means a registered investment company or business development company.

(2) *Fair value* means the value of a portfolio investment for which market quotations are not readily available under paragraph (c) of this section.

(3) *Board* means either the fund's entire board of directors or a designated committee of such board composed of a majority of directors who are not interested persons of the fund.

(4) *Valuation designee* means the investment adviser, other than a sub-adviser, of a fund or, if the fund does not have an investment adviser, an officer or officers of the fund.

[86 FR 807, Jan. 6, 2021]

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§ 270.2a–6 Certain transactions not deemed assignments.

A transaction which does not result in a change of actual control or management of the investment adviser to, or principal underwriter of, an investment company is not an assignment for purposes of section 15(a)(4) or section 15(b)(2) of the act, respectively.

(Secs. 6(c) and 38(a) (15 U.S.C. 80a–6(c) and 80a–37(a)))

[45 FR 1861, Jan. 9, 1980]

§ 270.2a–7 Money market funds.

(a) *Definitions*—(1) *Acquisition (or acquire)* means any purchase or subsequent rollover (but does not include the failure to exercise a demand feature).

(2) *Amortized cost method of valuation* means the method of calculating an investment company's net asset value whereby portfolio securities are valued at the fund's acquisition cost as adjusted for amortization of premium or accretion of discount rather than at their value based on current market factors.

(3) *Asset-backed security* means a fixed income security (other than a government security) issued by a special purpose entity (as defined in this paragraph (a)(3)), substantially all of the assets of which consist of qualifying assets (as defined in this paragraph (a)(3)). *Special purpose entity* means a trust, corporation, partnership or other entity organized for the sole purpose of issuing securities that entitle their holders to receive payments that depend primarily on the cash flow from qualifying assets, but does not include a registered investment company. *Qualifying assets* means financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

(4) *Business day* means any day, other than Saturday, Sunday, or any customary business holiday.

(5) *Collateralized fully* has the same meaning as defined in § 270.5b–3(c)(1) except that § 270.5b–3(c)(1)(iv)(C) shall not apply.

(6) *Conditional demand feature* means a demand feature that is not an unconditional demand feature. A conditional demand feature is not a guarantee.

(7) *Conduit security* means a security issued by a municipal issuer (as defined in this paragraph (a)(7)) involving an arrangement or agreement entered into, directly or indirectly, with a person other than a municipal issuer, which arrangement or agreement provides for or secures repayment of the security. *Municipal issuer* means a state or territory of the United States (including the District of Columbia), or any political subdivision or public instrumentality of a state or territory of the United States. A conduit security does not include a security that is:

(i) Fully and unconditionally guaranteed by a municipal issuer;

(ii) Payable from the general revenues of the municipal issuer or other municipal issuers (other than those revenues derived from an agreement or arrangement with a person who is not a municipal issuer that provides for or secures repayment of the security issued by the municipal issuer);

(iii) Related to a project owned and operated by a municipal issuer; or

(iv) Related to a facility leased to and under the control of an industrial or commercial enterprise that is part of a public project which, as a whole, is owned and under the control of a municipal issuer.

(8) *Daily liquid assets* means:

(i) Cash;

(ii) Direct obligations of the U.S. Government;

(iii) Securities that will mature, as determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments, or are subject to a demand feature that is exercisable and payable, within one business day; or

(iv) Amounts receivable and due unconditionally within one business day on pending sales of portfolio securities.

(9) *Demand feature* means a feature permitting the holder of a security to sell the security at an exercise price equal to the approximate amortized cost of the security plus accrued interest, if any, at the later of the time of

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exercise or the settlement of the transaction, paid within 397 calendar days of exercise.

(10) *Demand feature issued by a non-controlled person* means a demand feature issued by:

(i) A person that, directly or indirectly, does not control, and is not controlled by or under common control with the issuer of the security subject to the demand feature (*control* means ''control'' as defined in section 2(a)(9) of the Act) (15 U.S.C. 80a–2(a)(9)); or

(ii) A sponsor of a special purpose entity with respect to an asset-backed security.

(11) *Eligible security* means a security:

(i) With a remaining maturity of 397 calendar days or less that the fund's board of directors determines presents minimal credit risks to the fund, which determination must include an analysis of the capacity of the security's issuer or guarantor (including for this paragraph (a)(11)(i) the provider of a conditional demand feature, when applicable) to meet its financial obligations, and such analysis must include, to the extent appropriate, consideration of the following factors with respect to the security's issuer or guarantor:

(A) Financial condition;

(B) Sources of liquidity;

(C) Ability to react to future market-wide and issuer- or guarantor-specific events, including ability to repay debt in a highly adverse situation; and

(D) Strength of the issuer or guarantor's industry within the economy and relative to economic trends, and issuer or guarantor's competitive position within its industry.

(ii) That is issued by a registered investment company that is a money market fund; or

(iii) That is a government security.

NOTE TO PARAGRAPH (a)(11): For a discussion of additional factors that may be relevant in evaluating certain specific asset types see Investment Company Act Release No. IC–31828 (9/16/15).

(12) *Event of insolvency* has the same meaning as defined in § 270.5b–3(c)(2).

(13) *Floating rate security* means a security the terms of which provide for the adjustment of its interest rate whenever a specified interest rate changes and that, at any time until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(14) *Government money market fund* means a money market fund that invests 99.5 percent or more of its total assets in cash, government securities, and/or repurchase agreements that are collateralized fully.

(15) *Government security* has the same meaning as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16)).

(16) *Guarantee:*

(i) Means an unconditional obligation of a person other than the issuer of the security to undertake to pay, upon presentment by the holder of the guarantee (if required), the principal amount of the underlying security plus accrued interest when due or upon default, or, in the case of an unconditional demand feature, an obligation that entitles the holder to receive upon the later of exercise or the settlement of the transaction the approximate amortized cost of the underlying security or securities, plus accrued interest, if any. A guarantee includes a letter of credit, financial guaranty (bond) insurance, and an unconditional demand feature (other than an unconditional demand feature provided by the issuer of the security).

(ii) The sponsor of a special purpose entity with respect to an asset-backed security shall be deemed to have provided a guarantee with respect to the entire principal amount of the asset-backed security for purposes of this section, except paragraphs (a)(11) (definition of eligible security), (d)(2)(ii) (credit substitution), (d)(3)(iv)(A) (fractional guarantees) and (e) (guarantees not relied on) of this section, unless the money market fund's board of directors has determined that the fund is not relying on the sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support to determine the quality (pursuant to paragraph (d)(2) of this section) or liquidity (pursuant to paragraph (d)(4) of this section) of the asset-backed security, and maintains a record of this determination (pursuant to paragraphs (g)(7) and (h)(6) of this section).

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(17) *Guarantee issued by a non-controlled person* means a guarantee issued by:

(i) A person that, directly or indirectly, does not control, and is not controlled by or under common control with the issuer of the security subject to the guarantee (*control* means ''control'' as defined in section 2(a)(9) of the Act) (15 U.S.C. 80a–2(a)(9))); or

(ii) A sponsor of a special purpose entity with respect to an asset-backed security.

(18) *Illiquid security* means a security that cannot be sold or disposed of in the ordinary course of business within seven calendar days at approximately the value ascribed to it by the fund.

(19) *Penny-rounding method* of pricing means the method of computing an investment company's price per share for purposes of distribution, redemption and repurchase whereby the current net asset value per share is rounded to the nearest one percent.

(20) *Refunded security* has the same meaning as defined in § 270.5b–3(c)(4).

(21) *Retail money market fund* means a money market fund that has policies and procedures reasonably designed to limit all beneficial owners of the fund to natural persons.

(22) *Single state fund* means a tax exempt fund that holds itself out as seeking to maximize the amount of its distributed income that is exempt from the income taxes or other taxes on investments of a particular state and, where applicable, subdivisions thereof.

(23) *Tax exempt fund* means any money market fund that holds itself out as distributing income exempt from regular federal income tax.

(24) *Total assets* means, with respect to a money market fund using the Amortized Cost Method, the total amortized cost of its assets and, with respect to any other money market fund, means the total value of the money market fund's assets, as defined in section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)) and the rules thereunder.

(25) *Unconditional demand feature* means a demand feature that by its terms would be readily exercisable in the event of a default in payment of principal or interest on the underlying security or securities.

(26) *United States dollar-denominated* means, with reference to a security, that all principal and interest payments on such security are payable to security holders in United States dollars under all circumstances and that the interest rate of, the principal amount to be repaid, and the timing of payments related to such security do not vary or float with the value of a foreign currency, the rate of interest payable on foreign currency borrowings, or with any other interest rate or index expressed in a currency other than United States dollars.

(27) *Variable rate security* means a security the terms of which provide for the adjustment of its interest rate on set dates (such as the last day of a month or calendar quarter) and that, upon each adjustment until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(28) *Weekly liquid assets* means:

(i) Cash;

(ii) Direct obligations of the U.S. Government;

(iii) Government securities that are issued by a person controlled or supervised by and acting as an instrumentality of the government of the United States pursuant to authority granted by the Congress of the United States that:

(A) Are issued at a discount to the principal amount to be repaid at maturity without provision for the payment of interest; and

(B) Have a remaining maturity date of 60 days or less.

(iv) Securities that will mature, as determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments, or are subject to a demand feature that is exercisable and payable, within five business days; or

(v) Amounts receivable and due unconditionally within five business days on pending sales of portfolio securities.

(b) *Holding out and use of names and titles*—(1) *Holding out.* It shall be an untrue statement of material fact within the meaning of section 34(b) of the Act

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(15 U.S.C. 80a–33(b)) for a registered investment company, in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Act, including 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)), to hold itself out to investors as a money market fund or the equivalent of a money market fund, unless such registered investment company complies with this section.

(2) *Names.* It shall constitute the use of a materially deceptive or misleading name or title within the meaning of section 35(d) of the Act (15 U.S.C. 80a–34(d)) for a registered investment company to adopt the term ''money market'' as part of its name or title or the name or title of any redeemable securities of which it is the issuer, or to adopt a name that suggests that it is a money market fund or the equivalent of a money market fund, unless such registered investment company complies with this section.

(3) *Titles.* For purposes of paragraph (b)(2) of this section, a name that suggests that a registered investment company is a money market fund or the equivalent thereof includes one that uses such terms as ''cash,'' ''liquid,'' ''money,'' ''ready assets'' or similar terms.

(c) *Pricing and Redeeming Shares*—(1) *Share price calculation.*

(i) The current price per share, for purposes of distribution, redemption and repurchase, of any redeemable security issued by a government money market fund or retail money market fund, notwithstanding the requirements of section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)) and of §§ 270.2a–4 and 270.22c–1 thereunder, may be computed by use of the amortized cost method and/or the penny-rounding method. To use these methods, the board of directors of the government or retail money market fund must determine, in good faith, that it is in the best interests of the fund and its shareholders to maintain a stable net asset value per share or stable price per share, by virtue of either the amortized cost method and/or the penny-rounding method. The government or retail money market fund may continue to use such methods only so long as the board of directors believes that they fairly reflect the market-based net asset value per share and the fund complies with the other requirements of this section.

(ii) Any money market fund that is not a government money market fund or a retail money market fund must compute its price per share for purposes of distribution, redemption and repurchase by rounding the fund's current net asset value per share to a minimum of the fourth decimal place in the case of a fund with a $1.0000 share price or an equivalent or more precise level of accuracy for money market funds with a different share price (e.g. $10.000 per share, or $100.00 per share).

(2) *Liquidity fees and temporary suspensions of redemptions.* Except as provided in paragraphs (c)(2)(iii) and (v) of this section, and notwithstanding sections 22(e) and 27(i) of the Act (15 U.S.C. 80a–22(e) and 80a–27(i)) and § 270.22c–1:

(i) *Discretionary liquidity fees and temporary suspensions of redemptions.* If, at any time, the money market fund has invested less than thirty percent of its total assets in weekly liquid assets, the fund may institute a liquidity fee (not to exceed two percent of the value of the shares redeemed) or suspend the right of redemption temporarily, subject to paragraphs (c)(2)(i)(A) and (B) of this section, if the fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines that the fee or suspension of redemptions is in the best interests of the fund.

(A) *Duration and application of discretionary liquidity fee.* Once imposed, a discretionary liquidity fee must be applied to all shares redeemed and must remain in effect until the money market fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines that imposing such liquidity fee is no longer in the best interests of the fund. Provided however, that if, at the end of a business day, the money market fund has invested thirty percent or

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more of its total assets in weekly liquid assets, the fund must cease charging the liquidity fee, effective as of the beginning of the next business day.

(B) *Duration of temporary suspension of redemptions.* The temporary suspension of redemptions must apply to all shares and must remain in effect until the fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines that the temporary suspension of redemptions is no longer in the best interests of the fund. Provided, however, that the fund must restore the right of redemption on the earlier of:

(*1*) The beginning of the next business day following a business day that ended with the money market fund having invested thirty percent or more of its total assets in weekly liquid assets; or

(*2*) The beginning of the next business day following ten business days after suspending redemptions. The money market fund may not suspend the right of redemption pursuant to this section for more than ten business days in any rolling ninety calendar day period.

(ii) *Default liquidity fees.* If, at the end of a business day, the money market fund has invested less than ten percent of its total assets in weekly liquid assets, the fund must institute a liquidity fee, effective as of the beginning of the next business day, as described in paragraphs (c)(2)(ii)(A) and (B) of this section, unless the fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines that imposing the fee is not in the best interests of the fund.

(A) *Amount of default liquidity fee.* The default liquidity fee shall be one percent of the value of shares redeemed unless the money market fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines, at the time of initial imposition or later, that a higher or lower fee level is in the best interests of the fund. A liquidity fee may not exceed two percent of the value of the shares redeemed.

(B) *Duration and application of default liquidity fee.* Once imposed, the default liquidity fee must be applied to all shares redeemed and shall remain in effect until the money market fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines that imposing such liquidity fee is not in the best interests of the fund. Provided however, that if, at the end of a business day, the money market fund has invested thirty percent or more of its total assets in weekly liquid assets, the fund must cease charging the liquidity fee, effective as of the beginning of the next business day.

(iii) *Government money market funds.* The requirements of paragraphs (c)(2)(i) and (ii) of this section shall not apply to a government money market fund. A government money market fund may, however, choose to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of paragraph (c)(2)(i) and/or (ii) of this section and any other requirements that apply to liquidity fees and temporary suspensions of redemptions (e.g., Item 4(b)(1)(ii) of Form N–1A (§ 274.11A of this chapter)).

(iv) *Variable contracts.* Notwithstanding section 27(i) of the Act (15 U.S.C. 80a–27(i)), a variable insurance contract issued by a registered separate account funding variable insurance contracts or the sponsoring insurance company of such separate account may apply a liquidity fee or temporary suspension of redemptions pursuant to paragraph (c)(2) of this section to contract owners who allocate all or a portion of their contract value to a subaccount of the separate account that is either a money market fund or that invests all of its assets in shares of a money market fund.

(v) *Master feeder funds.* Any money market fund (a ''feeder fund'') that owns, pursuant to section 12(d)(1)(E) of the Act (15 U.S.C. 80a–12(d)(1)(E)), shares of another money market fund (a ''master fund'') may not impose liquidity fees or temporary suspensions of redemptions under paragraphs (c)(2)(i) and (ii) of this section, provided however, that if a master fund, in which the feeder fund invests, imposes a liquidity fee or temporary suspension of redemptions pursuant to paragraphs (c)(2)(i) and (ii) of this section, then the

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feeder fund shall pass through to its investors the fee or redemption suspension on the same terms and conditions as imposed by the master fund.

(d) *Risk-limiting conditions*—(1) *Portfolio maturity*. The money market fund must maintain a dollar-weighted average portfolio maturity appropriate to its investment objective; provided, however, that the money market fund must not:

(i) Acquire any instrument with a remaining maturity of greater than 397 calendar days;

(ii) Maintain a dollar-weighted average portfolio maturity (''WAM'') that exceeds 60 calendar days; or

(iii) Maintain a dollar-weighted average portfolio maturity that exceeds 120 calendar days, determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments (''WAL'').

(2) *Portfolio quality*—(i) *General*. The money market fund must limit its portfolio investments to those United States dollar-denominated securities that at the time of acquisition are eligible securities.

(ii) *Securities subject to guarantees*. A security that is subject to a guarantee may be determined to be an eligible security based solely on whether the guarantee is an eligible security, provided however, that the issuer of the guarantee, or another institution, has undertaken to promptly notify the holder of the security in the event the guarantee is substituted with another guarantee (if such substitution is permissible under the terms of the guarantee).

(iii) *Securities subject to conditional demand features*. A security that is subject to a conditional demand feature (''underlying security'') may be determined to be an eligible security only if:

(A) The conditional demand feature is an eligible security;

(B) The underlying security or any guarantee of such security is an eligible security, except that the underlying security or guarantee may have a remaining maturity of more than 397 calendar days.

(C) At the time of the acquisition of the underlying security, the money market fund's board of directors has determined that there is minimal risk that the circumstances that would result in the conditional demand feature not being exercisable will occur; and

(*1*) The conditions limiting exercise either can be monitored readily by the fund or relate to the taxability, under federal, state or local law, of the interest payments on the security; or

(*2*) The terms of the conditional demand feature require that the fund will receive notice of the occurrence of the condition and the opportunity to exercise the demand feature in accordance with its terms; and

(D) The issuer of the conditional demand feature, or another institution, has undertaken to promptly notify the holder of the security in the event the conditional demand feature is substituted with another conditional demand feature (if such substitution is permissible under the terms of the conditional demand feature).

(3) *Portfolio diversification*—(i) *Issuer diversification*. The money market fund must be diversified with respect to issuers of securities acquired by the fund as provided in paragraphs (d)(3)(i) and (ii) of this section, other than with respect to government securities.

(A) *Taxable and national funds*. Immediately after the acquisition of any security, a money market fund other than a single state fund must not have invested more than:

(*1*) Five percent of its total assets in securities issued by the issuer of the security, provided, however, that with respect to paragraph (d)(3)(i)(A) of this section, such a fund may invest up to twenty-five percent of its total assets in the securities of a single issuer for a period of up to three business days after the acquisition thereof; provided, further, that the fund may not invest in the securities of more than one issuer in accordance with the foregoing proviso in this paragraph (d)(3)(i)(A)(*1*) at any time; and

(*2*) Ten percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee, provided, however, that a tax exempt fund need only comply with this paragraph (d)(3)(i)(A)(*2*) with respect to eighty-five percent of its total assets, subject to paragraph (d)(3)(iii) of this section.

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(B) *Single state funds.* Immediately after the acquisition of any security, a single state fund must not have invested:

(*1*) With respect to seventy-five percent of its total assets, more than five percent of its total assets in securities issued by the issuer of the security; and

(*2*) With respect to seventy-five percent of its total assets, more than ten percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee, subject to paragraph (d)(3)(iii) of this section.

(ii) *Issuer diversification calculations.* For purposes of making calculations under paragraph (d)(3)(i) of this section:

(A) *Repurchase agreements.* The acquisition of a repurchase agreement may be deemed to be an acquisition of the underlying securities, provided the obligation of the seller to repurchase the securities from the money market fund is collateralized fully and the fund's board of directors has evaluated the seller's creditworthiness.

(B) *Refunded securities.* The acquisition of a refunded security shall be deemed to be an acquisition of the escrowed government securities.

(C) *Conduit securities.* A conduit security shall be deemed to be issued by the person (other than the municipal issuer) ultimately responsible for payments of interest and principal on the security.

(D) *Asset-backed securities—*(*1*) *General.* An asset-backed security acquired by a fund (''primary ABS'') shall be deemed to be issued by the special purpose entity that issued the asset-backed security, provided, however:

(*i*) *Holdings of primary ABS.* Any person whose obligations constitute ten percent or more of the principal amount of the qualifying assets of the primary ABS (''ten percent obligor'') shall be deemed to be an issuer of the portion of the primary ABS such obligations represent; and

(*ii*) *Holdings of secondary ABS.* If a ten percent obligor of a primary ABS is itself a special purpose entity issuing asset-backed securities (''secondary ABS''), any ten percent obligor of such secondary ABS also shall be deemed to be an issuer of the portion of the primary ABS that such ten percent obligor represents.

(*2*) *Restricted special purpose entities.* A ten percent obligor with respect to a primary or secondary ABS shall not be deemed to have issued any portion of the assets of a primary ABS as provided in paragraph (d)(3)(ii)(D)(*1*) of this section if that ten percent obligor is itself a special purpose entity issuing asset-backed securities (''restricted special purpose entity''), and the securities that it issues (other than securities issued to a company that controls, or is controlled by or under common control with, the restricted special purpose entity and which is not itself a special purpose entity issuing asset-backed securities) are held by only one other special purpose entity.

(*(3*) *Demand features and guarantees.* In the case of a ten percent obligor deemed to be an issuer, the fund must satisfy the diversification requirements of paragraph (d)(3)(iii) of this section with respect to any demand feature or guarantee to which the ten percent obligor's obligations are subject.

(E) *Shares of other money market funds.* A money market fund that acquires shares issued by another money market fund in an amount that would otherwise be prohibited by paragraph (d)(3)(i) of this section shall nonetheless be deemed in compliance with this section if the board of directors of the acquiring money market fund reasonably believes that the fund in which it has invested is in compliance with this section.

(F) *Treatment of certain affiliated entities—*(*1*) *General.* The money market fund, when calculating the amount of its total assets invested in securities issued by any particular issuer for purposes of paragraph (d)(3)(i) of this section, must treat as a single issuer two or more issuers of securities owned by the money market fund if one issuer controls the other, is controlled by the other issuer, or is under common control with the other issuer, provided that ''control'' for this purpose means ownership of more than 50 percent of the issuer's voting securities.

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(*2*) *Equity owners of asset-backed commercial paper special purpose entities.* The money market fund is not required to aggregate an asset-backed commercial paper special purpose entity and its equity owners under paragraph (d)(3)(ii)(F)*(1)* of this section provided that a primary line of business of its equity owners is owning equity interests in special purpose entities and providing services to special purpose entities, the independent equity owners' activities with respect to the SPEs are limited to providing management or administrative services, and no qualifying assets of the special purpose entity were originated by the equity owners.

(*3*) *Ten percent obligors.* For purposes of determining ten percent obligors pursuant to paragraph (d)(3)(ii)(D)*(1)*(*i*) of this section, the money market fund must treat as a single person two or more persons whose obligations in the aggregate constitute ten percent or more of the principal amount of the qualifying assets of the primary ABS if one person controls the other, is controlled by the other person, or is under common control with the person, provided that ''control'' for this purpose means ownership of more than 50 percent of the person's voting securities.

(iii) *Diversification rules for demand features and guarantees.* The money market fund must be diversified with respect to demand features and guarantees acquired by the fund as provided in paragraphs (d)(3)(i), (iii), and (iv) of this section, other than with respect to a demand feature issued by the same institution that issued the underlying security, or with respect to a guarantee or demand feature that is itself a government security.

(A) *General.* Immediately after the acquisition of any demand feature or guarantee, any security subject to a demand feature or guarantee, or a security directly issued by the issuer of a demand feature or guarantee, a money market fund must not have invested more than ten percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee, subject to paragraphs (d)(3)(i) and (d)(3)(iii)(B) of this section.

(B) *Tax exempt funds.* Immediately after the acquisition of any demand feature or guarantee, any security subject to a demand feature or guarantee, or a security directly issued by the issuer of a demand feature or guarantee (any such acquisition, a ''demand feature or guarantee acquisition''), a tax exempt fund, with respect to eighty-five percent of its total assets, must not have invested more than ten percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee; provided that any demand feature or guarantee acquisition in excess of ten percent of the fund's total assets in accordance with this paragraph must be a demand feature or guarantee issued by a non-controlled person.

(iv) *Demand feature and guarantee diversification calculations*—(A) *Fractional demand features or guarantees.* In the case of a security subject to a demand feature or guarantee from an institution by which the institution guarantees a specified portion of the value of the security, the institution shall be deemed to guarantee the specified portion thereof.

(B) *Layered demand features or guarantees.* In the case of a security subject to demand features or guarantees from multiple institutions that have not limited the extent of their obligations as described in paragraph (d)(3)(iv)(A) of this section, each institution shall be deemed to have provided the demand feature or guarantee with respect to the entire principal amount of the security.

(v) *Diversification safe harbor.* A money market fund that satisfies the applicable diversification requirements of paragraphs (d)(3) and (e) of this section shall be deemed to have satisfied the diversification requirements of section 5(b)(1) of the Act (15 U.S.C. 80a–5(b)(1)) and the rules adopted thereunder.

(4) *Portfolio liquidity.* The money market fund must hold securities that are sufficiently liquid to meet reasonably foreseeable shareholder redemptions in light of the fund's obligations under section 22(e) of the Act (15 U.S.C. 80a–22(e)) and any commitments the fund

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has made to shareholders; provided, however, that:

(i) *Illiquid securities.* The money market fund may not acquire any illiquid security if, immediately after the acquisition, the money market fund would have invested more than five percent of its total assets in illiquid securities.

(ii) *Minimum daily liquidity requirement.* The money market fund may not acquire any security other than a daily liquid asset if, immediately after the acquisition, the fund would have invested less than ten percent of its total assets in daily liquid assets. This provision does not apply to tax exempt funds.

(iii) *Minimum weekly liquidity requirement.* The money market fund may not acquire any security other than a weekly liquid asset if, immediately after the acquisition, the fund would have invested less than thirty percent of its total assets in weekly liquid assets.

(e) *Demand features and guarantees not relied upon.* If the fund's board of directors has determined that the fund is not relying on a demand feature or guarantee to determine the quality (pursuant to paragraph (d)(2) of this section), or maturity (pursuant to paragraph (i) of this section), or liquidity of a portfolio security (pursuant to paragraph (d)(4) of this section), and maintains a record of this determination (pursuant to paragraphs (g)(3) and (h)(7) of this section), then the fund may disregard such demand feature or guarantee for all purposes of this section.

(f) *Defaults and other events*—(1) *Adverse events.* Upon the occurrence of any of the events specified in paragraphs (f)(1)(i) through (iii) of this section with respect to a portfolio security, the money market fund shall dispose of such security as soon as practicable consistent with achieving an orderly disposition of the security, by sale, exercise of any demand feature or otherwise, absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund (which determination may take into account, among other factors, market conditions that could affect the orderly disposition of the portfolio security):

(i) The default with respect to a portfolio security (other than an immaterial default unrelated to the financial condition of the issuer);

(ii) A portfolio security ceases to be an eligible security (e.g., no longer presents minimal credit risks); or

(iii) An event of insolvency occurs with respect to the issuer of a portfolio security or the provider of any demand feature or guarantee.

(2) *Notice to the Commission.* The money market fund must notify the Commission of the occurrence of certain material events, as specified in Form N–CR (§ 274.222 of this chapter).

(3) *Defaults for purposes of paragraphs (f)(1) and (2) of this section.* For purposes of paragraphs (f)(1) and (2) of this section, an instrument subject to a demand feature or guarantee shall not be deemed to be in default (and an event of insolvency with respect to the security shall not be deemed to have occurred) if:

(i) In the case of an instrument subject to a demand feature, the demand feature has been exercised and the fund has recovered either the principal amount or the amortized cost of the instrument, plus accrued interest;

(ii) The provider of the guarantee is continuing, without protest, to make payments as due on the instrument; or

(iii) The provider of a guarantee with respect to an asset-backed security pursuant to paragraph (a)(16)(ii) of this section is continuing, without protest, to provide credit, liquidity or other support as necessary to permit the asset-backed security to make payments as due.

(g) *Required procedures.* The money market fund's board of directors must adopt written procedures including the following:

(1) *Funds using amortized cost.* In the case of a government or retail money market fund that uses the amortized cost method of valuation, in supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market

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fund's board of directors, as a particular responsibility within the overall duty of care owed to its shareholders, shall establish written procedures reasonably designed, taking into account current market conditions and the money market fund's investment objectives, to stabilize the money market fund's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at a single value.

(i) *Specific procedures.* Included within the procedures adopted by the board of directors shall be the following:

(A) *Shadow pricing.* Written procedures shall provide:

(*1*) That the extent of deviation, if any, of the current net asset value per share calculated using available market quotations (or an appropriate substitute that reflects current market conditions) from the money market fund's amortized cost price per share, shall be calculated at least daily, and at such other intervals that the board of directors determines appropriate and reasonable in light of current market conditions;

(*2*) For the periodic review by the board of directors of the amount of the deviation as well as the methods used to calculate the deviation; and

(*3*) For the maintenance of records of the determination of deviation and the board's review thereof.

(B) *Prompt consideration of deviation.* In the event such deviation from the money market fund's amortized cost price per share exceeds ½ of 1 percent, the board of directors shall promptly consider what action, if any, should be initiated by the board of directors.

(C) *Material dilution or unfair results.* Where the board of directors believes the extent of any deviation from the money market fund's amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall cause the fund to take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results.

(ii) [Reserved]

(2) *Funds using penny rounding.* In the case of a government or retail money market fund that uses the penny rounding method of pricing, in supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors, as a particular responsibility within the overall duty of care owed to its shareholders, must establish written procedures reasonably designed, taking into account current market conditions and the money market fund's investment objectives, to assure to the extent reasonably practicable that the money market fund's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one percent, will not deviate from the single price established by the board of directors.

(3) *Ongoing Review of Credit Risks.* The written procedures must require the adviser to provide ongoing review of whether each security (other than a government security) continues to present minimal credit risks. The review must:

(i) Include an assessment of each security's credit quality, including the capacity of the issuer or guarantor (including conditional demand feature provider, when applicable) to meet its financial obligations; and

(ii) Be based on, among other things, financial data of the issuer of the portfolio security or provider of the guarantee or demand feature, as the case may be, and in the case of a security subject to a conditional demand feature, the issuer of the security whose financial condition must be monitored under paragraph (d)(2)(iii) of this section, whether such data is publicly available or provided under the terms of the security's governing documents.

(4) *Securities subject to demand features or guarantees.* In the case of a security subject to one or more demand features or guarantees that the fund's board of directors has determined that the fund is not relying on to determine the quality (pursuant to paragraph (d)(2) of this section), maturity (pursuant to paragraph (i) of this section) or liquidity (pursuant to paragraph (d)(4) of this section) of the security subject to the demand feature or guarantee, written

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procedures must require periodic evaluation of such determination.

(5) *Adjustable rate securities without demand features.* In the case of a variable rate or floating rate security that is not subject to a demand feature and for which maturity is determined pursuant to paragraph (i)(1), (i)(2) or (i)(4) of this section, written procedures shall require periodic review of whether the interest rate formula, upon readjustment of its interest rate, can reasonably be expected to cause the security to have a market value that approximates its amortized cost value.

(6) *Ten percent obligors of asset-backed securities.* In the case of an asset-backed security, written procedures must require the fund to periodically determine the number of ten percent obligors (as that term is used in paragraph (d)(3)(ii)(D) of this section) deemed to be the issuers of all or a portion of the asset-backed security for purposes of paragraph (d)(3)(ii)(D) of this section; provided, however, written procedures need not require periodic determinations with respect to any asset-backed security that a fund's board of directors has determined, at the time of acquisition, will not have, or is unlikely to have, ten percent obligors that are deemed to be issuers of all or a portion of that asset-backed security for purposes of paragraph (d)(3)(ii)(D) of this section, and maintains a record of this determination.

(7) *Asset-backed securities not subject to guarantees.* In the case of an asset-backed security for which the fund's board of directors has determined that the fund is not relying on the sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support in connection with the asset-backed security to determine the quality (pursuant to paragraph (d)(2) of this section) or liquidity (pursuant to paragraph (d)(4) of this section) of the asset-backed security, written procedures must require periodic evaluation of such determination.

(8) *Stress Testing.* Written procedures must provide for:

(i) *General.* The periodic stress testing, at such intervals as the board of directors determines appropriate and reasonable in light of current market conditions, of the money market fund's ability to have invested at least ten percent of its total assets in weekly liquid assets, and the fund's ability to minimize principal volatility (and, in the case of a money market fund using the amortized cost method of valuation or penny rounding method of pricing as provided in paragraph (c)(1) of this section, the fund's ability to maintain the stable price per share established by the board of directors for the purpose of distribution, redemption and repurchase), based upon specified hypothetical events that include, but are not limited to:

(A) Increases in the general level of short-term interest rates, in combination with various levels of an increase in shareholder redemptions;

(B) An event indicating or evidencing credit deterioration, such as a downgrade or default of particular portfolio security positions, each representing various portions of the fund's portfolio (with varying assumptions about the resulting loss in the value of the security), in combination with various levels of an increase in shareholder redemptions;

(C) A widening of spreads compared to the indexes to which portfolio securities are tied in various sectors in the fund's portfolio (in which a sector is a logically related subset of portfolio securities, such as securities of issuers in similar or related industries or geographic region or securities of a similar security type), in combination with various levels of an increase in shareholder redemptions; and

(D) Any additional combinations of events that the adviser deems relevant.

(ii) A report on the results of such testing to be provided to the board of directors at its next regularly scheduled meeting (or sooner, if appropriate in light of the results), which report must include:

(A) The date(s) on which the testing was performed and an assessment of the money market fund's ability to have invested at least ten percent of its total assets in weekly liquid assets and to minimize principal volatility (and, in the case of a money market fund using the amortized cost method of valuation or penny rounding method of pricing as provided in paragraph (c)(1) of this section to maintain the stable

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price per share established by the board of directors); and

(B) An assessment by the fund's adviser of the fund's ability to withstand the events (and concurrent occurrences of those events) that are reasonably likely to occur within the following year, including such information as may reasonably be necessary for the board of directors to evaluate the stress testing conducted by the adviser and the results of the testing. The fund adviser must include a summary of the significant assumptions made when performing the stress tests.

(h) *Recordkeeping and reporting*—(1) *Written procedures.* For a period of not less than six years following the replacement of existing procedures with new procedures (the first two years in an easily accessible place), a written copy of the procedures (and any modifications thereto) described in this section must be maintained and preserved.

(2) *Board considerations and actions.* For a period of not less than six years (the first two years in an easily accessible place) a written record must be maintained and preserved of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth in this section, to be included in the minutes of the board of directors' meetings.

(3) *Credit risk analysis.* For a period of not less than three years from the date that the credit risks of a portfolio security were most recently reviewed, a written record must be maintained and preserved in an easily accessible place of the determination that a portfolio security is an eligible security, including the determination that it presents minimal credit risks at the time the fund acquires the security, or at such later times (or upon such events) that the board of directors determines that the investment adviser must reassess whether the security presents minimal credit risks.

(4) *Determinations with respect to adjustable rate securities.* For a period of not less than three years from the date when the assessment was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the determination required by paragraph (g)(5) of this section (that a variable rate or floating rate security that is not subject to a demand feature and for which maturity is determined pursuant to paragraph (i)(1), (i)(2) or (i)(4) of this section can reasonably be expected, upon readjustment of its interest rate at all times during the life of the instrument, to have a market value that approximates its amortized cost).

(5) *Determinations with respect to asset-backed securities.* For a period of not less than three years from the date when the determination was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the determinations required by paragraph (g)(6) of this section (the number of ten percent obligors (as that term is used in paragraph (d)(3)(ii)(D) of this section) deemed to be the issuers of all or a portion of the asset-backed security for purposes of paragraph (d)(3)(ii)(D) of this section). The written record must include:

(i) The identities of the ten percent obligors (as that term is used in paragraph (d)(3)(ii)(D) of this section), the percentage of the qualifying assets constituted by the securities of each ten percent obligor and the percentage of the fund's total assets that are invested in securities of each ten percent obligor; and

(ii) Any determination that an asset-backed security will not have, or is unlikely to have, ten percent obligors deemed to be issuers of all or a portion of that asset-backed security for purposes of paragraph (d)(3)(ii)(D) of this section.

(6) *Evaluations with respect to asset-backed securities not subject to guarantees.* For a period of not less than three years from the date when the evaluation was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the evaluation required by paragraph (g)(7) of this section (regarding asset-backed securities not subject to guarantees).

(7) *Evaluations with respect to securities subject to demand features or guarantees.* For a period of not less than three years from the date when the evaluation was most recently made, a written record must be preserved and maintained, in an easily accessible place, of

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the evaluation required by paragraph (g)(4) of this section (regarding securities subject to one or more demand features or guarantees).

(8) *Reports with respect to stress testing.* For a period of not less than six years (the first two years in an easily accessible place), a written copy of the report required under paragraph (g)(8)(ii) of this section must be maintained and preserved.

(9) *Inspection of records.* The documents preserved pursuant to paragraph (h) of this section are subject to inspection by the Commission in accordance with section 31(b) of the Act (15 U.S.C. 80a–30(b)) as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act (15 U.S.C. 80a–30(a)).

(10) *Web site disclosure of portfolio holdings and other fund information.* The money market fund must post prominently on its Web site the following information:

(i) For a period of not less than six months, beginning no later than the fifth business day of the month, a schedule of its investments, as of the last business day or subsequent calendar day of the preceding month, that includes the following information:

(A) With respect to the money market fund and each class of redeemable shares thereof:

(*1*) The WAM; and

(*2*) The WAL.

(B) With respect to each security held by the money market fund:

(*1*) Name of the issuer;

(*2*) Category of investment (indicate the category that identifies the instrument from among the following: U.S. Treasury Debt; U.S. Government Agency Debt; Non-U.S. Sovereign, Sub-Sovereign and Supra-National debt; Certificate of Deposit; Non-Negotiable Time Deposit; Variable Rate Demand Note; Other Municipal Security; Asset Backed Commercial Paper; Other Asset Backed Securities; U.S. Treasury Repurchase Agreement, if collateralized only by U.S. Treasuries (including Strips) and cash; U.S. Government Agency Repurchase Agreement, collateralized only by U.S. Government Agency securities, U.S. Treasuries, and cash; Other Repurchase Agreement, if any collateral falls outside Treasury, Government Agency and cash; Insurance Company Funding Agreement; Investment Company; Financial Company Commercial Paper; and Non-Financial Company Commercial Paper. If Other Instrument, include a brief description);

(*3*) CUSIP number (if any);

(*4*) Principal amount;

(*5*) The maturity date determined by taking into account the maturity shortening provisions in paragraph (i) of this section (*i.e.*, the maturity date used to calculate WAM under paragraph (d)(1)(ii) of this section);

(*6*) The maturity date determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments (*i.e.*, the maturity used to calculate WAL under paragraph (d)(1)(iii) of this section);

(*7*) Coupon or yield; and

(*8*) Value.

(ii) A schedule, chart, graph, or other depiction, which must be updated each business day as of the end of the preceding business day, showing, as of the end of each business day during the preceding six months:

(A) The percentage of the money market fund's total assets invested in daily liquid assets;

(B) The percentage of the money market fund's total assets invested in weekly liquid assets; and

(C) The money market fund's net inflows or outflows.

(iii) A schedule, chart, graph, or other depiction showing the money market fund's net asset value per share (which the fund must calculate based on current market factors before applying the amortized cost or penny-rounding method, if used), rounded to the fourth decimal place in the case of funds with a $1.000 share price or an equivalent level of accuracy for funds with a different share price (e.g., $10.00 per share), as of the end of each business day during the preceding six months, which must be updated each business day as of the end of the preceding business day.

(iv) A link to a Web site of the Securities and Exchange Commission where a user may obtain the most recent 12 months of publicly available information filed by the money market fund pursuant to § 270.30b1–7.

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(v) For a period of not less than one year, beginning no later than the same business day on which the money market fund files an initial report on Form N–CR (§ 274.222 of this chapter) in response to the occurrence of any event specified in Parts C, E, F, or G of Form N–CR, the same information that the money market fund is required to report to the Commission on Part C (Items C.1, C.2, C.3, C.4, C.5, C.6, and C.7), Part E (Items E.1, E.2, E.3, and E.4), Part F (Items F.1 and F.2), or Part G of Form N–CR concerning such event, along with the following statement: ''The Fund was required to disclose additional information about this event [or ''these events,'' as appropriate] on Form N–CR and to file this form with the Securities and Exchange Commission. Any Form N–CR filing submitted by the Fund is available on the EDGAR Database on the Securities and Exchange Commission's Internet site at *http://www.sec.gov*.''

(11) *Processing of transactions.* A government money market fund and a retail money market fund (or its transfer agent) must have the capacity to redeem and sell securities issued by the fund at a price based on the current net asset value per share pursuant to § 270.22c–1. Such capacity must include the ability to redeem and sell securities at prices that do not correspond to a stable price per share.

(i) *Maturity of portfolio securities.* For purposes of this section, the maturity of a portfolio security shall be deemed to be the period remaining (calculated from the trade date or such other date on which the fund's interest in the security is subject to market action) until the date on which, in accordance with the terms of the security, the principal amount must unconditionally be paid, or in the case of a security called for redemption, the date on which the redemption payment must be made, except as provided in paragraphs (i)(1) through (i)(8) of this section:

(1) *Adjustable rate government securities.* A government security that is a variable rate security where the variable rate of interest is readjusted no less frequently than every 397 calendar days shall be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate. A government security that is a floating rate security shall be deemed to have a remaining maturity of one day.

(2) *Short-term variable rate securities.* A variable rate security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity equal to the earlier of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(3) *Long-term variable rate securities.* A variable rate security, the principal amount of which is scheduled to be paid in more than 397 calendar days, that is subject to a demand feature, shall be deemed to have a maturity equal to the longer of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(4) *Short-term floating rate securities.* A floating rate security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity of one day, except for purposes of determining WAL under paragraph (d)(1)(iii) of this section, in which case it shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand.

(5) *Long-term floating rate securities.* A floating rate security, the principal amount of which is scheduled to be paid in more than 397 calendar days, that is subject to a demand feature, shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand.

(6) *Repurchase agreements.* A repurchase agreement shall be deemed to have a maturity equal to the period remaining until the date on which the repurchase of the underlying securities is scheduled to occur, or, where the agreement is subject to demand, the notice period applicable to a demand for the repurchase of the securities.

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(7) *Portfolio lending agreements.* A portfolio lending agreement shall be treated as having a maturity equal to the period remaining until the date on which the loaned securities are scheduled to be returned, or where the agreement is subject to demand, the notice period applicable to a demand for the return of the loaned securities.

(8) *Money market fund securities.* An investment in a money market fund shall be treated as having a maturity equal to the period of time within which the acquired money market fund is required to make payment upon redemption, unless the acquired money market fund has agreed in writing to provide redemption proceeds to the investing money market fund within a shorter time period, in which case the maturity of such investment shall be deemed to be the shorter period.

(j) *Delegation.* The money market fund's board of directors may delegate to the fund's investment adviser or officers the responsibility to make any determination required to be made by the board of directors under this section other than the determinations required by paragraphs (c)(1) (board findings), (c)(2)(i) and (ii) (determinations related to liquidity fees and temporary suspensions of redemptions), (f)(1) (adverse events), (g)(1) and (2) (amortized cost and penny rounding procedures), and (g)(8) (stress testing procedures) of this section.

(1) *Written guidelines.* The board of directors must establish and periodically review written guidelines (including guidelines for determining whether securities present minimal credit risks as required in paragraphs (d)(2) and (g)(3) of this section) and procedures under which the delegate makes such determinations.

(2) *Oversight.* The board of directors must take any measures reasonably necessary (through periodic reviews of fund investments and the delegate's procedures in connection with investment decisions and prompt review of the adviser's actions in the event of the default of a security or event of insolvency with respect to the issuer of the security or any guarantee or demand feature to which it is subject that requires notification of the Commission under paragraph (f)(2) of this section by reference to Form N–CR (§ 274.222 of this chapter)) to assure that the guidelines and procedures are being followed.

[79 FR 47958, Aug. 14, 2014, as amended at 80 FR 58153, Sept. 25, 2015]

§ 270.2a19–2 Investment company general partners not deemed interested persons.

PRELIMINARY NOTE TO § 270.2a19–2: This § 270.2a19–2 conditionally excepts from the definition of interested person in section 2(a)(19) (15 U.S.C. 80a–2(a)(19)) general partners of investment companies organized in limited partnership form. Compliance with the conditions of this § 270.2a19–2 does not relieve an investment company of any other requirement of this Act, or except a general partner that is an interested person by virtue of any other provision.

(a) *Director General Partners Not Deemed Interested Persons.* A general partner serving as a director of a limited partnership investment company shall not be deemed to be an interested person of such company, or of any investment adviser of, or principal underwriter for, such company, solely by reason of being a partner of the limited partnership investment company, or a copartner in the limited partnership investment company with any investment adviser of, or principal underwriter for, the company, *provided* that the Limited Partnership Agreement contains in substance the following:

(1) Only general partners who are natural persons shall serve as, and perform the functions of, directors of the limited partnership investment company, except that any general partner may act as provided in paragraph (a)(2)(iii) of this section.

(2) A general partner shall not have the authority to act individually on behalf of, or to bind, the Limited Partnership Investment Company, except:

(i) In such person's capacity as investment adviser, principal underwriter, or administrator;

(ii) Within the scope of such person's authority as delegated by the board of directors; or

(iii) In the event that no director of the company remains, to the extent necessary to continue the Limited Partnership Investment Company, for such limited periods as are permitted under the Act to fill director vacancies.

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(3) Limited partners shall have all of the rights afforded shareholders under the Act. If a limited partnership interest is transferred in a manner that is effective under the Partnership Agreement, the transferee shall have all of the rights afforded shareholders under the Act.

(4) A general partner shall not withdraw from the Limited Partnership Investment Company or reduce its Federal Tax Status Contribution without giving at least one year's prior written notice to the Limited Partnership Investment Company, if such withdrawal or reduction is likely to cause the company to lose its partnership tax classification. This paragraph (a)(4) shall not apply to an investment adviser general partner if the company terminates its advisory agreement with such general partner.

(b) *Definitions.* (1) ''Federal Tax Status Contribution'' shall mean the interest (including limited partnership interest) in each material item of partnership income, gain, loss, deduction, or credit, and other contributions, required to be held or made by general partners, pursuant to section 4 of Internal Revenue Service Revenue Procedure 89–12, or any successor provisions thereto.

(2) ''Limited Partnership Investment Company'' shall mean a registered management company or a business development company that is organized as a limited partnership under state law.

(3) ''Partnership Agreement'' shall mean the agreement of the partners of the Limited Partnership Investment Company as to the affairs of the limited partnership and the conduct of its business.

[58 FR 45838, Aug. 31, 1993; 58 FR 64353, Dec. 6, 1993; 59 FR 15501, Apr. 1, 1994]

§ 270.2a19–3 Certain investment company directors not considered interested persons because of ownership of index fund securities.

If a director of a registered investment company (''Fund'') owns shares of a registered investment company (including the Fund) with an investment objective to replicate the performance of one or more broad-based securities indices (''Index Fund''), ownership of the Index Fund shares will not cause the director to be considered an ''interested person'' of the Fund or of the Fund's investment adviser or principal underwriter (as defined by section 2(a)(19)(A)(iii) and (B)(iii) of the Act (15 U.S.C. 80a–2(a)(19)(A)(iii) and (B)(iii)).

[66 FR 3758, Jan. 16, 2001]

§ 270.2a41–1 Valuation of standby commitments by registered investment companies.

(a) A standby commitment means a right to sell a specified underlying security or securities within a specified period of time and at an exercise price equal to the amortized cost of the underlying security or securities plus accrued interest, if any, at the time of exercise, that may be sold, transferred or assigned only with the underlying security or securities. A standby commitment entitles the holder to receive same day settlement, and will be considered to be from the party to whom the investment company will look for payment of the exercise price. A standby commitment may be assigned a fair value of zero, Provided, That:

(1) The standby commitment is not used to affect the company's valuation of the security or securities underlying the standby commitment; and

(2) Any consideration paid by the company for the standby commitment, whether paid in cash or by paying a premium for the underlying security or securities, is accounted for by the company as unrealized depreciation until the standby commitment is exercised or expires.

(b) [Reserved]

[51 FR 9779, Mar. 21, 1986, as amended at 56 FR 8128, Feb. 27, 1991; 61 FR 13982, Mar. 28, 1996; 62 FR 64986, Dec. 9, 1997]

§ 270.2a–46 Certain issuers as eligible portfolio companies.

The term *eligible portfolio company* shall include any issuer that meets the requirements set forth in paragraphs (A) and (B) of section 2(a)(46) of the Act (15 U.S.C. 80a–2(a)(46)(A) and (B)) and that:

(a) Does not have any class of securities listed on a national securities exchange; or

(b) Has a class of securities listed on a national securities exchange, but has

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an aggregate market value of outstanding voting and non-voting common equity of less than $250 million. For purposes of this paragraph:

(1) The *aggregate market value* of an issuer's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of acquisition of its securities by a business development company; and

(2) *Common equity* has the same meaning as in 17 CFR 230.405.

[73 FR 29051, May 20, 2008]

§ 270.2a51–1 Definition of investments for purposes of section 2(a)(51) (definition of "qualified purchaser"); certain calculations.

(a) *Definitions.* As used in this section:

(1) The term *Commodity Interests* means commodity futures contracts, options on commodity futures contracts, and options on physical commodities traded on or subject to the rules of:

(i) Any contract market designated for trading such transactions under the Commodity Exchange Act and the rules thereunder; or

(ii) Any board of trade or exchange outside the United States, as contemplated in Part 30 of the rules under the Commodity Exchange Act [17 CFR 30.1 through 30.11].

(2) The term *Family Company* means a company described in paragraph (A)(ii) of section 2(a)(51) of the Act [15 U.S.C. 80a–2(a)(51)].

(3) The term *Investment Vehicle* means an investment company, a company that would be an investment company but for the exclusions provided by sections 3(c)(1) through 3(c)(9) of the Act [15 U.S.C. 80a–3(c)(1) through 3(c)(9)] or the exemptions provided by §§ 270.3a–6 or 270.3a–7, or a commodity pool.

(4) The term *Investments* has the meaning set forth in paragraph (b) of this section.

(5) The term *Physical Commodity* means any physical commodity with respect to which a Commodity Interest is traded on a market specified in paragraph (a)(1) of this section.

(6) The term *Prospective Qualified Purchaser* means a person seeking to purchase a security of a Section 3(c)(7) Company.

(7) The term *Public Company* means a company that:

(i) Files reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m or 78o(d)]; or

(ii) Has a class of securities that are listed on a ''designated offshore securities market'' as such term is defined by Regulation S under the Securities Act of 1933 [17 CFR 230.901 through 230.904].

(8) The term *Related Person* means a person who is related to a Prospective Qualified Purchaser as a sibling, spouse or former spouse, or is a direct lineal descendant or ancestor by birth or adoption of the Prospective Qualified Purchaser, or is a spouse of such descendant or ancestor, *provided that*, in the case of a Family Company, a Related Person includes any owner of the Family Company and any person who is a Related Person of such owner.

(9) The term *Relying Person* means a Section 3(c)(7) Company or a person acting on its behalf.

(10) The term *Section 3(c)(7) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(7) of the Act [15 U.S.C. 80a–3(c)(7)].

(b) *Types of Investments.* For purposes of section 2(a)(51) of the Act [15 U.S.C. 80a–2(a)(51)], the term *Investments* means:

(1) Securities (as defined by section 2(a)(1) of the Securities Act of 1933 [15 U.S.C. 77b(a)(1)]), other than securities of an issuer that controls, is controlled by, or is under common control with, the Prospective Qualified Purchaser that owns such securities, unless the issuer of such securities is:

(i) An Investment Vehicle;

(ii) A Public Company; or

(iii) A company with shareholders' equity of not less than $50 million (determined in accordance with generally accepted accounting principles) as reflected on the company's most recent financial statements, *provided that* such financial statements present the information as of a date within 16 months

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preceding the date on which the Prospective Qualified Purchaser acquires the securities of a Section 3(c)(7) Company;

(2) Real estate held for investment purposes;

(3) Commodity Interests held for investment purposes;

(4) Physical Commodities held for investment purposes;

(5) To the extent not securities, financial contracts (as such term is defined in section 3(c)(2)(B)(ii) of the Act [15 U.S.C. 80a–3(c)(2)(B)(ii)] entered into for investment purposes;

(6) In the case of a Prospective Qualified Purchaser that is a Section 3(c)(7) Company, a company that would be an investment company but for the exclusion provided by section 3(c)(1) of the Act [15 U.S.C. 80a–3(c)(1)], or a commodity pool, any amounts payable to such Prospective Qualified Purchaser pursuant to a firm agreement or similar binding commitment pursuant to which a person has agreed to acquire an interest in, or make capital contributions to, the Prospective Qualified Purchaser upon the demand of the Prospective Qualified Purchaser; and

(7) Cash and cash equivalents (including foreign currencies) held for investment purposes. For purposes of this section, cash and cash equivalents include:

(i) Bank deposits, certificates of deposit, bankers acceptances and similar bank instruments held for investment purposes; and

(ii) The net cash surrender value of an insurance policy.

(c) *Investment Purposes.* For purposes of this section:

(1) Real estate shall not be considered to be held for investment purposes by a Prospective Qualified Purchaser if it is used by the Prospective Qualified Purchaser or a Related Person for personal purposes or as a place of business, or in connection with the conduct of the trade or business of the Prospective Qualified Purchaser or a Related Person, *provided that* real estate owned by a Prospective Qualified Purchaser who is engaged primarily in the business of investing, trading or developing real estate in connection with such business may de deemed to be held for investment purposes. Residential real estate shall not be deemed to be used for personal purposes if deductions with respect to such real estate are not disallowed by section 280A of the Internal Revenue Code [26 U.S.C. 280A].

(2) A Commodity Interest or Physical Commodity owned, or a financial contract entered into, by the Prospective Qualified Purchaser who is engaged primarily in the business of investing, reinvesting, or trading in Commodity Interests, Physical Commodities or financial contracts in connection with such business may be deemed to be held for investment purposes.

(d) *Valuation.* For purposes of determining whether a Prospective Qualified Purchaser is a qualified purchaser, the aggregate amount of Investments owned and invested on a discretionary basis by the Prospective Qualified Purchaser shall be the Investments' fair market value on the most recent practicable date or their cost, *provided that:*

(1) In the case of Commodity Interests, the amount of Investments shall be the value of the initial margin or option premium deposited in connection with such Commodity Interests; and

(2) In each case, there shall be deducted from the amount of Investments owned by the Prospective Qualified Purchaser the amounts specified in paragraphs (e) and (f) of this section, as applicable.

(e) *Deductions.* In determining whether any person is a qualified purchaser there shall be deducted from the amount of such person's Investments the amount of any outstanding indebtedness incurred to acquire or for the purpose of acquiring the Investments owned by such person.

(f) *Deductions: Family Companies.* In determining whether a Family Company is a qualified purchaser, in addition to the amounts specified in paragraph (e) of this section, there shall be deducted from the value of such Family Company's Investments any outstanding indebtedness incurred by an owner of the Family Company to acquire such Investments.

(g) *Special rules for certain Prospective Qualified Purchasers*—1) *Qualified institutional buyers.* Any Prospective Qualified Purchaser who is, or who a Relying

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Person reasonably believes is, a qualified institutional buyer as defined in paragraph (a) of § 230.144A of this chapter, acting for its own account, the account of another qualified institutional buyer, or the account of a qualified purchaser, shall be deemed to be a qualified purchaser *provided:*

(i) That a dealer described in paragraph (a)(1)(ii) of § 230.144A of this chapter shall own and invest on a discretionary basis at least $25 million in securities of issuers that are not affiliated persons of the dealer; and

(ii) That a plan referred to in paragraph (a)(1)(i)(D) or (a)(1)(i)(E) of § 230.144A of this chapter, or a trust fund referred to in paragraph (a)(1)(i)(F) of § 230.144A of this chapter that holds the assets of such a plan, will not be deemed to be acting for its own account if investment decisions with respect to the plan are made by the beneficiaries of the plan, except with respect to investment decisions made solely by the fiduciary, trustee or sponsor of such plan.

(2) *Joint Investments.* In determining whether a natural person is a qualified purchaser, there may be included in the amount of such person's Investments any Investments held jointly with such person's spouse, or Investments in which such person shares with such person's spouse a community property or similar shared ownership interest. In determining whether spouses who are making a joint investment in a Section 3(c)(7) Company are qualified purchasers, there may be included in the amount of each spouse's Investments any Investments owned by the other spouse (whether or not such Investments are held jointly). In each case, there shall be deducted from the amount of any such Investments the amounts specified in paragraph (e) of this section incurred by each spouse.

(3) *Investments by Subsidiaries.* For purposes of determining the amount of Investments owned by a company under section 2(a)(51)(A)(iv) of the Act [15 U.S.C. 80a–2(a)(51)(A)(iv)], there may be included Investments owned by majority-owned subsidiaries of the company and Investments owned by a company (''Parent Company'') of which the company is a majority-owned subsidiary, or by a majority-owned subsidiary of the company and other majority-owned subsidiaries of the Parent Company.

(4) *Certain Retirement Plans and Trusts.* In determining whether a natural person is a qualified purchaser, there may be included in the amount of such person's Investments any Investments held in an individual retirement account or similar account the Investments of which are directed by and held for the benefit of such person.

(h) *Reasonable Belief.* The term ''qualified purchaser'' as used in section 3(c)(7) of the Act [15 U.S.C. 80a–3(c)(7)] means any person that meets the definition of qualified purchaser in section 2(a)(51)(A) of the Act [15 U.S.C. 80a–2(a)(51)(A)]) and the rules thereunder, or that a Relying Person reasonably believes meets such definition.

[62 FR 17526, Apr. 9, 1997]

§ 270.2a51–2 Definitions of beneficial owner for certain purposes under sections 2(a)(51) and 3(c)(7) and determining indirect ownership interests.

(a) *Beneficial ownership: General.* Except as set forth in this section, for purposes of sections 2(a)(51)(C) and 3(c)(7)(B)(ii) of the Act [15 U.S.C. 80a–2(a)(51)(C) and –3(c)(7)(B)(ii)], the beneficial owners of securities of an excepted investment company (as defined in section 2(a)(51)(C) of the Act [15 U.S.C. 80a–2(a)(51)(C)]) shall be determined in accordance with section 3(c)(1) of the Act [15 U.S.C. 80a–3(c)(1)].

(b) *Beneficial ownership: Grandfather provision.* For purposes of section 3(c)(7)(B)(ii) of the Act [15 U.S.C. 80a–3(c)(7)(B)(ii)], securities of an issuer beneficially owned by a company (without giving effect to section 3(c)(1)(A) of the Act [15 U.S.C. 80a–3(c)(1)(A)]) (''owning company'') shall be deemed to be beneficially owned by one person unless:

(1) The owning company is an investment company or an excepted investment company;

(2) The owning company, directly or indirectly, controls, is controlled by, or is under common control with, the issuer; and

(3) On October 11, 1996, under section 3(c)(1)(A) of the Act as then in effect, the voting securities of the issuer were

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deemed to be beneficially owned by the holders of the owning company's outstanding securities (other than short-term paper), in which case, such holders shall be deemed to be beneficial owners of the issuer's outstanding voting securities.

(c) *Beneficial ownership: Consent provision.* For purposes of section 2(a)(51)(C) of the Act [15 U.S.C. 80a–2(a)(51)(C)], securities of an excepted investment company beneficially owned by a company (without giving effect to section 3(c)(1)(A) of the Act [15 U.S.C. 80a–3(c)(1)(A)]) (''owning company'') shall be deemed to be beneficially owned by one person unless:

(1) The owning company is an excepted investment company;

(2) The owning company directly or indirectly controls, is controlled by, or is under common control with, the excepted investment company or the company with respect to which the excepted investment company is, or will be, a qualified purchaser; and

(3) On April 30, 1996, under section 3(c)(1)(A) of the Act as then in effect, the voting securities of the excepted investment company were deemed to be beneficially owned by the holders of the owning company's outstanding securities (other than short-term paper), in which case the holders of such excepted company's securities shall be deemed to be beneficial owners of the excepted investment company's outstanding voting securities.

(d) *Indirect ownership: Consent provision.* For purposes of section 2(a)(51)(C) of the Act [15 U.S.C. 80a–2(a)(51)(C)], an excepted investment company shall not be deemed to indirectly own the securities of an excepted investment company seeking a consent to be treated as a qualified purchaser (''qualified purchaser company'') unless such excepted investment company, directly or indirectly, controls, is controlled by, or is under common control with, the qualified purchaser company or a company with respect to which the qualified purchaser company is or will be a qualified purchaser.

(e) *Required consent: Consent provision.* For purposes of section 2(a)(51)(C) of the Act [15 U.S.C. 80a–2(a)(51)(C)], the consent of the beneficial owners of an excepted investment company (''owning company'') that beneficially owns securities of an excepted investment company that is seeking the consents required by section 2(a)(51)(C) (''consent company'') shall not be required unless the owning company directly or indirectly controls, is controlled by, or is under common control with, the consent company or the company with respect to which the consent company is, or will be, a qualified purchaser.

NOTES TO § 270.2*a*51–2: 1. On both April 30, 1996 and October 11, 1996, section 3(c)(1)(A) of the Act as then in effect provided that: (A) Beneficial ownership by a company shall be deemed to be beneficial ownership by one person, except that, if the company owns 10 per centum or more of the outstanding voting securities of the issuer, the beneficial ownership shall be deemed to be that of the holders of such company's outstanding securities (other than short-term paper) unless, as of the date of the most recent acquisition by such company of securities of that issuer, the value of all securities owned by such company of all issuers which are or would, but for the exception set forth in this subparagraph, be excluded from the definition of investment company solely by this paragraph, does not exceed 10 per centum of the value of the company's total assets. Such issuer nonetheless is deemed to be an investment company for purposes of section 12(d)(1).

2. Issuers seeking the consent required by section 2(a)(51)(C) of the Act should note that section 2(a)(51)(C) requires an issuer to obtain the consent of the beneficial owners of its securities and the beneficial owners of securities of any ''excepted investment company'' that directly or indirectly owns the securities of the issuer. Except as set forth in paragraphs (d) (with respect to indirect owners) and (e) (with respect to direct owners) of this section, nothing in this section is designed to limit this consent requirement.

[62 FR 17528, Apr. 9, 1997]

§ 270.2a51–3 Certain companies as qualified purchasers.

(a) For purposes of section 2(a)(51)(A)(ii) and (iv) of the Act [15 U.S.C. 80a–2(a)(51)(A) (ii) and (iv)], a company shall not be deemed to be a qualified purchaser if it was formed for the specific purpose of acquiring the securities offered by a company excluded from the definition of investment company by section 3(c)(7) of the Act [15 U.S.C. 80a–3(c)(7)] unless each beneficial owner of the company's securities is a qualified purchaser.

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(b) For purposes of section 2(a)(51) of the Act [15 U.S.C. 80a–2(a)(51)], a company may be deemed to be a qualified purchaser if each beneficial owner of the company's securities is a qualified purchaser.

[62 FR 17528, Apr. 9, 1997]

§ 270.3a–1 Certain prima facie investment companies.

Notwithstanding section 3(a)(1)(C) of the Act (15 U.S.C. 80a–3(a)(1)(c)), an issuer will be deemed not to be an investment company under the Act; *Provided*, That:

(a) No more than 45 percent of the value (as defined in section 2(a)(41) of the Act) of such issuer's total assets (exclusive of Government securities and cash items) consists of, and no more than 45 percent of such issuer's net income after taxes (for the last four fiscal quarters combined) is derived from, securites other than:

(1) Government securities;

(2) Securities issued by employees' securities companies;

(3) Securities issued by majority-owned subsidiaries of the issuer (other than subsidiaries relying on the exclusion from the definition of investment company in section 3(b)(3) or (c)(1) of the Act) which are not investment companies; and

(4) Securities issued by companies:

(i) Which are controlled primarily by such issuer;

(ii) Through which such issuer engages in a business other than that of investing, reinvesting, owning, holding or trading in securities; and

(iii) Which are not investment companies;

(b) The issuer is not an investment company as defined in section 3(a)(1)(A) or 3(a)(1)(B) of the Act (15 U.S.C. 80a–3(a)(1)(A) or 80a–3(a)(1)(B)) and is not a special situation investment company; and

(c) The percentages described in paragraph (a) of this section are determined on an unconsolidated basis, except that the issuer shall consolidate its financial statements with the financial statements of any wholly-owned subsidiaries.

[46 FR 6881, Jan. 22, 1981, as amended at 67 FR 43536, June 28, 2002]

§ 270.3a–2 Transient investment companies.

(a) For purposes of sections 3(a)(1)(A) and 3(a)(1)(C) of the Act (15 U.S.C. 80a–3(a)(1)(A) and 80a–3(a)(1)(C)), an issuer is deemed not to be engaged in the business of investing, reinvesting, owning, holding or trading in securities during a period of time not to exceed one year; *Provided*, That the issuer has a *bona fide* intent to be engaged primarily, as soon as is reasonably possible (in any event by the termination of such period of time), in a business other than that of investing, reinvesting, owning, holding or trading in securities, such intent to be evidenced by:

(1) The issuer's business activities; and

(2) An appropriate resolution of the issuer's board of directors, or by an appropriate action of the person or persons performing similar functions for any issuer not having a board of directors, which resolution or action has been recorded contemporaneously in its minute books or comparable documents.

(b) For purposes of this rule, the period of time described in paragraph (a) shall commence on the earlier of:

(1) The date on which an issuer owns securities and/or cash having a value exceeding 50 percent of the value of such issuer's total assets on either a consolidated or unconsolidated basis; or

(2) The date on which an issuer owns or proposes to acquire investment securities (as defined in section 3(a) of the Act) having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

(c) No issuer may rely on this section more frequently than once during any three-year period.

[46 FR 6883, Jan. 22, 1981, as amended at 67 FR 43536, June 28, 2002]

§ 270.3a–3 Certain investment companies owned by companies which are not investment companies.

Notwithstanding section 3(a)(1)(A) or section 3(a)(1)(C) of the Act (15 U.S.C. 80a–3(a)(1)(A) or 80a–3(a)(1)(C)), an

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issuer will be deemed not to be an investment company for purposes of the Act; *Provided,* That all of the outstanding securities of the issuer (other than short-term paper, directors' qualifying shares, and debt securities owned by the Small Business Administration) are directly or indirectly owned by a company which satisfies the conditions of § 270.3a–1(a) and which is:

(a) A company that is not an investment company as defined in section 3(a) of the Act;

(b) A company that is an investment company as defined in section 3(a)(1)(C) of the Act (15 U.S.C. 80a–3(a)(1)(C)), but which is excluded from the definition of the term ''investment company'' by section 3(b)(1) or 3(b)(2) of the Act (15 U.S.C. 80a–3(b)(1) or 80a–3(b)(2)); or

(c) A company that is deemed not to be an investment company for purposes of the Act by rule 3a–1.

[46 FR 6884, Jan. 22, 1981, as amended at 67 FR 43536, June 28, 2002]

§ 270.3a–4 Status of investment advisory programs.

NOTE: This section is a nonexclusive safe harbor from the definition of investment company for programs that provide discretionary investment advisory services to clients. There is no registration requirement under section 5 of the Securities Act of 1933 [15 U.S.C. 77e] with respect to programs that are organized and operated in the manner described in § 270.3a–4. The section is not intended, however, to create any presumption about a program that is not organized and operated in the manner contemplated by the section.

(a) Any program under which discretionary investment advisory services are provided to clients that has the following characteristics will not be deemed to be an investment company within the meaning of the Act [15 U.S.C. 80a, *et seq.*]:

(1) Each client's account in the program is managed on the basis of the client's financial situation and investment objectives and in accordance with any reasonable restrictions imposed by the client on the management of the account.

(2)(i) At the opening of the account, the sponsor or another person designated by the sponsor obtains information from the client regarding the client's financial situation and investment objectives, and gives the client the opportunity to impose reasonable restrictions on the management of the account;

(ii) At least annually, the sponsor or another person designated by the sponsor contacts the client to determine whether there have been any changes in the client's financial situation or investment objectives, and whether the client wishes to impose any reasonable restrictions on the management of the account or reasonably modify existing restrictions;

(iii) At least quarterly, the sponsor or another person designated by the sponsor notifies the client in writing to contact the sponsor or such other person if there have been any changes in the client's financial situation or investment objectives, or if the client wishes to impose any reasonable restrictions on the management of the client's account or reasonably modify existing restrictions, and provides the client with a means through which such contact may be made; and

(iv) The sponsor and personnel of the manager of the client's account who are knowledgeable about the account and its management are reasonably available to the client for consultation.

(3) Each client has the ability to impose reasonable restrictions on the management of the client's account, including the designation of particular securities or types of securities that should not be purchased for the account, or that should be sold if held in the account; *Provided, however,* that nothing in this section requires that a client have the ability to require that particular securities or types of securities be purchased for the account.

(4) The sponsor or person designated by the sponsor provides each client with a statement, at least quarterly, containing a description of all activity in the client's account during the preceding period, including all transactions made on behalf of the account, all contributions and withdrawals made by the client, all fees and expenses charged to the account, and the value of the account at the beginning and end of the period.

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(5) Each client retains, with respect to all securities and funds in the account, to the same extent as if the client held the securities and funds outside the program, the right to:

(i) Withdraw securities or cash;

(ii) Vote securities, or delegate the authority to vote securities to another person;

(iii) Be provided in a timely manner with a written confirmation or other notification of each securities transaction, and all other documents required by law to be provided to security holders; and

(iv) Proceed directly as a security holder against the issuer of any security in the client's account and not be obligated to join any person involved in the operation of the program, or any other client of the program, as a condition precedent to initiating such proceeding.

(b) As used in this section, the term sponsor refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program. If a program has more than one sponsor, one person shall be designated the principal sponsor, and such person shall be considered the sponsor of the program under this section.

[62 FR 15109, Mar. 31, 1997]

§ 270.3a–5 Exemption for subsidiaries organized to finance the operations of domestic or foreign companies.

(a) A finance subsidiary will not be considered an investment company under section 3(a) of the Act (15 U.S.C. 80a–3(a)) and securities of a finance subsidiary held by the parent company or a company controlled by the parent company will not be considered ''investment securities'' under section 3(a)(1)(C) of the Act (15 U.S.C. 80a–3(a)(1)(C)); *Provided*, That:

(1) Any debt securities of the finance subsidiary issued to or held by the public are unconditionally guaranteed by the parent company as to the payment of principal, interest, and premium, if any (except that the guarantee may be subordinated in right of payment to other debt of the parent company);

(2) Any non-voting preferred stock of the finance subsidiary issued to or held by the public is unconditionally guaranteed by the parent company as to payment of dividends, payment of the liquidation preference in the event of liquidation, and payments to be made under a sinking fund, if a sinking fund is to be provided (except that the guarantee may be subordinated in right of payment to other debt of the parent company);

(3) The parent company's guarantee provides that in the event of a default in payment of principal, interest, premium, dividends, liquidation preference or payments made under a sinking fund on any debt securities or non-voting preferred stock issued by the finance subsidiary, the holders of those securities may institute legal proceedings directly against the parent company (or, in the case of a partnership or joint venture, against the partners or participants in the joint venture) to enforce the guarantee without first proceeding against the finance subsidiary;

(4) Any securities issued by the finance subsidiary which are convertible or exchangeable are convertible or exchangeable only for securities issued by the parent company (and, in the case of a partnership or joint venture, for securities issued by the partners or participants in the joint venture) or for debt securities or non-voting preferred stock issued by the finance subsidiary meeting the applicable requirements of paragraphs (a)(1) through (a)(3);

(5) The finance subsidiary invests in or loans to its parent company or a company controlled by its parent company at least 85% of any cash or cash equivalents raised by the finance subsidiary through an offering of its debt securities or non-voting preferred stock or through other borrowings as soon as practicable, but in no event later than six months after the finance subsidiary's receipt of such cash or cash equivalents;

(6) The finance subsidiary does not invest in, reinvest in, own, hold or trade in securities other than Government securities, securities of its parent company or a company controlled by its parent company (or in the case of a

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partnership or joint venture, the securities of the partners or participants in the joint venture) or debt securities (including repurchase agreements) which are exempted from the provisions of the Securities Act of 1933 by section 3(a)(3) of that Act; and

(7) Where the parent company is a foreign bank as the term is used in rule 3a–6 (17 CFR 270.3a–6 of this chapter), the parent company may, in lieu of the guaranty required by paragraph (a)(1) or (a)(2) of this section, issue, in favor of the holders of the finance subsidiary's debt securities or non-voting preferred stock, as the case may be, an irrevocable letter of credit in an amount sufficient to fund all of the amounts required to be guaranteed by paragraphs (a)(1) and (a)(2) of this section, *provided*, that:

(i) Payment on such letter of credit shall be conditional only upon the presentation of customary documentation, and

(ii) The beneficiary of such letter of credit is not required by either the letter of credit or applicable law to institute proceedings against the finance subsidiary before enforcing its remedies under the letter of credit.

(b) For purposes of this rule,

(1) A *finance subsidiary* shall mean any corporation—

(i) All of whose securities other than debt securities or non-voting preferred stock meeting the applicable requirements of paragraphs (a)(1) through (3) or directors' qualifying shares are owned by its parent company or a company controlled by its parent company; and

(ii) The primary purpose of which is to finance the business operations of its parent company or companies controlled by its parent company;

(2) A *parent company* shall mean any corporation, partnership or joint venture:

(i) That is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a);

(ii) That is organized or formed under the laws of the United States or of a state or that is a foreign private issuer, or that is a foreign bank or foreign insurance company as those terms are used in rule 3a–6 (17 CFR 270.3a–6 of this chapter); and

(iii) In the case of a partnership or joint venture, each partner or participant in the joint venture meets the requirements of paragraphs (b)(2)(i) and (ii).

(3) A *company controlled by the parent company* shall mean any corporation, partnership or joint venture:

(i) That is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a);

(ii) That is either organized or formed under the laws of the United States or of a state or that is a foreign private issuer, or that is a foreign bank or foreign insurance company as those terms are used in rule 3a–6; and

(iii) In the case of a corporation, more than 25 percent of whose outstanding voting securities are beneficially owned directly or indirectly by the parent company; or

(iv) In the case of a partnership or joint venture, each partner or participant in the joint venture meets the requirements of paragraphs (b)(3) (i) and (ii), and the parent company has the power to exercise a controlling influence over the management or policies of the partnership or joint venture.

(4) A *foreign private issuer* shall mean any issuer which is incorporated or organized under the laws of a foreign country, but not a foreign government or political subdivision of a foreign government.

[49 FR 49446, Dec. 20, 1984, as amended at 56 FR 56299, Nov. 4, 1991; 67 FR 43536, June 28, 2002]

§ 270.3a–6 Foreign banks and foreign insurance companies.

(a) Notwithstanding section 3(a)(1)(A) or section 3(a)(1)(C) of the Act (15 U.S.C. 80a–3(a)(1)(A) or 80a–3(a)(1)(C)), a foreign bank or foreign insurance company shall not be considered an investment company for purposes of the Act.

(b) For purposes of this section:

(1)(i) *Foreign bank* means a banking institution incorporated or organized under the laws of a country other than

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the United States, or a political subdivision of a country other than the United States, that is:

(A) Regulated as such by that country's or subdivision's government or any agency thereof;

(B) Engaged substantially in commercial banking activity; and

(C) Not operated for the purpose of evading the provisions of the Act;

(ii) The term *foreign bank* shall also include:

(A) A trust company or loan company that is:

(*1*) Organized or incorporated under the laws of Canada or a political subdivision thereof;

(*2*) Regulated as a trust company or a loan company by that country's or subdivision's government or any agency thereof; and

(*3*) Not operated for the purpose of evading the provisions of the Act; and

(B) A building society that is:

(*1*) Organized under the laws of the United Kingdom or a political subdivision thereof;

(*2*) Regulated as a building society by the country's or subdivision's government or any agency thereof; and

(*3*) Not operated for the purpose of evading the provisions of the Act.

(iii) Nothing in this section shall be construed to include within the definition of *foreign bank* a common or collective trust or other separate pool of assets organized in the form of a trust or otherwise in which interests are separately offered.

(2) *Engaged substantially in commercial banking activity* means engaged regularly in, and deriving a substantial portion of its business from, extending commercial and other types of credit, and accepting demand and other types of deposits, that are customary for commercial banks in the country in which the head office of the banking institution is located.

(3) *Foreign insurance company* means an insurance company incorporated or organized under the laws of a country other than the United States, or a political subdivision of a country other than the United States, that is:

(i) Regulated as such by that country's or subdivision's government or any agency thereof;

(ii) Engaged primarily and predominantly in:

(A) The writing of insurance agreements of the type specified in section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)), except for the substitution of supervision by foreign government insurance regulators for the regulators referred to in that section; or

(B) The reinsurance of risks on such agreements underwritten by insurance companies; and

(iii) Not operated for the purpose of evading the provisions of the Act. Nothing in this section shall be construed to include within the definition of ''foreign insurance company'' a separate account or other pool of assets organized in the form of a trust or otherwise in which interests are separately offered.

NOTE: Foreign banks and foreign insurance companies (and certain of their finance subsidiaries and holding companies) relying on rule 3a–6 for exemption from the Act may be required by rule 489 (17 CFR 230.489) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) to file Form F-N with the Commission in connection with the filing of a registration statement under the Securities Act of 1933.

[56 FR 56299, Nov. 4, 1991, as amended at 67 FR 43536, June 28, 2002]

§ 270.3a–7 Issuers of asset-backed securities.

(a) Notwithstanding section 3(a) of the Act, any issuer who is engaged in the business of purchasing, or otherwise acquiring, and holding eligible assets (and in activities related or incidental thereto), and who does not issue redeemable securities will not be deemed to be an investment company; *Provided That:*

(1) The issuer issues fixed-income securities or other securities which entitle their holders to receive payments that depend primarily on the cash flow from eligible assets;

(2) Securities sold by the issuer or any underwriter thereof are fixed-income securities rated, at the time of initial sale, in one of the four highest categories assigned long-term debt or in an equivalent short-term category (within either of which there may be sub-categories or gradations indicating

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relative standing) by at least one nationally recognized statistical rating organization that is not an affiliated person of the issuer or of any person involved in the organization or operation of the issuer, except that:

(i) Any fixed-income securities may be sold to accredited investors as defined in paragraphs (1), (2), (3), and (7) of rule 501(a) under the Securities Act of 1933 (17 CFR 230.501(a)) and any entity in which all of the equity owners come within such paragraphs; and

(ii) Any securities may be sold to qualified institutional buyers as defined in rule 144A under the Securities Act (17 CFR 230.144A) and to persons (other than any rating organization rating the issuer's securities) involved in the organization or operation of the issuer or an affiliate, as defined in rule 405 under the Securities Act (17 CFR 230.405), of such a person;

Provided, That the issuer or any underwriter thereof effecting such sale exercises reasonable care to ensure that such securities are sold and will be resold to persons specified in paragraphs (a)(2) (i) and (ii) of this section;

(3) The issuer acquires additional eligible assets, or disposes of eligible assets, only if:

(i) The assets are acquired or disposed of in accordance with the terms and conditions set forth in the agreements, indentures, or other instruments pursuant to which the issuer's securities are issued;

(ii) The acquisition or disposition of the assets does not result in a downgrading in the rating of the issuer's outstanding fixed-income securities; and

(iii) The assets are not acquired or disposed of for the primary purpose of recognizing gains or decreasing losses resulting from market value changes; and

(4) If the issuer issues any securities other than securities exempted from the Securities Act by section 3(a)(3) thereof (15 U.S.C. 77c(a)(3)), the issuer:

(i) Appoints a trustee that meets the requirements of section 26(a)(1) of the Act and that is not affiliated, as that term is defined in rule 405 under the Securities Act (17 CFR 230.405), with the issuer or with any person involved in the organization or operation of the issuer, which does not offer or provide credit or credit enhancement to the issuer, and that executes an agreement or instrument concerning the issuer's securities containing provisions to the effect set forth in section 26(a)(3) of the Act;

(ii) Takes reasonable steps to cause the trustee to have a perfected security interest or ownership interest valid against third parties in those eligible assets that principally generate the cash flow needed to pay the fixed-income security holders, provided that such assets otherwise required to be held by the trustee may be released to the extent needed at the time for the operation of the issuer; and

(iii) Takes actions necessary for the cash flows derived from eligible assets for the benefit of the holders of fixed-income securities to be deposited periodically in a segregated account that is maintained or controlled by the trustee consistent with the rating of the outstanding fixed-income securities.

(b) For purposes of this section:

(1) *Eligible assets* means financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

(2) *Fixed-income securities* means any securities that entitle the holder to receive:

(i) A stated principal amount; or

(ii) Interest on a principal amount (which may be a notional principal amount) calculated by reference to a fixed rate or to a standard or formula which does not reference any change in the market value or fair value of eligible assets; or

(iii) Interest on a principal amount (which may be a notional principal amount) calculated by reference to auctions among holders and prospective holders, or through remarketing of the security; or

(iv) An amount equal to specified fixed or variable portions of the interest received on the assets held by the issuer; or

(v) Any combination of amounts described in paragraphs (b)(2) (i), (ii), (iii), and (iv) of this section;

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Provided, That substantially all of the payments to which the holders of such securities are entitled consist of the foregoing amounts.

[57 FR 56256, Nov. 27, 1992]

§ 270.3a–8 Certain research and development companies.

(a) Notwithstanding sections 3(a)(1)(A) and 3(a)(1)(C) of the Act (15 U.S.C. 80a–3(a)(1)(A) and 80a–3(a)(1)(C)), an issuer will be deemed not to be an investment company if:

(1) Its research and development expenses, for the last four fiscal quarters combined, are a substantial percentage of its total expense for the same period;

(2) Its net income derived from investments in securities, for the last four fiscal quarters combined, does not exceed twice the amount of its research and development expenses for the same period;

(3) Its expenses for investment advisory and management activities, investment research and custody, for the last four fiscal quarters, combined, do not exceed five percent of its total expenses for the same period;

(4) Its investments in securities are capital preservation investments, except that:

(i) No more than 10 percent of the issuer's total assets may consist of other investments, or

(ii) No more than 25 percent of the issuer's total assets may consist of other investments, provided that at least 75 percent of such other investments are investments made pursuant to a collaborative research and development arrangement;

(5) It does not hold itself out as being engaged in the business of investing, reinvesting or trading in securities, and it is not a special situation investment company;

(6) It is primarily engaged, directly, through majority-owned subsidiaries, or through companies which it controls primarily, in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities, as evidenced by:

(i) The activities of its officers, directors and employees;

(ii) Its public representations of policies;

(iii) Its historical development; and

(iv) An appropriate resolution of its board of directors, which resolution or action has been recorded contemporaneously in its minute books or comparable documents; and

(7) Its board of directors has adopted a written investment policy with respect to the issuer's capital preservation investments.

(b) For purposes of this section:

(1) All assets shall be valued in accordance with section 2(a)(41)(A) of the Act (15 U.S.C. 80a–2(a)(41)(A));

(2) The percentages described in this section are determined on an unconsolidated basis, except that the issuer shall consolidate its financial statements with the financial statements of any wholly-owned subsidiaries;

(3) *Board of directors* means the issuer's board of directors or an appropriate person or persons performing similar functions for any issuer not having a board of directors;

(4) *Capital preservation investment* means an investment that is made to conserve capital and liquidity until the funds are used in the issuer's primary business or businesses;

(5) *Controlled primarily* means controlled within the meaning of section 2(a)(9) of the Act (15 U.S.C. 80a–2(a)(9)) with a degree of control that is greater than that of any other person;

(6) *Investment made pursuant to a collaborative research and development arrangement* means an investment in an investee made pursuant to a business relationship which:

(i) Is designed to achieve narrowly focused goals that are directly related to, and an integral part of, the issue's research and development activities;

(ii) Calls for the issuer to conduct joint research and development activities with the investee or a company controlled primarily by, or which controls primarily, the investee; and

(iii) Is not entered into for the purpose of avoiding regulation under the Act;

(7) *Investments in securities* means all securities other than securities issued by majority-owned subsidiaries and companies controlled primarily by the issuer that conduct similar types of businesses, through which the issuer is engaged primarily in a business other than that of investing, reinvesting,

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owning, holding, or trading in securities;

(8) *Other investment* means an investment in securities that is not a capital preservation investment; and

(9) *Research and development expenses* means research and development costs as defined in FASB ASC Topic 730, *Research and Development*, as currently in effect or as it may be subsequently revised.

[68 FR 37052, June 20, 2003, as amended at 76 FR 50123, Aug. 12, 2011]

§ 270.3a–9 Crowdfunding vehicle.

(a) Notwithstanding section 3(a) of the Act, a crowdfunding vehicle will be deemed not to be an investment company if the vehicle:

(1) Is organized and operated for the sole purpose of directly acquiring, holding, and disposing of securities issued by a single crowdfunding issuer and raising capital in one or more offerings made in compliance with §§ 227.100 through 227.504 (Regulation Crowdfunding);

(2) Does not borrow money and uses the proceeds from the sale of its securities solely to purchase a single class of securities of a single crowdfunding issuer;

(3) Issues only one class of securities in one or more offerings under Regulation Crowdfunding in which the crowdfunding vehicle and the crowdfunding issuer are deemed to be co-issuers under the Securities Act (15 U.S.C. 77a *et seq.*);

(4) Receives a written undertaking from the crowdfunding issuer to fund or reimburse the expenses associated with its formation, operation, or winding up, receives no other compensation, and any compensation paid to any person operating the vehicle is paid solely by the crowdfunding issuer;

(5) Maintains the same fiscal year-end as the crowdfunding issuer;

(6) Maintains a one-to-one relationship between the number, denomination, type and rights of crowdfunding issuer securities it owns and the number, denomination, type and rights of its securities outstanding;

(7) Seeks instructions from the holders of its securities with regard to:

(i) The voting of the crowdfunding issuer securities it holds and votes the crowdfunding issuer securities only in accordance with such instructions; and

(ii) Participating in tender or exchange offers or similar transactions conducted by the crowdfunding issuer and participates in such transactions only in accordance with such instructions;

(8) Receives, from the crowdfunding issuer, all disclosures and other information required under Regulation Crowdfunding and the crowdfunding vehicle promptly provides such disclosures and other information to the investors and potential investors in the crowdfunding vehicle's securities and to the relevant intermediary; and

(9) Provides to each investor the right to direct the crowdfunding vehicle to assert the rights under State and Federal law that the investor would have if he or she had invested directly in the crowdfunding issuer and provides to each investor any information that it receives from the crowdfunding issuer as a shareholder of record of the crowdfunding issuer.

(b) For purposes of this section:

(1) *Crowdfunding issuer* means a company that seeks to raise capital as a co-issuer with a crowdfunding vehicle in an offering that complies with all of the requirements under section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) and Regulation Crowdfunding.

(2) *Crowdfunding vehicle* means an issuer formed by or on behalf of a crowdfunding issuer for the purpose of conducting an offering under section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) as a co-issuer with the crowdfunding issuer, which offering is controlled by the crowdfunding issuer.

(3) *Regulation Crowdfunding* means the regulations set forth in §§ 227.100 through 227.504 of this chapter.

[86 FR 3602, Jan. 14, 2021]

§ 270.3c–1 Definition of beneficial ownership for certain 3(c)(1) funds.

(a) As used in this section:

(1) The term *Covered Company* means a company that is an investment company, a Section 3(c)(1) Company or a Section 3(c)(7) Company.

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(2) The term *Section 3(c)(1) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(1) of the Act [15 U.S.C. 80a–3(c)(1)].

(3) The term *Section 3(c)(7) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(7) of the Act [15 U.S.C. 80a–3(c)(7)].

(b) For purposes of section 3(c)(1)(A) of the Act [15 U.S.C. 80a–3(c)(1)(A)], beneficial ownership by a Covered Company owning 10 percent or more of the outstanding voting securities of a Section 3(c)(1) Company shall be deemed to be beneficial ownership by one person, *provided that:*

(1) On April 1, 1997, the Covered Company owned 10 percent or more of the outstanding voting securities of the Section 3(c)(1) Company or non-voting securities that, on such date and in accordance with the terms of such securities, were convertible into or exchangeable for voting securities that, if converted or exchanged on or after such date, would have constituted 10 percent or more of the outstanding voting securities of the Section 3(c)(1) Company; and

(2) On the date of any acquisition of securities of the Section 3(c)(1) Company by the Covered Company, the value of all securities owned by the Covered Company of all issuers that are Section 3(c)(1) or Section 3(c)(7) Companies does not exceed 10 percent of the Covered Company's total assets.

[62 FR 17529, Apr. 9, 1997]

§ 270.3c–2 Definition of beneficial ownership in small business investment companies.

For the purpose of section 3(c)(1) of the Act, beneficial ownership by a company owning 10 per centum or more of the outstanding voting securities of any issuer which is a small business investment company licensed to operate under the Small Business Investment Act of 1958, or which has received from the Small Business Administration notice to proceed to qualify for a license, which notice or license has not been revoked, shall be deemed to be beneficial ownership by one person (a) if and so long as the value of all securities of small business investments companies owned by such company does not exceed 5 per centum of the value of its total assets; or (b) if and so long as such stock of the small business investment company shall be owned by a state development corporation which has been created by or pursuant to an act of the State legislature to promote and assist the growth and development of the economy within such State on a state-wide basis: *Provided,* That such State development corporation is not, or as a result of its investment in the small business investment company (considering such investment as an investment security) would not be, an investment company as defined in section 3 of the Act.

(Sec. 6, 74 Stat. 412; 15 U.S.C. 80a–6)

[33 FR 11451, Aug. 13, 1968]

§ 270.3c–3 Definition of certain terms used in section 3(c)(1) of the Act with respect to certain debt securities offered by small business investment companies.

The term *public offering* as used in section 3(c)(1) of the Act shall not be deemed to include the offer and sale by a small business investment company, licensed under the Small Business Investment Act of 1958, of any debt security issued by it which is (a) not convertible into, exchangeable for, or accompanied by any equity security, and (b) guaranteed as to timely payment of principal and interest by the Small Business Administration and backed by the full faith and credit of the United States. The holders of any securities offered and sold as described in this section shall be counted, in the aggregate, as one person for purposes of section 3(c)(1) of the Act.

[37 FR 7590, Apr. 18, 1972]

§ 270.3c–4 Definition of "common trust fund" as used in section 3(c)(3) of the Act.

The term *common trust fund* as used in section 3(c)(3) of the Act (15 U.S.C. 80a–3(c)(3)) shall include a common trust fund which is maintained by a bank which is a member of an affiliated group, as defined in section 1504(a) of the Internal Revenue Code of 1954 (26

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U.S.C. 1504(a)), and which is maintained exclusively for the collective investment and reinvestment of monies contributed thereto by one or more bank members of such affiliated group in the capacity of trustee, executor, administrator, or guardian; *Provided,* That:

(a) The common trust fund is operated in compliance with the same State and Federal regulatory requirements as would apply if the bank maintaining such fund and any other contributing banks were the same entity; and

(b) The rights of persons for whose benefit a contributing bank acts as trustee, executor, administrator, or guardian would not be diminished by reason of the maintenance of such common trust fund by another bank member of the affiliated group.

(15 U.S.C. 80a–6(c), 80a–37(a))

[43 FR 2393, Jan. 17, 1978]

§ 270.3c–5 Beneficial ownership by knowledgeable employees and certain other persons.

(a) As used in this section:

(1) The term *Affiliated Management Person* means an affiliated person, as such term is defined in section 2(a)(3) of the Act [15 U.S.C. 80a–2(a)(3)], that manages the investment activities of a Covered Company. For purposes of this definition, the term ''investment company'' as used in section 2(a)(3) of the Act includes a Covered Company.

(2) The term *Covered Company* means a Section 3(c)(1) Company or a Section 3(c)(7) Company.

(3) The term *Executive Officer* means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, for a Covered Company or for an Affiliated Management Person of the Covered Company.

(4) The term *Knowledgeable Employee* with respect to any Covered Company means any natural person who is:

(i) An Executive Officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of the Covered Company or an Affiliated Management Person of the Covered Company; or

(ii) An employee of the Covered Company or an Affiliated Management Person of the Covered Company (other than an employee performing solely clerical, secretarial or administrative functions with regard to such company or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of such Covered Company, other Covered Companies, or investment companies the investment activities of which are managed by such Affiliated Management Person of the Covered Company, *provided that* such employee has been performing such functions and duties for or on behalf of the Covered Company or the Affiliated Management Person of the Covered Company, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

(5) The term *Section 3(c)(1) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(1) of the Act [15 U.S.C. 80a–3(c)(1)].

(6) The term *Section 3(c)(7) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(7) of the Act [15 U.S.C. 80a–3(c)(7)].

(b) For purposes of determining the number of beneficial owners of a Section 3(c)(1) Company, and whether the outstanding securities of a Section 3(c)(7) Company are owned exclusively by qualified purchasers, there shall be excluded securities beneficially owned by:

(1) A person who at the time such securities were acquired was a Knowledgeable Employee of such Company;

(2) A company owned exclusively by Knowledgeable Employees;

(3) Any person who acquires securities originally acquired by a Knowledgeable Employee in accordance with this section, provided that such securities were acquired by such person in accordance with § 270.3c–6

[62 FR 17529, Apr. 9, 1997]

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§ 270.3c–6 Certain transfers of interests in section 3(c)(1) and section 3(c)(7) funds.

(a) As used in this section:

(1) The term *Donee* means a person who acquires a security of a Covered Company (or a security or other interest in a company referred to in paragraph (b)(3) of this section) as a gift or bequest or pursuant to an agreement relating to a legal separation or divorce.

(2) The term *Section 3(c)(1) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(1) of the Act [15 U.S.C. 80a–3(c)(1)].

(3) The term *Section 3(c)(7) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(7) of the Act [15 U.S.C. 80a–3(c)(7)].

(4) The term *Transferee* means a Section 3(c)(1) Transferee or a Qualified Purchaser Transferee, in each case as defined in paragraph (b) of this section.

(5) The term *Transferor* means a Section 3(c)(1) Transferor or a Qualified Purchaser Transferor, in each case as defined in paragraph (b) of this section.

(b) Beneficial ownership by any person (''Section 3(c)(1) Transferee'') who acquires securities or interests in securities of a Section 3(c)(1) Company from a person other than the Section 3(c)(1) Company shall be deemed to be beneficial ownership by the person from whom such transfer was made (''Section 3(c)(1) Transferor''), and securities of a Section 3(c)(7) Company that are owned by persons who received the securities from a qualified purchaser other than the Section 3(c)(7) Company (''Qualified Purchaser Transferor'') or a person deemed to be a qualified purchaser by this section shall be deemed to be acquired by a qualified purchaser (''Qualified Purchaser Transferee''), provided that the Transferee is:

(1) The estate of the Transferor;

(2) A Donee; or

(3) A company established by the Transferor exclusively for the benefit of (or owned exclusively by) the Transferor and the persons specified in paragraphs (b)(1) and (b)(2) of this section.

[62 FR 17529, Apr. 9, 1997]

§ 270.5b–1 Definition of "total assets."

The term *total assets*, when used in computing values for the purposes of sections 5 and 12 of the Act, shall mean the gross assets of the company with respect to which the computation is made, taken as of the end of the fiscal quarter of the company last preceding the date of computation. This section shall not apply to any company which has adopted either of the alternative methods of valuation permitted by § 270.2a–1.

[Rule N–5B–1, 6 FR 5920, Nov. 22, 1941]

§ 270.5b–2 Exclusion of certain guarantees as securities of the guarantor.

(a) For the purposes of section 5 of the act, a guarantee of a security shall not be deemed to be a security issued by the guarantor: *Provided*, That the value of all securities issued or guaranteed by the guarantor, and owned by the management company, does not exceed 10 percent of the value of the total assets of such management company.

(b) Notwithstanding paragraph (a) of this section, for the purposes of section 5 of the Act, a guarantee by a railroad company of a security issued by a terminal company, warehouse company, switching company, or bridge company, shall not be deemed to be a security issued by such railroad company: *Provided:*

(1) The security is guaranteed jointly or severally by more than one railroad company; and

(2) No one of such guaranteeing railroad companies directly or indirectly controls all of its co-guarantors.

(c) For the purposes of section 5 of the Act, a lease or other arrangement whereby a railroad company is or becomes obligated to pay a stipulated annual sum of rental either to another railroad company or to the security holders of such other railroad company shall not be deemed in itself a guarantee.

[Rule N–5B–2, 10 FR 581, Jan. 16, 1945]

§ 270.5b–3 Acquisition of repurchase agreement or refunded security treated as acquisition of underlying securities.

(a) *Repurchase Agreements.* For purposes of sections 5 and 12(d)(3) of the

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Act (15 U.S.C. 80a–5 and 80a–12(d)(3)), the acquisition of a repurchase agreement may be deemed to be an acquisition of the underlying securities, provided the obligation of the seller to repurchase the securities from the investment company is Collateralized Fully.

(b) *Refunded Securities.* For purposes of section 5 of the Act (15 U.S.C. 80a–5), the acquisition of a Refunded Security is deemed to be an acquisition of the escrowed Government Securities.

(c) *Definitions.* As used in this section:

(1) *Collateralized Fully* in the case of a repurchase agreement means that:

(i) The value of the securities collateralizing the repurchase agreement (reduced by the transaction costs (including loss of interest) that the investment company reasonably could expect to incur if the seller defaults) is, and during the entire term of the repurchase agreement remains, at least equal to the Resale Price provided in the agreement;

(ii) The investment company has perfected its security interest in the collateral;

(iii) The collateral is maintained in an account of the investment company with its custodian or a third party that qualifies as a custodian under the Act;

(iv) The collateral consists entirely of:

(A) Cash items;

(B) Government Securities; or

(C) Securities that the investment company's board of directors, or its delegate, determines at the time the repurchase agreement is entered into:

(*1*) Each issuer of which has an exceptionally strong capacity to meet its financial obligations; and

NOTE TO PARAGRAPH (c)(1)(iv)(C)(*1*): For a discussion of the phrase ''exceptionally strong capacity to meet its financial obligations'' see Investment Company Act Release No. 30847, (December 27, 2013).

(*2*) Are sufficiently liquid that they can be sold at approximately their carrying value in the ordinary course of business within seven calendar days; and

(v) Upon an Event of Insolvency with respect to the seller, the repurchase agreement would qualify under a provision of applicable insolvency law providing an exclusion from any automatic stay of creditors' rights against the seller.

(2) *Event of Insolvency* means, with respect to a person:

(i) An admission of insolvency, the application by the person for the appointment of a trustee, receiver, rehabilitator, or similar officer for all or substantially all of its assets, a general assignment for the benefit of creditors, the filing by the person of a voluntary petition in bankruptcy or application for reorganization or an arrangement with creditors; or

(ii) The institution of similar proceedings by another person which proceedings are not contested by the person; or

(iii) The institution of similar proceedings by a government agency responsible for regulating the activities of the person, whether or not contested by the person.

(3) *Government Security* means any ''Government Security'' as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16)).

(4) *Issuer*, as used in paragraph (c)(1)(iv)(C)(*1*) of this section, means the issuer of a collateral security or the issuer of an unconditional obligation of a person other than the issuer of the collateral security to undertake to pay, upon presentment by the holder of the obligation (if required), the principal amount of the underlying collateral security plus accrued interest when due or upon default.

(5) *Refunded Security* means a debt security the principal and interest payments of which are to be paid by Government Securities (''deposited securities'') that have been irrevocably placed in an escrow account pursuant to an agreement between the issuer of the debt security and an escrow agent that is not 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 issuer of the debt security, and, in accordance with such escrow agreement, are pledged only to the payment of the debt security and, to the extent that excess proceeds are available after all payments of principal, interest, and applicable premiums on the Refunded Securities, the expenses of the escrow

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agent and, thereafter, to the issuer or another party; *provided* that:

(i) The deposited securities are not redeemable prior to their final maturity;

(ii) The escrow agreement prohibits the substitution of the deposited securities unless the substituted securities are Government Securities; and

(iii) At the time the deposited securities are placed in the escrow account, or at the time a substitution of the deposited securities is made, an independent certified public accountant has certified to the escrow agent that the deposited securities will satisfy all scheduled payments of principal, interest and applicable premiums on the Refunded Securities.

(6) *Resale Price* means the acquisition price paid to the seller of the securities plus the accrued resale premium on such acquisition price. The accrued resale premium is the amount specified in the repurchase agreement or the daily amortization of the difference between the acquisition price and the resale price specified in the repurchase agreement.

[66 FR 36161, July 11, 2001, as amended at 74 FR 52373, Oct. 9, 2009; 79 FR 1329, Jan. 8, 2014]

§ 270.6a–5 Purchase of certain debt securities by companies relying on section 6(a)(5) of the Act.

For purposes of reliance on the exemption for certain companies under section 6(a)(5)(A) of the Act (15 U.S.C. 80a–6(a)(5)(A)), a company shall be deemed to have met the requirement for credit-worthiness of certain debt securities under section 6(a)(5)(A)(iv)(I) of the Investment Company Act (15 U.S.C. 80a–6(a)(5)(A)(iv)(I)) if, at the time of purchase, the board of directors (or its delegate) determines or members of the company (or their delegate) determine that the debt security is:

(a) Subject to no greater than moderate credit risk; and

(b) Sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time.

[77 FR 70120, Nov. 23, 2012]

§ 270.6b–1 Exemption of employees' securities company pending determination of application.

Any employees' securities company which files an application for an order of exemption under section 6(b) of the Act (54 Stat. 801; 15 U.S.C. 80a–6) shall be exempt, pending final determination of such application by the Commission, from all provisions of the Act applicable to investment companies as such.

[Rule N–6B–1, 6 FR 6126, Dec. 2, 1941]

§ 270.6c–3 Exemptions for certain registered variable life insurance separate accounts.

A separate account which meets the requirements of paragraph (a) of Rule 6e–2 (17 CFR 270.6e–2) or paragraph (a) of Rule 6e–3(T) (17 CFR 270.6e–3(T)) and registers as an investment company under section 8(a) of the Act (15 U.S.C. 80a–8(a)), and the investment adviser, principal underwriter and depositor of such separate account, shall be exempt from the provisions of the Act specified in paragraph (b) of Rule 6e–2 or paragraph (b) of Rule 6e–3(T), except for sections 7 (15 U.S.C. 80a–7) and 8(a) of the Act, under the same terms and conditions as a separate account claiming exemption under Rule 6e–2 or Rule 6e–3(T).

(Secs. 6(c); 15 U.S.C. 80a–6(C) and 38(a))

[49 FR 49228, Dec. 3, 1984]

§ 270.6c–6 Exemption for certain registered separate accounts and other persons.

(a) As used in this section,

(1) *Revenue Ruling* shall mean Revenue Ruling 81–225, 1981–41 I.R.B. (October 13, 1981), issued by the Internal Revenue Service on September 25, 1981.

(2) *Existing separate account* shall mean a separate account which is, or is a part of, a unit investment trust registered under the Act, engaged in a continuous offering of its securities on September 25, 1981.

(3) *Existing portfolio company* shall mean a registered open-end management investment company, engaged in a continuous offering of its securities on September 25, 1981, all or part of whose securities were owned by an existing separate account on September 25, 1981.

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(4) *New portfolio company* shall mean any registered open-end management investment company the shares of which will be sold to one or more registered separate accounts for the purpose of minimizing the impact of the Revenue Ruling on the contractowners of an existing separate account, which new portfolio company has the same:

(i) Investment objectives,

(ii) Fundamental policies, and

(iii) Voting rights as the existing portfolio company and has an advisory fee schedule, including expenses assumed by the adviser, that is at least as advantageous to the new portfolio company as was the fee schedule of the existing portfolio company.

(5) *New separate account* shall mean a separate account which

(i) Is, or is a part of, a unit investment trust registered under the Act;

(ii) Is intended to minimize the impact of the Revenue Ruling on the contractowners of an existing separate account;

(iii) Invests solely in one or more new portfolio companies;

(iv) Has the same

(A) Sales loads,

(B) Depositor, and

(C) Custodial arrangements

As the existing separate account; and

(v) Has

(A) Asset charges,

(B) Administrative fees, and

(C) Any other fees and charges (not including taxes) that correspond only to fees of the existing separate account and are no greater than those corresponding fees.

(b) Any order of the Commission under the Act, granted to an existing separate account on or before September 25, 1981, shall remain in full force and effect notwithstanding that the existing separate account invests in one or more new portfolio companies in lieu of, or in addition to, investing in one or more existing portfolio companies; *Provided,* That:

(1) No material changes in the facts upon which the order was based have occurred;

(2) All representations, undertakings, and conditions made or agreed to by the existing separate account, and any other person or persons, other than any existing portfolio company, in connection with the issuance of the order are, and continue to be, applicable to the existing separate account and any such other person or persons, unless modified in accordance with this section;

(3) All representations, undertakings, and conditions made or agreed to by the existing portfolio company in connection with the issuance of the order are made or agreed to by the new portfolio company, unless modified in accordance with this section; and

(4) Part II of the Registration Statement under the Securities Act of 1933 of the existing separate account

(i) Indicates that the existing separate account is relying upon paragraph (b) of this section,

(ii) Lists the Investment Company Act release numbers of any orders upon which the existing separate account intends to rely, and

(iii) Contains a representation that the provisions of this paragraph (b) have been complied with.

(c) Any order of the Commission under the Act, granted to an existing separate account on or before September 25, 1981, shall apply with full force and effect to a new separate account and the depositor of and principal underwriter for the new separate account notwithstanding that the new separate account invests in one or more new portfolio companies; *Provided,* That:

(1) No material changes in the facts upon which the order was based have occurred;

(2) All representations, undertakings, and conditions made or agreed to by the depositor, principal underwriter, and any other person or persons other than the existing separate account or any existing portfolio companies, in connection with the issuance of the order are, and continue to be, applicable to such depositor, principal underwriter, and other person or persons, unless modified in accordance with this section;

(3) All representations, undertakings, and conditions made or agreed to by the existing separate account in connection with the issuance of the order are made or agreed to by the new separate account, unless modified in accordance with this section;

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(4) All representations, undertakings, and conditions made or agreed to by an existing portfolio company in connection with the issuance of the order are made or agreed to by the new portfolio company, unless modified in accordance with this section; and

(5) Part II of the Registration Statement under the Securities Act of 1933 of the new separate account

(i) Indicates that the new separate account is relying upon paragraph (c) of this section,

(ii) Lists the Investment Company Act release numbers of any orders upon which the new separate account intends to rely, and

(iii) Contains a representation that the provisions of this paragraph (c) have been complied with.

(d) Any affiliated person or depositor of or principal underwriter for a new or existing separate account or any affiliated person of or principal underwriter for a new or existing portfolio company, and any affiliated person of such persons, principal underwriters, or depositor shall be exempt from section 17(d) of the Act (15 U.S.C 80a–17(d)) and rule 17d–1 thereunder (17 CFR 270.17d–1) to the extent necessary to permit the organization of one or more new portfolio companies; *Provided*, That, any expenses borne by the existing portfolio company or the new portfolio company in connection with such organization are necessary and appropriate and are allocated in a manner that is fair and reasonable to all of the shareholders of these companies.

(e) Any affiliated person or depositor of or principal underwriter for a new or existing separate account and any affiliated persons of such a person, principal underwriter, or depositor shall be exempt from section 17(d) of the Act and Rule 17d–1 thereunder to the extent necessary to permit such person to bear any reasonable expenses arising out of the organization of one or more new portfolio companies or the new separate account.

(f) Any affiliated persons or depositor of or principal underwriter for a new or existing separate account or any affiliated person of or principal underwriter for a new or existing portfolio company, and any affiliated person of such persons, principal underwriters, or depositor shall be exempt from section 17(a) (15 U.S.C. 80a–17(a)), and any existing portfolio company which has made an election pursuant to Rule 18f–1 (17 CFR 270.18f–1) shall be permitted to revoke that election to the extent necessary to permit transactions involving the transfer of assets from the existing portfolio company to a new portfolio company; *Provided*, That:

(1) Such assets are transferred without the imposition of any fees or charges;

(2) The board of directors of the existing portfolio company, including a majority of the directors of the company who are not interested persons of such company, determines that the transfer of assets is fair and reasonable to all shareholders of the company and such determination, and the basis upon which it was made, is recorded in the minute book of the existing portfolio company;

(3) Any securities involved are valued by the existing portfolio company for purposes of the transfer in accordance with its valuation practices for determining net asset value per share; and

(4) With respect to Rule 18f–1, the existing separate account requests that the existing portfolio company redeem in kind the shares of the portfolio company held by the separate account.

(g) The new portfolio company shall be exempt from section 2(a)(41) (15 U.S.C. 80a–2(a)(41)) of the Act and rules 2a–4 (17 CFR 270.2a–4) and 22c–1 (17 CFR 270.22c–1) under the Act to the extent necessary to permit it to use the same method of valuation for the purpose of pricing its shares for sale, redemption, and repurchase, as the existing portfolio company; *Provided*, That:

(1) The existing portfolio company had on September 25, 1981, an order of the Commission exempting it, for the purposes of pricing its shares for sale, redemption, and repurchase, from:

(i) Section 2(a)(41) of the Act and rules 2a–4 and 22c–1 under the Act to the extent necessary to permit it to use the amortized cost valuation method or

(ii) Rules 2a–4 and 22c–1 under the Act to the extent necessary to permit it to calculate its net asset value per share to the nearest one cent on share values of $1.00;

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(2) All representations, undertakings, and conditions made or agreed to by the existing portfolio company in connection with the order are made or agreed to by the new portfolio company unless modified in accordance with this section; and

(3) Part II of the Registration Statement under the Securities Act of 1933 of the new portfolio company

(i) Indicates that the new portfolio company is relying upon paragraph (g) of this section,

(ii) Lists the Investment Company Act release numbers of any orders upon which the new portfolio company intends to rely, and

(iii) Contains a representation that the provisions of paragraph (g) have been complied with.

(h) The depositor or trustee of an existing separate account shall be exempt from section 26(c) of the Act (15 U.S.C. 80a–26(c)) to the extent necessary to permit the substitution of securities of the new portfolio company for securities of the existing portfolio company; *Provided;* That, within thirty days of such substitution:

(1) The existing separate account notifies all contractowners of the substitution of securities and any determinations of the board of directors of the new portfolio company required by paragraph (d) of this section;

(2) The existing separate account delivers a copy of the prospectus of the new portfolio company to all contractowners; and

(3) The existing separate account, concurrently with the notification referred to in paragraph (h)(1) of this section or the delivery of the prospectus of the new portfolio company referred to in paragraph (h)(2) of this section, whichever is later, offers to those contractowners who would otherwise have surrender rights under their contracts the right, for a period of at least thirty days from the receipt of this offer, to surrender their contracts without the imposition of any withdrawal charge or contingent deferred sales load, and any surrendering contractowner receives the price next determined after the request for surrender is received by the insurance company.

(i) The existing separate account shall be exempt from section 22(d) of the Act (15 U.S.C. 80a–22(d)) to the extent necessary to permit it to comply with paragraph (h) of this section and the principal underwriter for or depositor of the existing separate account shall be exempt from section 26(a)(4)(B) of the Act (15 U.S.C. 80a–26(a)(4)(B)) to the extent necessary to permit them to rely on paragraph (h) of this section.

(j) Notwithstanding section 11 of the Act (15 U.S.C. 80a–11), the existing separate account or any principal underwriter for the existing separate account may make or cause to be made to the contractowners of the existing separate account an offer to exchange a security funded by an existing portfolio company for a security funded by a new portfolio company without the terms of that offer having first been submitted to and approved by the Commission; *Provided*, That the exchange is to be made on the basis of the relative net asset values of the securities to be exchanged without the imposition of any fees or charges.

(k) Notwithstanding section 11 of the Act, the new separate account or any principal underwriter for the new separate account may make or cause to be made an offer to the contractowners of the existing separate account to exchange their securities for securities of the new separate account without the terms of that offer having first been submitted to and approved by the Commission;

Provided, That:

(1) The exchange is to be made on the basis of the relative net asset values of the securities to be exchanged without the imposition of any fees or charges; and

(2) If the new separate account imposes a contingent deferred sales load (''sales load'') on the securities to be acquired in the exchange

(i) At the time this sales load is imposed, it is calculated as if

(A) The contractowner had been a contractowner of the new separate account from the date on which he became a contractowner of the existing separate account, in the case of a sales load based on the amount of time the contractowner has been invested in the new separate account, and

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(B) Amounts attributable to purchase payments made to the existing separate account had been made to the new separate account on the date on which they were made to the existing separate account, in the case of a sales load based on the amount of time purchase payments have been invested in the new separate account, and

(ii) The total sales load imposed does not exceed 9 percent of the sum of the purchase payments made to the new separate account and that portion of purchase payments made to the existing separate account attributable to the securities exchanged.

(l) Notwithstanding the foregoing, the provisions of this section will be available to a new separate account or new portfolio company, or to any affiliated person or depositor of or principal underwriter for such a new separate account, to any affiliated person of or principal underwriter for such a new portfolio company, to any affiliated person of such persons, depositor, or principal underwriters, or to any substitution of securities effected in reliance on this section, only if such new separate account or new portfolio company is registered under the Act or such substitution is effected prior to September 21, 1983.

[47 FR 42559, Sept. 28, 1982, as amended at 67 FR 43536, June 28, 2002]

§ 270.6c–7 Exemptions from certain provisions of sections 22(e) and 27 for registered separate accounts offering variable annuity contracts to participants in the Texas Optional Retirement Program.

A registered separate account, and any depositor of or underwriter for such account, shall be exempt from the provisions of sections 22(e), 27(i)(2)(A), and 27(d) of the Act (15 U.S.C. 80a–22(e), 80a–27(i)(2)(A), and 80a–27(d), respectively) with respect to any variable annuity contract participating in such account to the extent necessary to permit compliance with the Texas Optional Retirement Program (''Program''), *Provided,* That the separate, account, depositor, or underwriter for such account:

(a) Includes appropriate disclosure regarding the restrictions on redemption imposed by the Program in each registration statement, including the prospectus, used in connection with the Program;

(b) Includes appropriate disclosure regarding the restrictions on redemption imposed by the Program in any sales literature used in connection with the offer of annuity contracts to potential Program participants;

(c) Instructs salespeople who solicit Program participants to purchase annuity contracts specifically to bring the restrictions on redemption imposed by the Program to the attention of potential Program participants;

(d) Obtains from each Program participant who purchases an annuity contract in connection with the Program, prior to or at the time of such purchase, a signed statement acknowledging the restrictions on redemption imposed by the Program; and

(e) Includes in Part II of the separate account's registration statement under the Securities Act of 1933 a representation that this section is being relied upon and that the provisions of paragraphs (a) through (d) of this section have been complied with.

[49 FR 1479, Jan. 12, 1984, as amended at 85 FR 26102, May 1, 2020]

§ 270.6c–8 Exemptions for registered separate accounts to impose a deferred sales load and to deduct certain administrative charges.

(a) As used in this section *Deferred sales load* shall mean any sales load, including a contingent deferred sales load, that is deducted upon redemption or annuitization of amounts representing all or a portion of a securityholder's interest in a registered separate account.

(b) A registered separate account, and any depositor of or principal underwriter for such account, shall be exempt from the provisions of sections 22(c) and 27(i)(2)(A) of the Act (15 U.S.C. 80a–22(c) and 80a–27(i)(2)(A), respectively) and § 270.22c–1 (Rule 22c–1) to the extent necessary to permit them to impose a deferred sales load on any variable annuity contract participating in such account; provided that the terms of any offer to exchange another

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contract for the contract are in compliance with the requirements of paragraph (d) or (e) of § 270.11a–2 (Rule 11a–2).

(c) A registered separate account, and any depositor of or principal underwriter for such account, shall be exempt from sections 22(c) and 27(i)(2)(A) of the Act (15 U.S.C. 80a–22(c) and 80a–27(i)(2)(A), respectively) and § 270.22c–1 (Rule 22c–1) to the extent necessary to permit them to deduct from the value of any variable annuity contract participating in such account, upon total redemption of the contract prior to the last day of the year, the full annual fee for administrative services that otherwise would have been deducted on that date.

[48 FR 36098, Aug. 9, 1983, as amended at 85 FR 26102, May 1, 2020]

§ 270.6c–10 Exemption for certain open-end management investment companies to impose deferred sales loads.

(a) A company and any exempted person shall be exempt from the provisions of sections 2(a)(32), 2(a)(35), and 22(d) of the Act [15 U.S.C. 80a–2(a)(32), 80a–2(a)(35), and 80a–22(d), respectively] and § 270.22c–1 to the extent necessary to permit a deferred sales load to be imposed on shares issued by the company, *Provided,* that:

(1) The amount of the deferred sales load does not exceed a specified percentage of the net asset value or the offering price at the time of purchase;

(2) The terms of the deferred sales load are covered by the provisions of Rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc.; and

(3) The same deferred sales load is imposed on all shareholders, except that scheduled variations in or elimination of a deferred sales load may be offered to a particular class of shareholders or transactions, *Provided,* that the conditions in § 270.22d–1 are satisfied. Nothing in this paragraph (a) shall prevent a company from offering to existing shareholders a new scheduled variation that would waive or reduce the amount of a deferred sales load not yet paid.

(b) For purposes of this section:

(1) *Company* means a registered open-end management investment company, other than a registered separate account, and includes a separate series of the company;

(2) *Exempted person* means any principal underwriter of, dealer in, and any other person authorized to consummate transactions in, securities issued by a company; and

(3) *Deferred sales load* means any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption.

[61 FR 49016, Sept. 17, 1996]

§ 270.6c–11 Exchange-traded funds.

(a) *Definitions.* (1) For purposes of this section:

Authorized participant means a member or participant of a clearing agency registered with the Commission, which has a written agreement with the exchange-traded fund or one of its service providers that allows the authorized participant to place orders for the purchase and redemption of creation units.

Basket means the securities, assets or other positions in exchange for which an exchange-traded fund issues (or in return for which it redeems) creation units.

Business day means any day the exchange-traded fund is open for business, including any day when it satisfies redemption requests as required by section 22(e) of the Act (15 U.S.C. 80a–22(e)).

Cash balancing amount means an amount of cash to account for any difference between the value of the basket and the net asset value of a creation unit.

Creation unit means a specified number of exchange-traded fund shares that the exchange-traded fund will issue to (or redeem from) an authorized participant in exchange for the deposit (or delivery) of a basket and a cash balancing amount if any.

Custom basket means:

(A) A basket that is composed of a non-representative selection of the exchange-traded fund's portfolio holdings; or

(B) A representative basket that is different from the initial basket used

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in transactions on the same business day.

Exchange-traded fund means a registered open-end management company:

(A) That issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any; and

(B) Whose shares are listed on a national securities exchange and traded at market-determined prices.

Exchange-traded fund share means a share of stock issued by an exchange-traded fund.

Foreign investment means any security, asset or other position of the ETF issued by a foreign issuer as that term is defined in § 240.3b–4 of this title, and that is traded on a trading market outside of the United States.

Market price means:

(A) The official closing price of an exchange-traded fund share; or

(B) If it more accurately reflects the market value of an exchange-traded fund share at the time as of which the exchange-traded fund calculates current net asset value per share, the price that is the midpoint between the national best bid and national best offer as of that time.

National securities exchange means an exchange that is registered with the Commission under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

Portfolio holdings means the securities, assets or other positions held by the exchange-traded fund.

Premium or discount means the positive or negative difference between the market price of an exchange-traded fund share at the time as of which the current net asset value is calculated and the exchange-traded fund's current net asset value per share, expressed as a percentage of the exchange-traded fund share's current net asset value per share.

(2) Notwithstanding the definition of exchange-traded fund in paragraph (a)(1) of this section, an exchange-traded fund is not prohibited from selling (or redeeming) individual shares on the day of consummation of a reorganization, merger, conversion or liquidation, and is not limited to transactions with authorized participants under these circumstances.

(b) *Application of the Act to exchange-traded funds.* If the conditions of paragraph (c) of this section are satisfied:

(1) *Redeemable security.* An exchange-traded fund share is considered a ''redeemable security'' within the meaning of section 2(a)(32) of the Act (15 U.S.C. 80a-2(a)(32)).

(2) *Pricing.* A dealer in exchange-traded fund shares is exempt from section 22(d) of the Act (15 U.S.C. 80a-22(d)) and § 270.22c–1(a) with regard to purchases, sales and repurchases of exchange-traded fund shares at market-determined prices.

(3) *Affiliated transactions.* A person who is an affiliated person of an exchange-traded fund (or who is an affiliated person of such a person) solely by reason of the circumstances described in paragraphs (b)(3)(i) and (ii) of this section is exempt from sections 17(a)(1) and 17(a)(2) of the Act (15 U.S.C. 80a–17(a)(1) and (a)(2)) with regard to the deposit and receipt of baskets:

(i) Holding with the power to vote 5% or more of the exchange-traded fund's shares; or

(ii) Holding with the power to vote 5% or more of any investment company that is an affiliated person of the exchange-traded fund.

(4) *Postponement of redemptions.* If an exchange-traded fund includes a foreign investment in its basket, and if a local market holiday, or series of consecutive holidays, or the extended delivery cycles for transferring foreign investments to redeeming authorized participants prevents timely delivery of the foreign investment in response to a redemption request, the exchange-traded fund is exempt, with respect to the delivery of the foreign investment, from the prohibition in section 22(e) of the Act (15 U.S.C. 80a-22(e)) against postponing the date of satisfaction upon redemption for more than seven days after the tender of a redeemable security if the exchange-traded fund delivers the foreign investment as soon as practicable, but in no event later than 15 days after the tender of the exchange-traded fund shares.

(c) *Conditions.* (1) Each business day, an exchange-traded fund must disclose

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prominently on its website, which is publicly available and free of charge:

(i) Before the opening of regular trading on the primary listing exchange of the exchange-traded fund shares, the following information (as applicable) for each portfolio holding that will form the basis of the next calculation of current net asset value per share:

(A) Ticker symbol;

(B) CUSIP or other identifier;

(C) Description of holding;

(D) Quantity of each security or other asset held; and

(E) Percentage weight of the holding in the portfolio;

(ii) The exchange-traded fund's current net asset value per share, market price, and premium or discount, each as of the end of the prior business day;

(iii) A table showing the number of days the exchange-traded fund's shares traded at a premium or discount during the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the exchange-traded fund, if shorter);

(iv) A line graph showing exchange-traded fund share premiums or discounts for the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the exchange-traded fund, if shorter);

(v) The exchange-traded fund's median bid-ask spread, expressed as a percentage rounded to the nearest hundredth, computed by:

(A) Identifying the exchange-traded fund's national best bid and national best offer as of the end of each 10 second interval during each trading day of the last 30 calendar days;

(B) Dividing the difference between each such bid and offer by the midpoint of the national best bid and national best offer; and

(C) Identifying the median of those values; and

(vi) If the exchange-traded fund's premium or discount is greater than 2% for more than seven consecutive trading days, a statement that the exchange-traded fund's premium or discount, as applicable, was greater than 2% and a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount, which must be maintained on the website for at least one year thereafter.

(2) The portfolio holdings that form the basis for the exchange-traded fund's next calculation of current net asset value per share must be the ETF's portfolio holdings as of the close of business on the prior business day.

(3) An exchange-traded fund must adopt and implement written policies and procedures that govern the construction of baskets and the process that will be used for the acceptance of baskets; *provided*, *however*, if the exchange-traded fund utilizes a custom basket, these written policies and procedures also must:

(i) Set forth detailed parameters for the construction and acceptance of custom baskets that are in the best interests of the exchange-traded fund and its shareholders, including the process for any revisions to, or deviations from, those parameters; and

(ii) Specify the titles or roles of the employees of the exchange-traded fund's investment adviser who are required to review each custom basket for compliance with those parameters.

(4) An exchange-traded fund that seeks, directly or indirectly, to provide investment returns that correspond to the performance of a market index by a specified multiple, or to provide investment returns that have an inverse relationship to the performance of a market index, over a predetermined period of time, must comply with all applicable provisions of § 270.18f–4.

(d) *Recordkeeping*. The exchange-traded fund must maintain and preserve for a period of not less than five years, the first two years in an easily accessible place:

(1) All written agreements (or copies thereof) between an authorized participant and the exchange-traded fund or one of its service providers that allows the authorized participant to place orders for the purchase or redemption of creation units;

(2) For each basket exchanged with an authorized participant, records setting forth:

(i) The ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing

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the basket exchanged for creation units;

(ii) If applicable, identification of the basket as a custom basket and a record stating that the custom basket complies with policies and procedures that the exchange-traded fund adopted pursuant to paragraph (c)(3) of this section;

(iii) Cash balancing amount (if any); and

(iv) Identity of authorized participant transacting with the exchange-traded fund.

[84 FR 57234, Oct. 24, 2019, as amended at 85 FR 83291, Dec. 21, 2020]

§ 270.6d–1 Exemption for certain closed-end investment companies.

(a) An application under section 6(d) of the Act shall contain the following information:

(1) A brief description of the character of the business and investment policy of the applicant.

(2) The information relied upon by the applicant to satisfy the conditions of paragraphs (1) and (2) of section 6(d) of the Act.

(3) The number of holders of each class of the applicant's outstanding securities.

(4) An unconsolidated balance sheet as of a date not earlier than the end of the applicant's first fiscal year, together with a schedule specifying the title, the amount, the book value and, if determinable, the market value of each security in the applicant's portfolio.

(5) An unconsolidated profit and loss statement for the applicant's last fiscal year.

(6) A statement of each provision of the act from which the applicant seeks exemption, together with a statement of the facts by reason of which, in the applicant's opinion, such exemption is not contrary to the public interest or inconsistent with the protection of investors.

(b) There shall be attached to each copy of the application a copy of Form N–8A. The form need not be executed, but it shall be clearly marked on its facing page as an exhibit to the application. The filing of Form N–8A in this manner shall not be construed as the filing of a notification of registration under section 8(a) of the Act.

(c) The application may contain any additional information which the applicant desires to submit.

[Rule N–6D–1, 5 FR 4346, Nov. 2, 1940]

§ 270.6e–2 Exemptions for certain variable life insurance separate accounts.

(a) A separate account, and the investment adviser, principal underwriter and depositor of such separate account, shall, except for the exemptions provided in paragraph (b) of this section, be subject to all provisions of the Act and this part as though such separate account were a registered investment company issuing periodic payment plan certificates if:

(1) Such separate account is established and maintained by a life insurance company pursuant to the insurance laws or code of:

(i) Any state or territory of the United States or the District of Columbia; or

(ii) Canada or any province thereof, if it complies to the extent necessary with § 270.7d–1 (Rule 7d–1) under the Act;

(2) The assets of the separate account are derived solely from the sale of variable life insurance contracts as defined in paragraph (c) of this section, and advances made by the life insurance company which established and maintains the separate account (''life insurer'') in connection with the operation of such separate account;

(3) The separate account is not used for variable annuity contracts or for funds corresponding to dividend accumulations or other contract liabilities not involving life contingencies;

(4) The income, gains and losses, whether or not realized, from assets allocated to such separate account, are, in accordance with the applicable variable life insurance contract, credited to or charged against such account without regard to other income, gains or losses of the life insurer;

(5) The separate account is legally segregated, and that portion of its assets having a value equal to, or approximately equal to, the reserves and other contract liabilities with respect to such separate account are not

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chargeable with liabilities arising out of any other business that the life insurer may conduct;

(6) The assets of the separate account have, at each time during the year that adjustments in the reserves are made, a value at least equal to the reserves and other contract liabilities with respect to such separate account, and at all other times, except pursuant to an order of the Commission, have a value approximately equal to or in excess of such reserves and liabilities; and

(7) The investment adviser of the separate account is registered under the Investment Advisers Act of 1940.

(b) If a separate account meets the requirements of paragraph (a) of this section, then such separate account and the other persons described in paragraph (a) of this section shall be exempt from the provisions of the Act as follows:

(1) Section 7 (15 U.S.C. 80a–7).

(2) Section 8 (15 U.S.C. 80a–8) to the extent that:

(i) For purposes of paragraph (a) of section 8, the separate account shall file with the Commission a notification on §274.301 of this chapter (Form N–6EI–1) which identifies such separate account; and

(ii) For purposes of paragraph (b) of section 8, the separate account shall file with the Commission a form to be designated by the Commission within 90 days after filing the notification on Form N–6EI–1; provided, however, that if the fiscal year of the separate account ends within this 90 day period the form may be filed within ninety days after the end of such fiscal year.

(3) Section 9 (15 U.S.C. 80a–9) to the extent that:

(i) The eligibility restrictions of section 9(a) shall not be applicable to those persons who are officers, directors and employees of the life insurer or its affiliates who do not participate directly in the management or administration of the separate account or in the sale of variable life insurance contracts funded by such separate account; and

(ii) A life insurer shall be ineligible pursuant to paragraph (3) of section 9(a) to serve as investment adviser, depositor of or principal underwriter for a variable life insurance separate account only if an affiliated person of such life insurer, ineligible by reason of paragraph (1) or (2) of section 9(a), participates directly in the management or administration of the separate account or in the sale of variable life insurance contracts funded by such separate account.

(4) Section 13(a) (15 U.S.C. 80a–13(a)) to the extent that:

(i) An insurance regulatory authority may require pursuant to insurance law or regulation that the separate account make (or refrain from making) certain investments which would result in changes in the subclassification or investment policies of the separate account;

(ii) Changes in the investment policy of the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer, provided that such disapproval is reasonable and is based upon a determination by the life insurer in good faith that:

(A) Such change would be contrary to state law; or

(B) Such change would be inconsistent with the investment objectives of the separate account or would result in the purchase of securities for the separate account which vary from the general quality and nature of investments and investment techniques utilized by other separate accounts of the life insurer or of an affiliated life insurance company, which separate accounts have investment objectives similar to the separate account; and

(iii) Any action taken in accordance with paragraph (b)(4)(i) or (ii) of this section and the reasons therefor shall be disclosed in the proxy statement for the next meeting of variable life insurance contractholders of the separate account.

(5) Section 14(a) (15 U.S.C. 80a–14(a)).

(6)(i) Section 15(a) (15 U.S.C. 80a–15(a)) to the extent this section requires that the initial written contract pursuant to which the investment adviser serves or acts shall have been approved by the vote of a majority of the outstanding voting securities of the registered company; provided that:

(A) Such investment adviser is selected and a written contract is entered into before the effective date of

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the registration statement under the Securities Act of 1933, as amended, for variable life insurance contracts which are funded by the separate account, and that the terms of the contract are fully disclosed in such registration statement; and

(B) A written contract is submitted to a vote of variable life insurance contractholders at their first meeting after the effective date of the registration statement under the Securities Act of 1933, as amended, on condition that such meeting shall take place within one year after such effective date, unless the time for the holding of such meeting shall be extended by the Commission upon written request for good cause shown; and

(ii) Sections 15(a), (b) and (c) (15 U.S.C. 80a–15(a), (b), and (c)) to the extent that:

(A) An insurance regulatory authority may disapprove pursuant to insurance law or regulation any contract between the separate account and an investment adviser or principal underwriter;

(B) Changes in the principal underwriter for the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer; provided that such disapproval is reasonable;

(C) Changes in the investment adviser of the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer; provided that such disapproval is reasonable and is based upon a determination by the life insurer in good faith that:

(*1*) The rate of the proposed investment advisory fee will exceed the maximum rate that is permitted to be charged against the assets of the separate account for such services as specified by any variable life insurance contract funded by such separate account; or

(*2*) The proposed investment adviser may be expected to employ investment techniques which vary from the general techniques utilized by the current investment adviser to the separate account, or advise the purchase or sale of securities which would be inconsistent with the investment objectives of the separate account, or which would vary from the quality and nature of investments made by other separate accounts of the life insurer or of an affiliated life insurance company, which separate accounts have investment objectives similar to the separate account; and

(D) Any action taken in accordance with paragraph (b)(6)(ii)(A), (B), or (C) of this section and the reasons therefor shall be disclosed in the proxy statement for the next meeting of variable life insurance contractholders of the separate account.

(7) Section 16(a) (15 U.S.C. 80a–16(a)) to the extent that:

(i) Persons serving as directors of the separate account prior to the first meeting of such account's variable life insurance contractholders are exempt from the requirement of section 16(a) that such persons be elected by the holders of outstanding voting securities of such account at an annual or special meeting called for that purpose; provided that:

(A) Such persons have been appointed directors of such account by the life insurer before the effective date of the registration statement under the Securities Act of 1933, as amended, for variable life insurance contracts which are funded by the separate account and are identified in such registration statement (or are replacements appointed by the life insurer for any such persons who have become unable to serve as directors); and

(B) An election of directors for such account shall be held at the first meeting of variable life insurance contractholders after the effective date of the registration statement under the Securities Act of 1933, as amended, relating to contracts funded by such account, which meeting shall take place within one year after such effective date, unless the time for holding such meeting shall be extended by the Commission upon written request for good cause shown; and

(ii) A member of the board of directors of such separate account may be disapproved or removed by the appropriate insurance regulatory authority if such person is ineligible to serve as a director of the separate account pursuant to insurance law or regulation of

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the jurisdiction in which the life insurer is domiciled.

(8) Section 17(f) (15 U.S.C. 80a–17(f)) to the extent that the securities and similar investments of the separate account may be maintained in the custody of the life insurer or an insurance company which is an affiliated person of such life insurer; provided that:

(i) The securities and similar investments allocated to such separate account are clearly identified as to ownership by such account, and such securities and similar investments are maintained in the vault of an insurance company which meets the qualifications set forth in paragraph (b)(8)(ii) of this section, and whose procedures and activities with respect to such safekeeping function are supervised by the insurance regulatory authorities of the jurisdiction in which the securities and similar investments will be held;

(ii) The insurance company maintaining such investments must file with an insurance regulatory authority of a State or territory of the United States or the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, must be subject to supervision and inspection by such authority and must be examined periodically as to its financial condition and other affairs by such authority, must hold the securities and similar investments of the separate account in its vault, which vault must be equivalent to that of a bank which is a member of the Federal Reserve System, and must have a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000 as set forth in its most recent annual statement filed with such authority;

(iii) Access to such securities and similar investments shall be limited to employees of or agents authorized by the Commission, representatives of insurance regulatory authorities, independent public accountants for the separate account, accountants for the life insurer and to no more than 20 persons authorized pursuant to a resolution of the board of directors of the separate account, which persons shall be directors of the separate account, officers and responsible employees of the life insurer or officers and responsible employees of the affiliated insurance company in whose vault such investments are maintained (if applicable), and access to such securities and similar investments shall be had only by two or more such persons jointly, at least one of whom shall be a director of the separate account or officer of the life insurer;

(iv) The requirement in paragraph (b)(8)(i) of this section that the securities and similar investments of the separate account be maintained in the vault of a qualified insurance company shall not apply to securities deposited with insurance regulatory authorities or deposited in a system for the central handling of securities established by a national securities exchange or national securities association registered with the Commission under the Securities Exchange Act of 1934, as amended, or such person as may be permitted by the Commission, or to securities on loan which are collateralized to the extent of their full market value, or to securities hypothecated, pledged, or placed in escrow for the account of such separate account in connection with a loan or other transaction authorized by specific resolution of the board of directors of the separate account, or to securities in transit in connection with the sale, exchange, redemption, maturity or conversion, the exercise of warrants or rights, assents to changes in terms of the securities, or to other transactions necessary or appropriate in the ordinary course of business relating to the management of securities;

(v) Each person when depositing such securities or similar investments in or withdrawing them from the depository or when ordering their withdrawal and delivery from the custody of the life insurer or affiliated insurance company, shall sign a notation in respect of such deposit, withdrawal or order which shall show:

(A) The date and time of the deposit, withdrawal, or order;

(B) The title and amount of the securities or other investments deposited, withdrawn or ordered to be withdrawn,

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and an identification thereof by certificate numbers or otherwise;

(C) The manner of acquisition of the securities or similar investments deposited or the purpose for which they have been withdrawn, or ordered to be withdrawn; and

(D) If withdrawn and delivered to another person the name of such person. Such notation shall be transmitted promptly to an officer or director of the separate account or the life insurer designated by the board of directors of the separate account who shall not be a person designated for the purpose of paragraph (b)(8)(iii) of this section. Such notation shall be on serially numbered forms and shall be preserved for at least one year;

(vi) Such securities and similar investments shall be verified by complete examination by an independent public accountant retained by the separate account at least three times during each fiscal year, at least two of which shall be chosen by such accountant without prior notice to such separate account. A certificate of such accountant stating that he has made an examination of such securities and investments and describing the nature and extent of the examination shall be transmitted to the Commission by the accountant promptly after each examination; and

(vii) Securities and similar investments of a separate account maintained with a bank or other company whose functions and physical facilities are supervised by Federal or state authorities pursuant to any arrangement whereby the directors, officers, employees or agents of the separate account or the life insurer are authorized or permitted to withdraw such investments upon their mere receipt are deemed to be in the custody of the life insurer and shall be exempt from the requirements of section 17(f) so long as the arrangement complies with all provisions of paragraph (b)(8) of this section, except that such securities will be maintained in the vault of a bank or other company rather than the vault of an insurance company.

(9) Section 18(i) (15 U.S.C. 80a–18(i)) to the extent that:

(i) For the purposes of any section of the Act which provides for the vote of securityholders on matters relating to the investment company:

(A) Variable life insurance contractholders shall have one vote for each $100 of cash value funded by the separate account, with fractional votes allocated for amounts less than $100;

(B) The life insurer shall have one vote for each $100 of assets of the separate account not otherwise attributable to contractholders pursuant to paragraph (b)(9)(i)(A) of this section, with fractional votes allocated for amounts less than $100; provided that after the commencement of sales of variable life insurance contracts funded by the separate account, the life insurer shall cast its votes for and against each matter which may be voted upon by contractholders in the same proportion as the votes cast by contractholders; and

(C) The number of votes to be allocated shall be determined as of a record date not more than 90 days prior to any meeting at which such vote is held; provided that if a quorum is not present at the meeting, the meeting may be adjourned for up to 60 days without fixing a new record date; and

(ii) The requirement of this section that every share of stock issued by a registered management investment company (except a common-law trust of the character described in section 16(c)) shall be a voting stock and have equal voting rights with every other outstanding voting stock shall not be deemed to be violated by actions specifically permitted by any provision of this section.

(10) Section 19 (15 U.S.C. 80a–19) to the extent that the provisions of this section shall not be applicable to any dividend or similar distribution paid or payable pursuant to provisions of participating variable life insurance contracts.

(11) Sections 22(d), 22(e), and 27(i)(2)(A) (15 U.S.C. 80a–22(d), 80a–22(e), and 80a–27(i)(2)(A), respectively) and § 270.22c–1 (Rule 22c–1) promulgated under section 22(c) to the extent:

(i) That the amount payable on death and the cash surrender value of each variable life insurance contract shall be determined on each day during which the New York Stock Exchange is open for trading, not less frequently

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than once daily as of the time of the close of trading on such exchange; provided that the amount payable on death need not be determined more than once each contract month if such determination does not reduce the participation of the contract in the investment experience of the separate account; provided further, however, that if the net valuation premium for such contract is transferred at least annually, then the amount payable on death need be determined only when such net premium is transferred; and

(ii) Necessary for compliance with this section or with insurance laws and regulations and established administrative procedures of the life insurer with respect to issuance, transfer and redemption procedures for variable life insurance contracts funded by the separate account including, but not limited to, premium rate structure and premium processing, insurance underwriting standards, and the particular benefit afforded by the contract; provided, however, that any procedure or action shall be reasonable, fair and not discriminatory to the interests of the affected contractholder and to all other holders of contracts of the same class or series funded by the separate account; and, further provided that any such action shall be disclosed in the form required to be filed by the separate account with the Commission pursuant to paragraph (b)(2)(ii) of this section.

(12) Section 27(i)(2)(A) (15 U.S.C. 80a–27(i)(A)), to the extent that such sections require that the variable life insurance contract be redeemable or provide for a refund in cash; provided that such contract provides for election by the contractholder of a cash surrender value or certain non-forfeiture and settlement options which are required or permitted by the insurance law or regulation of the jurisdiction in which the contract is offered; and further provided that unless required by the insurance law or regulation of the jurisdiction in which the contract is offered or unless elected by the contractholder, such contract shall not provide for the automatic imposition of any option, including, but not limited to, an automatic premium loan, which would involve the accrual or payment of an interest or similar charge;

(13) Section 32(a)(2) (15 U.S.C. 80a–31(a)(2)); provided that:

(i) The independent public accountant is selected before the effective date of the registration statement under the Securities Act of 1933, as amended, for variable life insurance contracts which are funded by the separate account, and the identity of such accountant is disclosed in such registration statement; and

(ii) The selection of such accountant is submitted for ratification or rejection to variable life insurance contractholders at their first meeting after the effective date of the registration statement under the Securities Act of 1933, as amended, on condition that such meeting shall take place within one year after such effective date, unless the time for the holding of such meeting shall be extended by the Commission upon written request for good cause shown.

(14) If the separate account is organized as a unit investment trust, all the assets of which consist of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company:

(i) The eligibility restrictions of section 9(a) (15 U.S.C. 80a–9(a)) shall not be applicable to those persons who are officers, directors, and employees of the life insurer or its affiliates who do not participate directly in the management or administration of any registered management investment company described in paragraph (b)(14) introductory text;

(ii) The life insurer shall be ineligible pursuant to paragraph (3) of section 9(a) to serve as investment adviser of or principal underwriter for any registered management investment company described in paragraph (b)(14) of this section only if an affiliated person of such life insurer, ineligible by reason of paragraph (1) or (2) of section 9(a), participates in the management or administration of such company;

(iii) The life insurer may vote shares of the registered management investment companies held by the separate

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account without regard to instructions from contractholders of the separate account if such instructions would require such shares to be voted:

(A) To cause such companies to make (or refrain from making) certain investments which would result in changes in the sub-classification or investment objectives of such companies or to approve or disapprove any contract between such companies and an investment adviser when required to do so by an insurance regulatory authority subject to the provisions of paragraphs (b)(4)(i) and (b)(6)(ii)(A) of this section; or

(B) In favor of changes in investment objectives, investment adviser of or principal underwriter for such companies subject to the provisions of paragraphs (b)(4)(ii) and (b)(6)(ii)(B) and (C) of this section;

(iv) Any action taken in accordance with paragraph (b)(14)(iii)(A) or (B) of this section and the reasons therefor shall be disclosed in the next report to contractholders made pursuant to section 30(e) (15 U.S.C. 80a–29(e)) and § 270.30e–2 (Rule 30e–2);

(v) Any registered management investment company established by the insurer and described in paragraph (b)(14) of this section shall be exempt from section 14(a); and

(vi) Any registered management investment company established by the insurer and described in paragraph (b)(14) of this section shall be exempt from sections 15(a), 16(a), and 32(a)(2) (15 U.S.C. 80a–15(a), 80–16(a), and 80–31(a)(2), respectively), to the extent prescribed by paragraphs (b)(6)(i), (b)(7)(i), and (b)(13) of this section, provided that such company complies with the conditions set forth in those paragraphs as if it were a separate account.

(c) When used in this section, *variable life insurance contract* means a contract of life insurance, subject to regulation under the insurance laws or code of every jurisdiction in which it is offered, funded by a separate account of a life insurer, which contract, so long as premium payments are duly paid in accordance with its terms, provides for:

(1) A death benefit and cash surrender value which vary to reflect the investment experience of the separate account;

(2) An initial stated dollar amount of death benefit, and payment of a death benefit guaranteed by the life insurer to be at least equal to such stated amount; and

(3) Assumption of the mortality and expense risks thereunder by the life insurer for which a charge against the assets of the separate account may be assessed. Such charge shall be disclosed in the prospectus and shall not be less than fifty per centum of the maximum charge for risk assumption as disclosed in the prospectus and as provided for in the contract.

[85 FR 26102, May 1, 2020]

§ 270.6e–3 Exemptions for flexible premium variable life insurance separate accounts.

(a) A separate account, and its investment adviser, principal underwriter and depositor, shall, except as provided in paragraph (b) of this section, comply with all provisions of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) and this part that apply to a registered investment company issuing periodic payment plan certificates if:

(1) It is a separate account within the meaning of section 2(a)(37) of the Act (15 U.S.C. 80a–2(a)(37)) and is established and maintained by a life insurance company pursuant to the insurance laws or code of:

(i) Any state or territory of the United States or the District of Columbia; or

(ii) Canada or any province thereof, if it complies with § 270.7d–1 (Rule 7d–1) under the Act (the ''life insurer'');

(2) The assets of the separate account are derived solely from:

(i) The sale of flexible premium variable life insurance contracts (''flexible contracts'') as defined in paragraph (c)(1) of this section;

(ii) The sale of scheduled premium variable life insurance contracts (''scheduled contracts'') as defined in paragraph (c) of § 270.6e–2 (Rule 6e–2) under the Act;

(iii) Funds corresponding to dividend accumulations with respect to such contracts; and

(iv) Advances made by the life insurer in connection with the operation of such separate account;

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(3) The separate account is not used for variable annuity contracts or other contract liabilities not involving life contingencies;

(4) The separate account is legally segregated, and that part of its assets with a value approximately equal to the reserves and other contract liabilities for such separate account are not chargeable with liabilities arising from any other business of the life insurer;

(5) The value of the assets of the separate account, each time adjustments in the reserves are made, is at least equal to the reserves and other contract liabilities of the separate account, and at all other times approximately equals or exceeds the reserves and liabilities; and

(6) The investment adviser of the separate account is registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*).

(b) A separate account that meets the requirements of paragraph (a) of this section, and its investment adviser, principal underwriter and depositor shall be exempt with respect to flexible contracts funded by the separate account from the following provisions of the Act:

(1) Subject to section 26(f) of the Act, in connection with any sales charge deducted under the flexible contract, the separate account and other persons shall be exempt from sections 12(b), 22(c), and 27(i)(2)(A) (15 U.S.C. 80a–12(b), 80–22(c), and 80a–27(i)(2)(A), respectively) of the Act, and §§ 270.12b–1 (Rule 12b–1) and 270.22c–1 (Rule 22c–1) under the Act.

(2) Section 7 (15 U.S.C. 80a–7).

(3) Section 8 (15 U.S.C. 80a–8), to the extent that:

(i) For purposes of paragraph (a) of section 8, the separate account filed with the Commission a notification on § 274.301 of this chapter (Form N–6EI–1) which identifies the separate account; and

(ii) For purposes of paragraph (b) of section 8, the separate account shall file with the Commission the form designated by the Commission within ninety days after filing the notification on Form N–6EI–1; provided, however, that if the fiscal year of the separate account end within this ninety day period, the form may be filed within ninety days after the end of such fiscal year.

(4) Section 9 (15 U.S.C. 80a–9), to the extent that:

(i) The eligibility restrictions of section 9(a) shall not apply to persons who are officers, directors or employees of the life insurer or its affiliates and who do not participate directly in the management or administration of the separate account or in the sale of flexible contracts; and

(ii) A life insurer shall be ineligible under paragraph (3) of section 9(a) to serve as investment adviser, depositor of or principal underwriter for the separate account only if an affiliated person of such life insurer, ineligible by reason of paragraphs (1) or (2) of section 9(a), participates directly in the management or administration of the separate account or in the sale of flexible contracts.

(5) Section 13(a) (15 U.S.C. 80a–13(a)), to the extent that:

(i) An insurance regulatory authority may require pursuant to insurance law or regulation that the separate account make (or refrain from making) certain investments which would result in changes in the subclassification or investment policies of the separate account;

(ii) Changes in the investment policy of the separate account initiated by its contractholders or board of directors may be disapproved by the life insurer, if the disapproval is reasonable and is based on a good faith determination by the life insurer that:

(A) The change would violate state law; or

(B) The change would not be consistent with the investment objectives of the separate account or would result in the purchase of securities for the separate account which vary from the general quality and nature of investments and investment techniques used by other separate accounts of the life insurer or of an affiliated life insurance company with similar investment objectives; and

(iii) Any action described in paragraph (b)(5)(i) or (ii) of this section and the reasons for it shall be disclosed in the next communication to contractholders, but in no case, later than

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twelve months from the date of such action.

(6) Section 14(a) (15 U.S.C. 80a–14(a)).

(7)(i) Section 15(a) (15 U.S.C. 80a–15(a)), to the extent it requires that the initial written contract with the investment adviser shall have been approved by the vote of a majority of the outstanding voting securities of the registered investment company; provided that:

(A) The investment adviser is selected and a written contract is entered into before the effective date of the 1933 Act registration statement for flexible contracts, and that the terms of the contract are fully disclosed in the registration statement; and

(B) A written contract is submitted to a vote of contractholders at their first meeting and within one year after the effective date of the 1933 Act registration statement, unless the Commission upon written request and for good cause shown extends the time for the holding of such meeting; and

(ii) Sections 15(a), (b), and (c), to the extent that:

(A) An insurance regulatory authority may disapprove pursuant to insurance law or regulation any contract between the separate account and an investment adviser or principal underwriter;

(B) Changes in the principal underwriter for the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer; provided that such disapproval is reasonable;

(C) Changes in the investment adviser of the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer; provided that such disapproval is reasonable and is based on a good faith determination by the life insurer that:

(*1*) The proposed investment advisory fee will exceed the maximum rate specified in any flexible contract that may be charged against the assets of the separate account for such services; or

(*2*) The proposed investment adviser may be expected to employ investment techniques which vary from the general techniques used by the current investment adviser to the separate account, or advise the purchase or sale of securities which would not be consistent with the investment objectives of the separate account, or which would vary from the quality and nature of investments made by other separate accounts with similar investment objectives of the life insurer or an affiliated life insurance company; and

(D) Any action described in paragraph (b)(7)(ii)(A), (B), or (C) of this section and the reasons for it shall be disclosed in the next communication to contractholders, but in no case, later than twelve months from the date of such action.

(8) Section 16(a) (15 U.S.C. 80a–16(a)), to the extent that:

(i) Directors of the separate account serving before the first meeting of the account's contractholders are exempt from the requirement of section 16(a) that they be elected by the holders of outstanding voting securities of the account at an annual or special meeting called for that purpose; provided that:

(A) Such persons were appointed directors of the account by the life insurer before the effective date of the 1933 Act registration statement for flexible contracts and are identified in the registration statement (or are replacements appointed by the life insurer for any such persons who have become unable to serve as directors); and

(B) An election of directors for the account is held at the first meeting of contractholders and within one year after the effective date of the 1933 Act registration statement for flexible contracts, unless the time for holding the meeting is extended by the Commission upon written request and for good cause shown; and

(ii) A member of the board of directors of the separate account may be disapproved or removed by an insurance regulatory authority if the person is not eligible to be a director of the separate account under the law of the life insurer's domicile.

(9) Section 17(f) (15 U.S.C. 80a–17(f)), to the extent that the securities and similar investments of a separate account organized as a management investment company may be maintained in the custody of the life insurer or of an affiliated life insurance company; provided that:

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(i) The securities and similar investments allocated to the separate account are clearly identified as owned by the account, and the securities and similar investments are kept in the vault of an insurance company which meets the qualifications in paragraph (b)(9)(ii) of this section, and whose safekeeping function is supervised by the insurance regulatory authorities of the jurisdiction in which the securities and similar investments will be held;

(ii) The insurance company maintaining such investments must file with an insurance regulatory authority of a state or territory of the United States or the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, must be subject to supervision and inspection by such authority and must be examined periodically as to its financial condition and other affairs by such authority, must hold the securities and similar investments of the separate account in its vault, which vault must be equivalent to that of a bank which is a member of the Federal Reserve System, and must have a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000 as set forth in its most recent annual statement filed with such authority;

(iii) Access to such securities and similar investments shall be limited to employees of the Commission, representatives of insurance regulatory authorities, independent public accountants retained by the separate account (or on its behalf by the life insurer), accountants for the life insurer, and to no more than 20 persons authorized by a resolution of the board of directors of the separate account, which persons shall be directors of the separate account, officers and responsible employees of the life insurer or officers and responsible employees of the affiliated life insurance company in whose vault the investments are kept (if applicable), and access to such securities and similar investments shall be had only by two or more such persons jointly, at least one of whom shall be a director of the separate account or officer of the life insurer;

(iv) The requirement in paragraph (b)(9)(i) of this section that the securities and similar investments of the separate account be maintained in the vault of a qualified insurance company shall not apply to securities deposited with insurance regulatory authorities or deposited in accordance with any rule under section 17(f), or to securities on loan which are collateralized to the extent of their full market value, or to securities hypothecated, pledged, or placed in escrow for the account of such separate account in connection with a loan or other transaction authorized by specific resolution of the board of directors of the separate account, or to securities in transit in connection with the sale, exchange, redemption, maturity or conversion, the exercise of warrants or rights, assents to changes in terms of the securities, or to other transactions necessary or appropriate in the ordinary course of business relating to the management of securities;

(v) Each person when depositing such securities or similar investments in or withdrawing them from the depository or when ordering their withdrawal and delivery from the custody of the life insurer or affiliated life insurance company, shall sign a notation showing:

(A) The date and time of the deposit, withdrawal or order;

(B) The title and amount of the securities or other investments deposited, withdrawn or ordered to be withdrawn, and an identification thereof by certificate numbers or otherwise;

(C) The manner of acquisition of the securities or similar investments deposited or the purpose for which they have been withdrawn, or ordered to be withdrawn; and

(D) If withdrawn and delivered to another person, the name of such person. The notation shall be sent promptly to an officer or director of the separate account or the life insurer designated by the board of directors of the separate account who is not himself permitted to have access to the securities or investments under paragraph (b)(9)(iii) of this section. The notation shall be on serially numbered forms and shall be kept for at least one year;

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(vi) The securities and similar investments shall be verified by complete examination by an independent public accountant retained by the separate account (or on its behalf by the life insurer) at least three times each fiscal year, at least two of which shall be chosen by the accountant without prior notice to the separate account. A certificate of the accountant stating that he has made an examination of such securities and investments and describing the nature and extent of the examination shall be sent to the Commission by the accountant promptly after each examination; and

(vii) Securities and similar investments of a separate account maintained with a bank or other company whose functions and physical facilities are supervised by Federal or state authorities under any arrangement whereby the directors, officers, employees or agents of the separate account or the life insurer are authorized or permitted to withdraw such investments upon their mere receipt are deemed to be in the custody of the life insurer and shall be exempt from the requirements of section 17(f) so long as the arrangement complies with all provisions of paragraph (b)(9) of this section, except that such securities will be maintained in the vault of a bank or other company rather than the vault of an insurance company.

(10) Section 18(i) (15 U.S.C. 80a–18(i)), to the extent that:

(i) For the purposes of any section of the Act which provides for the vote of securityholders on matters relating to the investment company:

(A) Flexible contractholders shall have one vote for each $100 of cash value funded by the separate account, with fractional votes allocated for amounts less than $100;

(B) The life insurer shall have one vote for each $100 of assets of the separate account not otherwise attributable to contractholders under paragraph (b)(10)(i)(A) of this section, with fractional votes allocated for amounts less than $100; provided that after the commencement of sales of flexible contracts, the life insurer shall cast its votes for and against each matter which may be voted upon by contractholders in the same proportion as the votes cast by contractholders; and

(C) The number of votes to be allocated shall be determined as of a record date not more than 90 days before any meeting at which such vote is held; provided that if a quorum is not present at the meeting, the meeting may be adjourned for up to 60 days without fixing a new record date; and

(ii) The requirement of section 18(i) that every share of stock issued by a registered management investment company (except a common-law trust of the character described in section 16(c) (15 U.S.C. 80a–16(c))) shall be a voting stock and have equal voting rights with every other outstanding voting stock shall not be deemed to be violated by actions specifically permitted by any provisions of this section.

(11) Section 19 (15 U.S.C. 80a–19), to the extent that the provisions of this section shall not apply to any dividend or similar distribution paid or payable under provisions of participating flexible contracts.

(12) Sections 22(c), 22(d), 22(e) and 27(i)(2)(A) (15 U.S.C. 80a–22(c)), 80a–22(d), 80a–22(e), and 80a–27(i)(2)(A), respectively) and § 270.22c–1 (Rule 22c–1) to the extent:

(i) The cash value of each flexible contract shall be computed in accordance with Rule 22c–1(b); provided, however, that where actual computation is not necessary for the operation of a particular contract, then the cash value of that contract must only be capable of computation; and provided further that to the extent the calculation of the cash value reflects deductions for the cost of insurance and other insurance benefits or administrative expenses and fees or sales charges, such deductions need only be made at such times as specified in the contract or as necessary for compliance with insurance laws and regulations;

(ii) The death benefit, unless required by insurance laws and regulations, shall be computed on any day that the investment experience of the separate account would affect the death benefit under the terms of the contract provided that such terms are reasonable, fair, and nondiscriminatory; and

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(iii) Necessary to comply with this section or with insurance laws and regulations and established administrative procedures of the life insurer for issuance, increases in or additions of insurance benefits, transfer and redemption of flexible contracts, including, but not limited to, premium rate structure and premium processing, insurance underwriting standards, and the particular benefit afforded by the contract; provided, however, that any procedure or action shall be reasonable, fair, and not discriminatory to the interests of the affected contractholders and to all other holders of contracts of the same class or series funded by the separate account; and provided further that any such action shall be disclosed in the form filed by the separate account with the Commission under paragraph (b)(3)(ii) of this section.

(13) Sections 27(i)(2)(A) and 22(c) (15 U.S.C. 80a–27(i)(2)(A) and 80a–22(c)) and § 270.22c–1 (Rule 22c–1), to the extent that:

(i) Such sections require that the flexible contract be redeemable or provide for a refund in cash; provided that the contract provides for election by the contractholder of a cash surrender value or certain non-forfeiture and settlement options which are required or permitted by the insurance law or regulation of the jurisdiction in which the contract is offered; and provided further that unless required by the insurance law or regulation of the jurisdiction in which the contract is offered or unless elected by the contractholder, the contract shall not provide for the automatic imposition of any option, including, but not limited to, an automatic premium loan, which would involve the accrual or payment of an interest or similar charge.

(ii) Notwithstanding the provisions of paragraph (b)(13)(i) of this section, if the amounts available under the contract to pay the charges due under the contract on any contract processing day are less than such charges due, the contract may provide that the cash surrender value shall be applied to purchase a non-forfeiture option specified by the life insurer in such contract; provided that the contract also provides that Contract processing days occur not less frequently than monthly.

(iii) Subject to section 26(f) (15 U.S.C. 80a–26(f)), sales charges and administrative expenses or fees may be deducted upon redemption.

(14) Section 32(a)(2) (15 U.S.C. 80a–31(a)(2)); provided that:

(i) The independent public accountant is selected before the effective date of the 1933 Act registration statement for flexible contracts, and the identity of the accountant is disclosed in the registration statement; and

(ii) The selection of the accountant is submitted for ratification or rejection to flexible contractholders at their first meeting and within one year after the effective date of the 1933 Act registration statement for flexible contracts, unless the time for holding the meeting is extended by order of the Commission.

(15) If the separate account is organized as a unit investment trust, all the assets of which consist of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account; provided that the board of directors of each investment company, constituted with a majority of disinterested directors, will monitor such company for the existence of any material irreconcilable conflict between the interests of variable annuity contractholders and scheduled or flexible contractholders investing in such company; the life insurer agrees that it will be responsible for reporting any potential or existing conflicts to the directors; and if a conflict arises, the life insurer will, at its own cost, remedy such conflict up to and including establishing a new registered management investment company and segregating the assets

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underlying the variable annuity contracts and the scheduled or flexible contracts; then:

(i) The eligibility restrictions of section 9(a) shall not apply to those persons who are officers, directors or employees of the life insurer or its affiliates who do not participate directly in the management or administration of any registered management investment company described in paragraph (b)(15) of this section;

(ii) The life insurer shall be ineligible under paragraph (3) of section 9(a) to serve as investment adviser of or principal underwriter for any registered management investment company described in paragraph (b)(15) of this section only if an affiliated person of such life insurer, ineligible by reason of paragraphs (1) or (2) of section 9(a), participates in the management or administration of such company;

(iii) For purposes of any section of the Act which provides for the vote of securityholders on matters relating to the separate account or the underlying registered investment company, the voting provisions of paragraphs (b)(10)(i) and (ii) of this section apply; provided that:

(A) The life insurer may vote shares of the registered management investment companies held by the separate account without regard to instructions from contractholders of the separate account if such instructions would require such shares to be voted:

(*1*) To cause such companies to make (or refrain from making) certain investments which would result in changes in the sub-classification or investment objectives of such companies or to approve or disapprove any contract between such companies and an investment adviser when required to do so by an insurance regulatory authority subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of this section; or

(*2*) In favor of changes in investment objectives, investment adviser of or principal underwriter for such companies subject to the provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of this section;

(B) Any action taken in accordance with paragraph (b)(15)(iii)(A)(*1*) or (*2*) of this section and the reasons therefor shall be disclosed in the next report contractholders made under section 30(e) (15 U.S.C. 80a–29(e)) and § 270.30e–2 (Rule 30e–2);

(iv) Any registered management investment company established by the life insurer and described in paragraph (b)(15) of this section shall be exempt from section 14(a); and

(v) Any registered management investment company established by the life insurer and described in paragraph (b)(14) of this section shall be exempt from sections 15(a), 16(a), and 32(a)(2) (15 U.S.C. 80a–15(a), 80–16(a), and 80–31(a)(2), respectively), to the extent prescribed by paragraphs (b)(7)(i), (b)(8)(i), and (b)(14) of this section; provided that the company complies with the conditions set forth in paragraphs (b)(7)(i), (b)(8)(i), and (b)(14) of this section as if it were a separate account.

(c) When used in this section:

(1) *Flexible premium variable life insurance contract* means a contract of life insurance, subject to regulation under the insurance laws or code of every jurisdiction in which it is offered, funded by a separate account of a life insurer, which contract provides for:

(i) Premium payments which are not fixed by the life insurer as to both timing and amount; provided, however, that the life insurer may fix the timing and minimum amount of premium payments for the first two contract periods following issuance of the contract or of an increase in or addition of insurance benefits, and may prescribe a reasonable minimum amount for any additional premium payment;

(ii) A death benefit the amount or duration of which may vary to reflect the investment experience of the separate account;

(iii) A cash value which varies to reflect the investment experience of the separate account; and

(iv) There is a reasonable expectation that subsequent premium payments will be made.

(2) *Contract period* means the period from a contract issue or anniversary date to the earlier of the next following anniversary date (or, if later, the last day of any grace period commencing before such next following anniversary date) or the termination date of the contract.

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(3) *Cash value* means the amount that would be available in cash upon voluntary termination of a contract by its owner before it becomes payable by death or maturity, without regard to any charges that may be assessed upon such termination and before deduction of any outstanding contract loan.

(4) *Cash surrender value* means the amount available in cash upon voluntary termination of a contract by its owner before it becomes payable by death or maturity, after any charges assessed in connection with the termination have been deducted and before deduction of any outstanding contract loan.

(5) *Contract processing day* means any day on which charges under the contract are deducted from the separate account.

[85 FR 26105, May 1, 2020]

§ 270.7d–1 Specification of conditions and arrangements for Canadian management investment companies requesting order permitting registration.

(a) A management investment company organized under the laws of Canada or any province thereof may obtain an order pursuant to section 7(d) permitting its registration under the act and the public offering of its securities, if otherwise appropriate, upon the filing of an application complying with paragraph (b) of this section. All such applications will be considered by the Commission pursuant to the procedure set forth in § 270.0–5 and other applicable rules. Conditions and arrangements proposed by investment companies organized under the laws of other countries will be considered by the Commission in the light of the special circumstances and local laws involved in each case.

(b) An application filed pursuant to this section shall contain, inter alia, the following undertakings and agreements of the applicant:

(1) Applicant will cause each present and future officer, director, investment adviser, principal underwriter and custodian of the applicant to enter into an agreement, to be filed by applicant with the Commission upon the filing of its registration statement or upon the assumption of such office by such person which will provide, among other things, that each such person agrees (i) to comply with the applicant's Letters Patent (Charter) and By Laws, the act and the rules thereunder, and the undertakings and agreements contained in said application insofar as applicable to such person; (ii) to do nothing inconsistent with the applicant's undertakings and agreements required by this section; (iii) that the undertakings enumerated as paragraphs (b)(1)(i) and (ii) of this section constitute representations and inducements to the Commission to issue its order in the premises and continue the same in effect, as the case may be; (iv) that each such agreement constitutes a contract between such person and the applicant and its shareholders with the intent that applicant's shareholders shall be beneficiaries of and shall have the status of parties to such agreement so as to enable them to maintain actions at law or in equity within the United States and Canada for any violation thereof. In addition the agreement of each officer and director will contain provisions similar to those contained in paragraph (b)(6) of this section.

(2) That every agreement and undertaking of the applicant, its officers, directors, investment adviser, principal underwriter and custodian required by this section (i) constitute inducements to the Commission for the issuance and continuance in effect of, and conditions to, the Commission's order to be entered under this section; (ii) constitute a contract among applicant and applicant's shareholders with the same intent as set forth in paragraph (b)(1)(iv) of this section; and (iii) failure by the applicant or any of the above enumerated persons to comply with any such agreement and undertaking, unless permitted by the Commission, shall constitute a violation of the order entered under this section.

(3) That the Commission, in its discretion, may revoke its order permitting registration of the applicant and the public offering of its securities if it shall find after notice and opportunity for hearing that there shall have been a violation of such order or the act and may determine whether distribution of

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applicant's assets is necessary or appropriate in the interests of investors and may so direct.

(4) That applicant will perform every action and thing necessary to cause and assist the custodian of its assets to distribute the same, or the proceeds thereof, if the Commission or a court of competent jurisdiction, shall have so directed by a final order.

(5) That any shareholder of the applicant or the Commission on its own motion or on request of shareholders shall have the right to initiate a proceeding (i) before the Commission for the revocation of the order permitting registration of the applicant or (ii) before a court of competent jurisdiction for the liquidation of applicant and a distribution of its assets to its shareholders and creditors. Such court may enter such order in the event that it shall find, after notice and opportunity for hearing that applicant, its officers, directors, investment adviser, principal underwriter or custodian shall have violated any provision of the act or the Commission's order of registration of the applicant.

A court of competent jurisdiction for the purpose of paragraphs (b)(4) and (5) of this paragraph means the District Court of the United States of the district in which the assets of the applicant are maintained.

(6) That any shareholder of the applicant shall have the right to bring suit at law or in equity, in any court of the United States or Canada having jurisdiction over applicant, its assets or any of its officers or directors to enforce compliance by applicant, its officers and directors with any provision of applicant's Charter or By Laws, the act and the rules thereunder, or undertakings and agreements required by this section, insofar as applicable to such persons. That such court may appoint a trustee or receiver of the applicant with all powers necessary to implement the purposes of such suit, including the administration of the estate, the collection of corporate property including choses-in-action, and distribution of applicant's assets to its creditors and shareholders. That applicant and its officers and directors waive any objection they may be entitled to raise and any right they may have to object to the power and right of any shareholder of the applicant to bring such suit, reserving, however, their right to maintain that they have complied with the aforesaid provisions, undertakings and agreements, and otherwise to dispute such suit on its merits. Applicant, its officers and directors also agree that any final judgment or decree of any United States court as aforesaid, may be granted full faith and credit by a court of competent jurisdiction of Canada and consent that such Canadian court may enter judgment or decree thereon at the instance of any shareholder, receiver or trustee of the applicant.

(7) Applicant will file, and will cause each of its present or future directors, officers, or investment advisers who is not a resident of the United States to file with the Commission irrevocable designation of the applicant's custodian as an agent in the United States to accept service of process in any suit, action or proceeding before the Commission or any appropriate court to enforce the provisions of the acts administered by the Commission, or to enforce any right or liability based upon applicant's Charter, By Laws, contracts, or the respective undertakings and agreements of any such person required by this section, or which alleges a liability on the part of any such persons arising out of their service, acts of transactions relating to the applicant.

(8) Applicant's Charter and By Laws, taken together, will contain, so long as applicant is registered under the act in substance the following:

(i) The provisions of the Act as follows: Section 2(a): *Provided*, That the term ''government securities'' defined in section 2(a)(16) may include securities issued or guaranteed by Canada or any instrumentality of the government of Canada; the term ''value'' defined in section 2(a)(41) may be defined solely for the purposes of sections 5 and 12 in accordance with the provisions of § 270.2a–1 (Rule 2a–1) if the same shall be necessary or desirable to comply with Canadian regulatory or revenue laws or rules or regulations thereunder; the term ''bank'' defined in section 2(a)(5) shall be defined solely for the purposes of section 9 and 10, as any banking institution; section 4; section

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5; section 6(c); section 9; section 10 (a), (b), (c), (e), (f) and (g): *Provided*, That the provisions of section 10(d) may be substituted for the provisions of section 10(a) and 10(b)(2) if applicable; section 11; section 12 (a), (b), (c), and (d); section 13(a); section 15 (a), (b), and (c); section 16(a); sections 17, 18, 19, 20 and 21; section 22(d); section 22(e): *Provided*, That the Toronto Stock Exchange or the Montreal Stock Exchange or both may be included in addition to the New York Stock Exchange; section 22(f); section 22(g); section 23; section 25 (a) and (b); section 30 (a), (b), (d), (e), and (f); section 31; section 32(a): *Provided*, That provision may be made for the selection and termination of employment of the accountant in compliance with The Companies Act of Canada; section 32(b). Where a provision of the act prohibits or directs action by an investment company, or its directors, officers or employees, the Charter or By Laws shall state that the applicant of its directors, officers or employees shall or shall not act, as the case may be, in conformity with the intent of the statute; where the provision applies to others, such as principal underwriters, investment advisers, controlled companies and affiliated persons, the Charter or By Laws shall also state that the applicant will not permit the prohibited conduct or will obtain the required action. Any of the provisions of sections 11, 12, 15, 18, 22, 23, 30, and 31 may be omitted if not applicable to a company of applicant's classification or subclassification as defined in section 4 or 5 of the act or if not applicable because the subject matter of such provisions is prohibited by the Charter or By Laws. Other provisions of the act not specified above may be incorporated in the applicant's Charter or By Laws at its option.

(ii) Any question of interpretation of any term or provision of the Charter or By Laws having a counterpart in or otherwise derived from a term or provision of the act shall be resolved by reference to interpretations, if any, of the corresponding term or provision of the act by the courts of the United States of America or, in the absence of any controlling decision of any such court, by rules, regulations, orders or interpretations of the Commission.

(iii) Applicant will maintain the original or duplicate copies of its books and records at the office of its custodian or other office located within the United States.

(iv) At least a majority of the directors and of the officers of the applicant will be United States citizens of whom a majority will be resident in the United States.

(v) Except as provided in § 270.17f–5 and § 270.17f–7, applicant will appoint, by contract, a bank, as defined in section 2(a)(5) of the Act (15 U.S.C. 80a–2(a)(5)) and having the qualification described in section 26(a)(1) of the Act (15 U.S.C. 80a–26(a)(1)), to act as trustee of, and maintain in its sole custody in the United States, all of applicant's securities and cash, other than cash necessary to meet applicant's current administrative expenses. The contract will provide, *inter alia*, that the custodian will:

(A) Consummate all purchases and sales of securities by applicant, other than purchases and sales on an established securities exchange, through the delivery of securities and receipt of cash, or *vice versa* as the case may be, within the United States, and (B) redeem in the United States such of applicant's shares as shall be surrendered therefor, and (C) distribute applicant's assets, or the proceeds thereof, to applicant's creditors and shareholders, upon service upon the custodian of an order of the Commission or court directing such distribution as provided in paragraphs (b) (3) and (5) of this section.

(vi) Applicant's principal underwriter for the sale of its shares will be a citizen and resident of the United States or a corporation organized under the laws of a state of the United States, and having its principal place of business therein, and if redeemable shares are offered, also a member in good standing of a securities association registered under section 15A of the Securities Exchange Act of 1934.

(vii) Applicant will appoint an accountant, qualified to act as an independent public accountant for the applicant under the act and the rules thereunder, who maintains a permanent office and place of business in the United States.

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(viii) Any contract entered into between the applicant and its investment adviser and principal underwriter will contain provisions in compliance with the requirements of sections 15, 17(i) and 31 and the rules thereunder, and require that the investment adviser maintain in the United States its books and records or duplicate copies thereof relating to applicant.

(ix) Applicant's Charter and By Laws will not be changed in any manner inconsistent with this paragraph or the Act and the rules thereunder unless authorized by the Commission.

(9) Contracts of the applicant, other than those executed on an established securities exchange which do not involve affiliated persons, will provide that:

(i) Such contracts, irrespective of the place of their execution or performance, will be performed in accordance with the requirements of the Act, the Securities Act of 1933, and the Securities Exchange Act of 1934, if the subject matter of such contracts is within the purview of such acts; and

(ii) In effecting the purchase or sale of assets the parties thereto will utilize the United States mails or means of interstate commerce.

(10) Applicant will furnish to the Commission with its registration statement filed under the Act a list of persons affiliated with it and with its investment adviser and principal underwriter and will furnish revisions of such list, if any, concurrently with the filing of periodic reports required to be filed under the Act.

(Sec. 7, 54 Stat. 802; 15 U.S.C. 80a–7; secs. 6(c); 15 U.S.C. 80a–6(c); and 38(a); 15 U.S.C. 80a–37(a) of the Act)

[19 FR 2585, May 5, 1954, as amended at 38 FR 8593, Apr. 4, 1973; 49 FR 36084, Sept. 14, 1984; 65 FR 25637, May 3, 2000]

§ 270.7d–2 Definition of "public offering" as used in section 7(d) of the Act with respect to certain Canadian tax-deferred retirement savings accounts.

(a) *Definitions.* As used in this section:

(1) *Canadian law* means the federal laws of Canada, the laws of any province or territory of Canada, and the rules or regulations of any federal, provincial, or territorial regulatory authority, or any self-regulatory authority, of Canada.

(2) *Canadian Retirement Account* means a trust or other arrangement, including, but not limited to, a ''Registered Retirement Savings Plan'' or ''Registered Retirement Income Fund'' administered under Canadian law, that is managed by the Participant and:

(i) Operated to provide retirement benefits to a Participant; and

(ii) Established in Canada, administered under Canadian law, and qualified for tax-deferred treatment under Canadian law.

(3) *Eligible Security* means a security issued by a Qualified Company that:

(i) Is offered to a Participant, or sold to his or her Canadian Retirement Account, in reliance on this section; and

(ii) May also be purchased by Canadians other than Participants.

(4) *Foreign Government* means the government of any foreign country or of any political subdivision of a foreign country.

(5) *Foreign Issuer* means any issuer that is a Foreign Government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country, except an issuer meeting the following conditions:

(i) More than 50 percent of the outstanding voting securities of the issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States; and

(ii) Any of the following:

(A) The majority of the executive officers or directors are United States citizens or residents;

(B) More than 50 percent of the assets of the issuer are located in the United States; or

(C) The business of the issuer is administered principally in the United States.

(iii) For purposes of this definition, the term *resident*, as applied to security holders, means any person whose address appears on the records of the issuer, the voting trustee, or the depositary as being located in the United States.

(6) *Participant* means a natural person who is a resident of the United States,

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or is temporarily present in the United States, and who contributes to, or is or will be entitled to receive the income and assets from, a Canadian Retirement Account.

(7) *Qualified Company* means a Foreign Issuer whose securities are qualified for investment on a tax-deferred basis by a Canadian Retirement Account under Canadian law.

(8) *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

(b) *Public Offering.* For purposes of section 7(d) of the Act (15 U.S.C. 80a–7(d)), the term ''public offering'' does not include the offer to a Participant, or the sale to his or her Canadian Retirement Account, of Eligible Securities issued by a Qualified Company, if the Qualified Company:

(1) Includes in any written offering materials delivered to a Participant, or to his or her Canadian Retirement Account, a prominent statement that the Eligible Security, and the Qualified Company that issued the Eligible Security, are not registered with the U.S. Securities and Exchange Commission, and that the Eligible Security and the Qualified Company are relying on exemptions from registration.

(2) Has not asserted that Canadian law, or the jurisdiction of the courts of Canada, does not apply in a proceeding involving an Eligible Security.

[65 FR 37677, June 15, 2000]

§ 270.8b–1 Scope of §§ 270.8b–1 through 270.8b–31.

The rules contained in §§ 270.8b–1 through 270.8b–31 shall govern all registration statements pursuant to section 8 of the Act (15 U.S.C. 80a–8), including notifications of registration pursuant to section 8(a), and all reports pursuant to section 30(a) or (b) of the Act (15 U.S.C. 80a–29(a) or (b)), including all amendments to such statements and reports, except that any provision in a form covering the same subject matter as any such rule shall be controlling.

[83 FR 40880, Aug. 16, 2018, as amended at 85 FR 26109, May 1, 2020]

§ 270.8b–2 Definitions.

Unless the context otherwise requires, the terms in paragraphs (a) through (m) of this section, when used in the rules contained in §§ 270.8b–1 through 270.8b–32, in the rules under section 30(a) or (b) of the Act or in the forms for registration statements and reports pursuant to section 8 or 30(a) or (b) of the Act, shall have the respective meanings indicated in this section. The terms ''EDGAR,'' ''EDGAR Filer Manual,'' ''electronic filer,'' ''electronic filing,'' ''electronic format,'' ''electronic submission,'' ''paper format,'' and ''signature'' shall have the meanings assigned to such terms in part 232 of this chapter (Regulation S–T—General Rules for Electronic Filings).

(a) *Amount.* The term ''amount'', when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(b) *Certified.* The term ''certified'', when used in regard to financial statements, means certified by an independent public or independent certified public accountant or accountants.

(c) *Charter.* The term ''charter'' includes articles of incorporation, declaration of trust, articles of association or partnership, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

(d) *Employee.* The term ''employee'' does not include a director, trustee, officer or member of the advisory board.

(e) *Fiscal year.* The term ''fiscal year'' means the annual accounting period or, if no closing date has been adopted, the calendar year ending on December 31.

(f) *Investment income.* The term ''investment income'' means the aggregate of net operating income or loss from real estate and gross income from interest, dividends and all other sources, exclusive of profit or loss on sales of securities or other properties.

(g) *Material.* The term ''material'', when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an

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average prudent investor ought reasonably to be informed before buying or selling any security of the particular company.

(h) *Parent.* A ''parent'' of a specified person is an affiliated person who controls the specified person directly or indirectly through one or more intermediaries.

(i) *Previously filed or reported.* The terms ''previously filed'' and ''previously reported'' means previously filed with, or reported in, a registration statement filed under section 8 of the Act or under the Securities Act of 1933, a report filed under section 30 of the Act or section 13 or 15(d) of the Securities Exchange Act of 1934, a definitive proxy statement filed under section 20 of the Act or section 14 of the Securities Exchange Act of 1934, or a prospectus filed under the Securities Act of 1933: *Provided,* That information contained in any such document shall be deemed to have been previously filed with, or reported to, an exchange only if such document is filed with such exchange.

(j) *Share.* The term ''share'' means a share of stock in a corporation or unit of interest in an unincorporated person.

(k) *Significant subsidiary.* The term ''significant subsidiary'' means a subsidiary, including its subsidiaries, which meets any of the following conditions, using amounts determined under U.S. Generally Accepted Accounting Principles and, if applicable, section 2(a)(41) of the Act:

(1) *Investment test.* The value of the registrant's and its other subsidiaries' investments in and advances to the tested subsidiary exceed 10 percent of the value of the total investments of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year; or

(2) *Income test.* The absolute value of the sum of combined investment income from dividends, interest, and other income, the net realized gains and losses on investments, and the net change in unrealized gains and losses on investments from the tested subsidiary, for the most recently completed fiscal year exceeds:

(i) 80 percent of the absolute value of the change in net assets resulting from operations of the registrant and its subsidiaries consolidated for the most recently completed fiscal year; or

(ii) 10 percent of the absolute value of the change in net assets resulting from operations of the registrant and its subsidiaries consolidated for the most recently completed fiscal year and the investment test (paragraph (k)(1) of this section) condition exceeds 5 percent. However, if the absolute value of the change in net assets resulting from operations of the registrant and its subsidiaries consolidated is at least 10 percent lower than the average of the absolute value of such amounts for each of its last five fiscal years, then the registrant may compute both conditions of the income test using the average of the absolute value of such amounts for the registrant and its subsidiaries consolidated for each of its last five fiscal years.

(l) *Subsidiary.* A ''subsidiary'' of a specified person is an affiliated person who is controlled by the specified person, directly or indirectly, through one or more intermediaries.

(m) *Totally-held subsidiary.* The term ''totally-held subsidiary'' means a subsidiary (1) substantially all of whose outstanding securities are owned by its parent and/or the parent's other totally-held subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent's other totally-held subsidiaries in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not.

[18 FR 8575, Dec. 19, 1953, as amended at 19 FR 2779, May 14, 1954; 58 FR 14860, Mar. 18, 1993; 65 FR 24802, Apr. 27, 2000; 70 FR 6572, Feb. 8, 2005; 83 FR 40878, Aug. 16, 2018; 85 FR 54073, Aug. 31, 2020]

§ 270.8b–3 Title of securities.

Wherever the title of securities is required to be stated, there shall be given such information as will indicate the type and general character of the securities, including the following:

(a) In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative

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or noncumulative; a brief indication of the preference, if any; and if convertible, a statement to that effect.

(b) In the case of funded debt, the rate of interest; the date of maturity, or if the issue matures serially, a brief indication of the serial maturities, such as ''maturing serially from 1950 to 1960''; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and if convertible, a statement to that effect.

(c) In the case of any other kind of security, appropriate information of comparable character.

[18 FR 8575, Dec. 19, 1953]

§ 270.8b–4 Interpretation of requirements.

Unless the context clearly shows otherwise:

(a) The forms require information only as to the company filing the registration statement or report.

(b) Whenever any fixed period of time in the past is indicated, such period shall be computed from the date of filing.

(c) Whenever words relate to the future, they have reference solely to present intention.

(d) Any words indicating the holder of a position or office include persons, by whatever titles designated, whose duties are those ordinarily performed by holders of such positions or officers.

[18 FR 8575, Dec. 18, 1953]

§ 270.8b–5 Time of filing original registration statement.

An investment company shall file a registration statement with the Commission on the appropriate form within three months after the filing of notification of registration under section 8(a) of the Act, provided that if the fiscal year of the company ends within the three months period, its registration statement may be filed within three months after the end of such fiscal year.

[19 FR 2779, May 14, 1954]

§ 270.8b–6 [Reserved]

§ 270.8b–10 Requirements as to proper form.

Every registration statement or report shall be prepared in accordance with the form prescribed therefor by the Commission, as in effect on the date of filing. Any such statement or report shall be deemed to be filed on the proper form unless objection to the form is made by the Commission within thirty days after the date of filing.

[18 FR 8576, Dec. 19, 1953]

§ 270.8b–11 Number of copies; signatures; binding.

(a) Three complete copies of each registration statement or report, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Commission.

(b) In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a–1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), three complete copies of each part of the registration statement (including, if applicable, exhibits and all other papers and documents filed as part of Part C of the registration statement) shall be filed with the Commission.

(c) At least one copy of the registration statement or report shall be signed in the manner prescribed by the appropriate form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the registration statement or report.

(d) Each copy of a registration statement or report filed with the Commission shall be bound in one or more parts without stiff covers. The binding shall be made on the left-hand side and in such manner as to leave the reading matter legible.

(e) *Signatures.* Where the Act or the rules thereunder, including paragraph (c) of this section, require a document filed with or furnished to the Commission to be signed, the document should

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be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. When typed, duplicated, or facsimile signatures are used, each signatory to the filing shall manually or electronically sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in the filing (''authentication document''). Execute each such authentication document before or at the time the filing is made and retain for a period of five years. The requirements set forth in §232.302(b) must be met with regards to the use of an electronically signed authentication document pursuant to this paragraph (e). Upon request, the registrant shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

[49 FR 32059, Aug. 10, 1984, as amended at 50 FR 26160, June 25, 1985; 57 FR 56835, Dec. 1, 1992; 60 FR 26622, May 17, 1995; 63 FR 13944, Mar. 23, 1998; 67 FR 19870, Apr. 23, 2002; 85 FR 78320, Dec. 4, 2020]

§270.8b–12 Requirements as to paper, printing and language.

(a) Registration statements and reports shall be filed on good quality, unglazed, white paper, no larger than 8½ × 11 inches in size, insofar as practicable. To the extent that the reduction of larger documents would render them illegible, such documents may be filed on paper larger than 8½ × 11 inches in size.

(b) In the case of a registration statement filed on Form N–1A (§§239.15A and 274.11A of this chapter), Form N–2 (§§239.14 and 274.11a–1 of this chapter), Form N–3 (§§239.17a and 274.11b of this chapter), Form N–4 (§§239.17b and 274.11c of this chapter), or Form N–6 (§239.17c and §274.11d of this chapter), Part C of the registration statement shall be filed on good quality, unglazed, white paper, no larger than 8½ × 11 inches in size, insofar as practicable. The prospectus and, if applicable, the Statement of Additional Information, however, may be filed on smaller-sized paper provided that the size of paper used in each document is uniform.

(c) The registration statement or report and, insofar as practicable all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed or typewritten. However, the registration statement or report or any portion thereof may be prepared by any similar process which, in the opinion of the Commission, produces copies suitable for permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

(d) The body of all printed registration statements and reports and all notes to financial statements and other tabular data included therein shall be in roman type at least as large as 10-point modern type. However, to the extent necessary for convenient presentation, financial statements and other statistical or tabular data, including tabular data in notes, may be set in type at least as large and as legible as 8-point modern type. All type shall be leaded at least 2-points.

(e) Registration statements and reports shall be in the English language. If any exhibit or other paper or document filed with a registration statement or report is in a foreign language, it shall be accompanied by a translation into the English language.

(f) Where a registration statement or report is distributed through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as paper size, type size and font, bold-face type, italics and red ink, by presenting all required information in a format readily communicated to investors, and where indicated, in a manner reasonably calculated to draw investor attention to specific information.

[49 FR 32060, Aug. 10, 1984, as amended at 50 FR 26160, June 25, 1985; 57 FR 56836, Dec. 1, 1992; 61 FR 24657, May 15, 1996; 67 FR 19870, Apr. 23, 2002]

§270.8b–13 Preparation of registration statement or report.

The registration statement or report shall contain the numbers and captions of all items of the appropriate form,

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but the text of the items may be omitted provided the answers thereto are so prepared as to indicate to the reader the coverage of the items without the necessity of his referring to the text of the items or instructions thereto. However, where any item requires information to be given in tabular form, it shall be given in substantially the tabular form specified in the item. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted from the registration statement or report. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

[18 FR 8576, Dec. 19, 1953]

§ 270.8b–14 Riders; inserts.

Riders shall not be used. If the registration statement or report is typed on a printed form, and the space provided for the answer to any given item is insufficient, reference shall be made in such space to a full insert page or pages on which the item number and caption and the complete answer are given.

[18 FR 8576, Dec. 19, 1953]

§ 270.8b–15 Amendments.

All amendments shall be filed under cover of the facing sheet of the appropriate form, shall be clearly identified as amendments, and shall comply with all pertinent requirements applicable to registration statements and reports. Amendments shall be filed separately for each separate registration or report amended. Except as permitted under rule 102(b) of Regulation S-T (§ 232.102(b) of this chapter), any amendment filed under this section shall state the complete text of each item amended. An amendment to any report required to include the certifications as specified in § 270.30a-2(a) must include new certifications by each principal executive and principal financial officer of the registrant, and an amendment to any report required to be accompanied by the certifications as specified in § 240.13a-14(b) or § 240.15d-14(b) and § 270.30a-2(b) must be accompanied by new certifications by each principal executive and principal financial officer of the registrant.

[18 FR 8576, Dec. 19, 1953, as amended at 58 FR 14860, Mar. 18, 1993; 68 FR 5365, Feb. 3, 2003; 68 FR 36671, June 18, 2003]

§ 270.8b–16 Amendments to registration statement.

(a) Every registered management investment company which is required to file an annual report on Form N–CEN, as prescribed by § 270.30a–1 of this chaptershall amend the registration statement required pursuant to Section 8(b) by filing, not more than 120 days after the close of each fiscal year ending on or after the date upon which such registration statement was filed, the appropriate form prescribed for such amendments.

(b) Paragraph (a) of this section shall not apply to a registered closed-end management investment company whose registration statement was filed on Form N–2; provided that the following information is transmitted to shareholders in its annual report to shareholders:

(1) If the company offers a dividend reinvestment plan to shareholders, information about the plan required to be disclosed in the company's prospectus by Item 10.1.e of Form N–2 (17 CFR 274.11a–1);

(2) The company's investment objectives and policies (described in Item 8.2 of Form N–2), and any material changes to same that have not been approved by shareholders;

(3) Any changes in the company's charter or by-laws that would delay or prevent a change of control of the company (described in Item 10.1.f of Form N–2) that have not been approved by shareholders;

(4) The principal risk factors associated with investment in the company (described in Item 8.3 of Form N–2), and any material changes to same; and

(5) Any changes in the persons who are primarily responsible for the day-to-day management of the company's portfolio (described in Item 9.1.c of Form N–2), including any new person's business experience during the past five years and the length of time he or she has been responsible for the management of the portfolio.

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(c) In lieu of including a description of the dividend reinvestment plan in its annual report, a company may comply with the disclosure requirement of paragraph (b)(1) of this section concerning a company's dividend reinvestment plan by delivering to each shareholder annually a separate document containing the information about the plan required to be disclosed in the company's prospectus by Item 10.1.e of Form N–2. Any such document shall be deemed to be a record or document subject to the record-keeping requirements of section 31 (15 U.S.C. 80a–30) and the rules adopted thereunder (17 CFR 270.31a–1 *et seq.*).

(d) The changes required to be disclosed by paragraphs (b)(2) through (b)(5) of this section are those that occurred since the later of either the effective date of the company's registration statement relating to its initial offering of securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (or the most recent post-effective amendment thereto) or the close of the period covered by the previously transmitted annual shareholder report.

(e) The changes required to be disclosed by paragraphs (b)(2) through (5) of this section must be described in enough detail to allow investors to understand each change and how it may affect the fund. Such disclosures must be prefaced with the following legend: ''The following information [in this annual report] is a summary of certain changes since [date]. This information may not reflect all of the changes that have occurred since you purchased [this fund].''

[54 FR 10321, Mar. 13, 1989, as amended at 57 FR 56836, Dec. 1, 1992; 81 FR 82020, Nov. 18, 2016; 85 FR 33360, June 1, 2020]

§ 270.8b–20 Additional information.

In addition to the information expressly required to be included in a registration statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

[18 FR 8576, Dec. 19, 1953]

§ 270.8b–21 Information unknown or not available.

Information required need be given only insofar as it is known or reasonably available to the registrant. If any required information is unknown and not reasonably available to the registrant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted subject to the following conditions:

(a) The registrant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

(b) The registrant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

[18 FR 8576, Dec. 19, 1953]

§ 270.8b–22 Disclaimer of control.

If the existence of control is open to reasonable doubt in any instance, the registrant may disclaim the existence of control and any admission thereof; in such case, however, the registrant shall state the material facts pertinent to the possible existence of control.

[18 FR 8576, Dec. 19, 1953]

§§ 270.8b–23—270.8b–24 [Reserved]

§ 270.8b–25 Extension of time for furnishing information.

(a) Subject to paragraph (b) of this section, if it is impractical to furnish any required information, document or report at the time it is required to be filed, there may be filed with the Commission as a separate document an application (a) identifying the information, document or report in question, (b) stating why the filing thereof at the time required is impracticable, and (c) requesting an extension of time for filing the information, document or report to a specified date not more than

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60 days after the date it would otherwise have to be filed. The application shall be deemed granted unless the Commission, within 10 days after receipt thereof, shall enter an order denying the application. Section 270.0–5 (Rule N–5) shall not apply to such applications.

(b) If it is impracticable to furnish any document or report required to be filed in electronic format at the time it is required to be filed, the electronic filer may file under the temporary hardship provision of rule 201 of Regulation S-T (§ 232.201 of this chapter) or may submit a written application for a continuing hardship exemption, in accordance with rule 202 of Regulation S-T (§ 232.202 of this chapter). Applications for such exemptions shall be considered in accordance with the provisions of those sections and paragraphs (h) and (i) of § 200.30–5 of this chapter.

[18 FR 8576, Dec. 19, 1953, as amended at 58 FR 14860, Mar. 18, 1993; 60 FR 14630, Mar. 20, 1995]

§ 270.8b–30 Additional exhibits.

A company may file such exhibits as it may desire, in addition to those required by the appropriate form. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

[18 FR 8576, Dec. 19, 1953]

§ 270.8b–31 Omission of substantially identical documents.

In any case where two or more indentures, contracts, franchises, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, copies of only one of such documents need be filed, with a schedule identifying the other documents omitted and setting forth the material details in which such documents differ from the documents filed. The Commission may at any time in its discretion require the filing of copies of any documents so omitted.

[18 FR 8576, Dec. 19, 1953]

§ 270.8b–32 [Reserved]

§ 270.8f–1 Deregistration of certain registered investment companies.

A registered investment company that seeks a Commission order declaring that it is no longer an investment company may file an application with the Commission on Form N–8F (17 CFR 274.218) if the investment company:

(a) Has sold substantially all of its assets to another registered investment company or merged into or consolidated with another registered investment company;

(b) Has distributed substantially all of its assets to its shareholders and has completed, or is in the process of, winding up its affairs;

(c) Qualifies for an exclusion from the definition of ''investment company'' under section 3(c)(1) (15 U.S.C. 80a–3(c)(1)) or section 3(c)(7) (15 U.S.C. 80a–3(c)(7)) of the Act; or

(d) Has become a business development company.

NOTE TO § 270.8*f*–1: Applicants who are not eligible to use Form N–8F to file an application to deregister may follow the general guidance for filing applications under rule 0–2 (17 CFR 270.0–2) of this chapter.

[64 FR 19471, Apr. 21, 1999]

§ 270.10b–1 Definition of regular broker or dealer.

The term *regular broker or dealer* of an investment company shall mean:

(a) One of the ten brokers or dealers that received the greatest dollar amount of brokerage commissions by virtue of direct or indirect participation in the company's portfolio transactions during the company's most recent fiscal year;

(b) One of the ten brokers or dealers that engaged as principal in the largest dollar amount of portfolio transactions of the investment company during the company's most recent fiscal year; or

(c) One of the ten brokers or dealers that sold the largest dollar amount of securities of the investment company during the company's most recent fiscal year.

[49 FR 40572, Oct. 17, 1984]

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§ 270.10e–1 Death, disqualification, or bona fide resignation of directors.

If a registered investment company, by reason of the death, disqualification, or bona fide resignation of any director, does not meet any requirement of the Act or any rule or regulation thereunder regarding the composition of the company's board of directors, the operation of the relevant subsection of the Act, rule, or regulation will be suspended as to the company:

(a) For 90 days if the vacancy may be filled by action of the board of directors; or

(b) For 150 days if a vote of stockholders is required to fill the vacancy.

[66 FR 3758, Jan. 16, 2001]

§ 270.10f–1 Conditional exemption of certain underwriting transactions.

Any purchase or other acquisition by a registered management company acting, pursuant to a written agreement, as an underwriter of securities of an issuer which is not an investment company shall be exempt from the provisions of section 10(f) (54 Stat. 806; 15 U.S.C. 80a–10) upon the following conditions:

(a) The party to such agreement other than such registered company is a principal underwriter of such securities, which principal underwriter (1) is a person primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, or related activities, whose gross income normally is derived principally from such business or related activities, and (2) does not control or is not under common control with such registered company.

(b) No public offering of the securities underwritten by such agreement has been made prior to the execution thereof.

(c) Such securities have been effectively registered pursuant to the Securities Act of 1933 (48 Stat. 74; 15 U.S.C. 77a-aa) prior to the execution of such agreement.

(d) In regard to any securities underwritten, whether or not purchased, by the registered company pursuant to such agreement, such company shall be allowed a rate of gross commission, spread, concession or other profit not less than the amount allowed to such principal underwriter, exclusive of any amounts received by such principal underwriter as a management fee from other principal underwriters.

(e) Such agreement is authorized by resolution adopted by a vote of not less than a majority of the board of directors of such registered company, none of which majority is an affiliated person of such principal underwriter, of the issuer of the securities underwritten pursuant to such agreement or of any person engaged in a business described in paragraph (a)(1) of this section.

(f) The resolution required in paragraph (e) of this section shall state that it has been adopted pursuant to this section, and shall incorporate the terms of the proposed agreement by attaching a copy thereof as an exhibit or otherwise.

(g) A copy of the resolution required in paragraph (e) of this section, signed by each member of the board of directors of the registered company who voted in favor of its adoption, shall be transmitted to the Commission not later than the fifth day succeeding the date on which such agreement is executed.

[Rule N–10F–1, 6 FR 1191, Feb. 28, 1941]

§ 270.10f–2 Exercise of warrants or rights received on portfolio securities.

Any purchase or other acquisition of securities by a registered investment company pursuant to the exercise of warrants or rights to subscribe to or to purchase securities shall be exempt from the provisions of section 10(f) (section 10(f), 54 Stat. 807; 15 U.S.C. 80a–10) of the Act, *Provided*, That the warrants or rights so exercised (a) were offered or issued to such company as a security holder on the same basis as all other holders of the class or classes of securities to whom such warrants or rights were offered or issued, and (b) do not exceed 5 percent of the total amount of such warrants or rights so issued.

[Rule N–10F–2, 9 FR 339, Jan. 8, 1944]

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

(a) *Definitions*—(1) *Domestic Issuer* means any issuer other than a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country.

(2) *Eligible Foreign Offering* means a public offering of securities, conducted under the laws of a country other than the United States, that meets the following conditions:

(i) The offering is subject to regulation by a ''foreign financial regulatory authority,'' as defined in section 2(a)(50) of the Act [15 U.S.C. 80a–2(a)(50)], in such country;

(ii) The securities are offered at a fixed price to all purchasers in the offering (except for any rights to purchase securities that are required by law to be granted to existing security holders of the issuer);

(iii) Financial statements, prepared and audited in accordance with standards required or permitted by the appropriate foreign financial regulatory authority in such country, for the two years prior to the offering, are made available to the public and prospective purchasers in connection with the offering; and

(iv) If the issuer is a Domestic Issuer, it meets the following conditions:

(A) It has a class of securities registered pursuant to section 12(b) or 12(g) of the Securities Exchange Act of 1934 [15 U.S.C. 78*l*(b) or 78*l*(g)] or is required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78o(d)]; and

(B) It has filed all the material required to be filed pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(a) or 78o(d)] for a period of at least twelve months immediately preceding the sale of securities made in reliance upon this (or for such shorter period that the issuer was required to file such material).

(3) *Eligible Municipal Securities* means ''municipal securities,'' as defined in section 3(a)(29) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(29)), that are sufficiently liquid that they can be sold at or near their carrying value within a reasonably short period of time and either:

(i) Are subject to no greater than moderate credit risk; or

(ii) If the issuer of the municipal securities, or the entity supplying the revenues or other payments from which the issue is to be paid, has been in continuous operation for less than three years, including the operation of any predecessors, the securities are subject to a minimal or low amount of credit risk.

(4) *Eligible Rule 144A Offering* means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(2)], rule 144A thereunder [§ 230.144A of this chapter], or rules 501–508 thereunder [§§ 230.501–230.508 of this chapter];

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to § 230.144A of this chapter.

(5) *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

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(B) Limits its responsibility in providing advice to providing advice with respect to such portion.

(6) *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.

(7) *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.* Any purchase of securities by a registered investment company prohibited by section 10(f) of the Act [15 U.S.C. 80a–10(f)] shall be exempt from the provisions of such section if the following conditions are met:

(1) *Type of Security.* The securities to be purchased are:

(i) Part of an issue registered under the Securities Act of 1933 (15 U.S.C. 77a—aa) that is being offered to the public;

(ii) Part of an issue of government securities, as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16));

(iii) Eligible Municipal Securities;

(iv) Securities sold in an Eligible Foreign Offering; or

(v) Securities sold in an Eligible Rule 144A Offering.

(2) *Timing and Price.* (i) The securities are purchased prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities (except, in the case of an Eligible Foreign Offering, for any rights to purchase that are required by law to be granted to existing security holders of the issuer); and

(ii) If the securities are offered for subscription upon exercise of rights, the securities shall be purchased on or before the fourth day preceding the day on which the rights offering terminates.

(3) *Reasonable reliance.* For purposes of determining compliance with paragraphs (c)(1)(v) and (c)(2)(i) of this section, an investment company may reasonably rely upon written statements made by the issuer or a syndicate manager, or by an underwriter or seller of the securities through which such investment company purchases the securities.

(4) *Continuous operation.* If the securities to be purchased are part of an issue registered under the Securities Act of 1933 (15 U.S.C. 77a-aa) that is being offered to the public, are government securities (as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16))), or are purchased pursuant to an Eligible Foreign Offering or an Eligible Rule 144A Offering, the issuer of the securities must have been in continuous operation for not less than three years, including the operations of any predecessors.

(5) *Firm Commitment Underwriting.* The securities are offered pursuant to an underwriting or similar agreement under which the underwriters are committed to purchase all of the securities being offered, except those purchased by others pursuant to a rights offering, if the underwriters purchase any of the securities.

(6) *Reasonable commission.* The commission, spread or profit received or to be received by the principal underwriters is reasonable and fair compared to the commission, spread or profit received by other such persons in connection with the underwriting of similar securities being sold during a comparable period of time.

(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

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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.

(8) *Prohibition of Certain Affiliate Transactions.* Such investment company does not purchase the securities being offered directly or indirectly from an officer, director, member of an advisory board, investment adviser or employee of such investment company or from a person of which any such officer, director, member of an advisory board, investment adviser or employee is an affiliated person; *provided,* that a purchase from a syndicate manager shall not be deemed to be a purchase from a specific underwriter if:

(i) Such underwriter does not benefit directly or indirectly from the transaction; or

(ii) In respect to the purchase of Eligible Municipal Securities, such purchase is not designated as a group sale or otherwise allocated to the account of any person from whom this paragraph prohibits the purchase.

(9) [Reserved]

(10) *Board review.* The board of directors of the investment company, including a majority of the directors who are not interested persons of the investment company:

(i) Has approved procedures, pursuant to which such purchases may be effected for the company, that are reasonably designed to provide that the purchases comply with all the conditions of this section;

(ii) Approves such changes to the procedures as the board deems necessary; and

(iii) Determines no less frequently than quarterly that all purchases made during the preceding quarter were effected in compliance with such procedures.

(11) *Board composition.* The board of directors of the investment company satisfies the fund governance standards defined in § 270.0–1(a)(7).

(12) *Maintenance of records.* The investment company:

(i) Shall maintain and preserve permanently in an easily accessible place a written copy of the procedures, and any modification thereto, described in paragraphs (c)(10)(i) and (c)(10)(ii) of this section; and

(ii) Shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the transaction, and the information or materials upon which the determination described in paragraph (c)(10)(iii) of this section was made.

[62 FR 42408, Aug. 7, 1997, as amended at 66 FR 3758, Jan. 16, 2001; 67 FR 31079, May 8, 2002; 68 FR 3152, Jan. 22, 2003; 69 FR 46389, Aug. 7, 2004; 74 FR 52373, Oct. 9, 2009; 81 FR 82020, Nov. 18, 2016]

§ 270.11a–1 Definition of "exchange" for purposes of section 11 of the Act.

(a) For the purposes of section 11 of the Act, the term *exchange* as used

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therein shall include the issuance of any security by a registered investment company in an amount equal to the proceeds, or any portion of the proceeds, paid or payable—

(1) Upon the repurchase, by or at the instance of such issuer, of an outstanding security the terms of which provide for its termination, retirement or cancellation, or

(2) Upon the termination, retirement or cancellation of an outstanding security of such issuer in accordance with the terms thereof.

(b) A security shall not be deemed to have been repurchased by or at the instance of the issuer, or terminated, retired or canceled in accordance with the terms of the security if—

(1) The security was redeemed or repurchased at the instance of the holder; or

(2) A security holder's account was closed for failure to make payments as prescribed in the security or instruments pursuant to which the security was issued, and notice of intention to close the account was mailed to the security holder, and he had a reasonable time in which to meet the deficiency; or

(3) Sale of the security was restricted to a specified, limited group of persons and, in accordance with the terms of the security or the instruments pursuant to which the security was issued, upon its being transferred by the holder to a person not a member of the group eligible to purchase the security, the issuer required the surrender of the security and paid the redemption price thereof.

(c) The provisions of paragraph (a) of this section shall not apply if, following the repurchase of an outstanding security by or at the instance of the issuer or the termination, retirement or cancellation of an outstanding security in accordance with the terms thereof—

(1) The proceeds are actually paid to the security holder by or on behalf of the issuer within 7 days, and

(2) No sale and no offer (other than by way of exchange) of any security of the issuer is made by or on behalf of the issuer to the person to whom such proceeds were paid, within 60 days after such payment.

(d) The provisions of paragraph (a) of this section shall not apply to the repurchase, termination, retirement, or cancellation of a security outstanding on the effective date of this section or issued pursuant to a subscription agreement or other plan of acquisition in effect on such date.

(Sec. 11, 54 Stat. 808; 15 U.S.C. 80a–11)

[32 FR 10728, July 21, 1967]

§ 270.11a–2 Offers of exchange by certain registered separate accounts or others the terms of which do not require prior Commission approval.

(a) As used in this section:

(1) *Deferred sales load* shall mean any sales load, including a contingent deferred sales load, that is deducted upon redemption or annuitization of amounts representing all or a portion of a securityholder's interest in a separate account;

(2) *Exchanged security* shall include not only the security or securities (or portion[s] thereof) of a securityholder actually exchanged pursuant to an exchange offer but also any security or securities (or portion[s] thereof) of the securityholder previously exchanged for the exchanged security or its predecessors;

(3) *Front-end sales load* shall mean any sales load that is deducted from one or more purchase payments made by a securityholder before they are invested in a separate account; and

(4) *Purchase payments made for the acquired security*, as used in paragraphs (c)(2) and (d)(2) of this section, shall not include any purchase payments made for the exchanged security or any appreciation attributable to those purchase payments that are transferred to the offering account in connection with an exchange.

(b) Notwithstanding section 11 of the Act [15 U.S.C. 80a–11], any registered separate account or any principal underwriter for such an account (collectively, the ''offering account'') may make or cause to be made an offer to the holder of a security of the offering account, or of any other registered separate account having the same insurance company depositor or sponsor as the offering account or having an insurance company depositor or sponsor

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that is an affiliate of the offering account's depositor or sponsor, to exchange his security (or portion thereof) (the ''exchanged security'') for a security (or portion thereof) of the offering account (the ''acquired security'') without the terms of such exchange offer first having been submitted to and approved by the Commission, as provided below:

(1) If the securities (or portions thereof) involved are variable annuity contracts, then

(i) The exchange must be made on the basis of the relative net asset values of the securities to be exchanged, except that the offering account may deduct at the time of the exchange

(A) An administrative fee which is disclosed in the part of the offering account's registration statement under the Securities Act of 1933 relating to the prospectus, and

(B) Any front-end sales load permitted by paragraph (c) of this section, and

(ii) Any deferred sales load imposed on the acquired security by the offering account shall be calculated in the manner prescribed by paragraph (d) or (e) of this section; or

(2) If the securities (or portions thereof) involved are variable life insurance contracts offered by a separate account registered under the Act as a unit investment trust, then the exchange must be made on the basis of the relative net asset values of the securities to be exchanged, except that the offering account may deduct at the time of the exchange an administrative fee which is disclosed in the part of the offering account's registration statement under the Securities Act of 1933 relating to the prospectus.

(c) If the offering account imposes a front-end sales load on the acquired security, then such sales load shall be a percentage that is no greater than the excess of the rate of the front-end sales load otherwise applicable to that security over the rate of any front-end sales load previously paid on the exchanged security.

(d) If the offering account imposes a deferred sales load on the acquired security and the exchanged security was also subject to a deferred sales load, then any deferred sales load imposed on the acquired security shall be calculated as if:

(1) The holder of the acquired security had been the holder of that security from the date on which he became the holder of the exchanged security; and

(2) Purchase payments made for the exchanged security had been made for the acquired security on the date on which they were made for the exchanged security.

(e) If the offering account imposes a deferred sales load on the acquired security and a front-end sales load was paid on the exchanged security, then any deferred sales load imposed on the acquired security may not be imposed on purchase payments made for the exchanged security or any appreciation attributable to purchase payments made for the exchanged security that are transferred in connection with the exchange.

(f) Notwithstanding the foregoing, no offer of exchange shall be made in reliance on this section if both a front-end sales load and a deferred sales load are to be imposed on the acquired security or if both such sales loads are imposed on the exchanged security.

[48 FR 36245, Aug. 10, 1983, as amended at 85 FR 26109, May 1, 2020]

§ 270.11a–3 Offers of exchange by open-end investment companies other than separate accounts.

(a) For purposes of this rule:

(1) *Acquired security* means the security held by a securityholder after completing an exchange pursuant to an exchange offer;

(2) *Administrative fee* means any fee, other than a sales load, deferred sales load or redemption fee, that is

(i) Reasonably intended to cover the costs incurred in processing exchanges of the type for which the fee is charged, *Provided that:* the offering company will maintain and preserve records of any determination of the costs incurred in connection with exchanges for a period of not less than six years, the first two years in an easily accessible place. The records preserved under this provision shall be subject to inspection by the Commission in accordance with section 31(b) of the Act (15 U.S.C. 80a–30(b)) as if such records

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were records required to be maintained under rules adopted under section 31(a) of the Act (15 U.S.C. 80a–30a)); or

(ii) A nominal fee as defined in paragraph (a)(8) of this section;

(3) *Deferred sales load* means any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption;

(4) *Exchanged security* means

(i) The security actually exchanged pursuant to an exchange offer, and

(ii) Any security previously exchanged for such security or for any of its predecessors;

(5) *Group of investment companies* means any two or more registered open-end investment companies that hold themselves out to investors as related companies for purposes of investment and investor services, and

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

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

(6) *Offering company* means a registered open-end investment company (other than a registered separate account) or any principal underwriter thereof that makes an offer (an ''exchange offer'') to the holder of a security of that company, or of another open-end investment company within the same group of investment companies as the offering company, to exchange that security for a security of the offering company;

(7) *Redemption fee* means a fee that is imposed by the fund pursuant to section 270.22c–2; and

(8) *Nominal fee* means a slight or *de minimis* fee.

(b) Nothwithstanding section 11(a) of the Act (15 U.S.C. 80a–11(a)), and except as provided in paragraphs (d) and (e) of this section, in connection with an exchange offer an offering company may cause a securityholder to be charged a sales load on the acquired security, a redemption fee, an administrative fee, or any combination of the foregoing, *Provided that:*

(1) Any administrative fee or scheduled variation thereof is applied uniformly to all securityholders of the class specified;

(2) Any redemption fee charged with respect to the exchanged security or any scheduled variation thereof

(i) Is applied uniformly to all securityholders of the class specified, and

(ii) Does not exceed the redemption fee applicable to a redemption of the exchanged security in the absence of an exchange.

(3) No deferred sales load is imposed on the exchanged security at the time of an exchange;

(4) Any sales load charged with respect to the acquired security is a percentage that is no greater than the excess, if any, of the rate of the sales load applicable to that security in the absence of an exchange over the sum of the rates of all sales loads previously paid on the exchanged security, *Provided that:*

(i) The percentage rate of any sales load charged when the acquired security is redeemed, that is solely the result of a deferred sales load imposed on the exchanged security, may be no greater than the excess, if any, of the applicable rate of such sales load, calculated in accordance with paragraph (b)(5) of this section, over the sum of the rates of all sales loads previously paid on the acquired security, and

(ii) In no event may the sum of the rates of all sales loads imposed prior to and at the time the acquired security is redeemed, including any sales load paid or to be paid with respect to the exchanged security, exceed the maximum sales load rate, calculated in accordance with paragraph (b)(5) of this section, that would be applicable in the absence of an exchange to the security (exchanged or acquired) with the highest such rate;

(5) Any deferred sales load charged at the time the acquired security is redeemed is calculated as if the holder of the acquired security had held that security from the date on which he became the holder of the exchanged security, *Provided that:*

(i) The time period during which the acquired security is held need not be

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included when the amount of the deferred sales load is calculated, if the deferred sales load is

(A) reduced by the amount of any fees collected on the acquired security under the terms of any plan of distribution adopted in accordance with rule 12b–1 under the Act (17 CFR 270.12b–1) (a ''12b–1 plan''), and

(B) Solely the result of a sales load imposed on the exchanged security, and no other sales loads, including deferred sales loads, are imposed with respect to the acquired security,

(ii) The time period during which the exchanged security is held need not be included when the amount of the deferred sales load on the acquired security is calculated, if

(A) The deferred sales load is reduced by the amount of any fees previously collected on the exchanged security under the terms of any 12b–1 plan, and

(B) The exchanged security was not subject to any sales load, and

(iii) The holding periods in this subsection may be computed as of the end of the calendar month in which a security was purchased or redeemed;

(6) The prospectus of the offering company discloses

(i) The amount of any administrative or redemption fee imposed on an exchange transaction for its securities, as well as the amount of any administrative or redemption fee imposed on its securityholders to acquire the securities of other investment companies in an exchange transaction, and

(ii) If the offering company reserves the right to change the terms of or terminate an exchange offer, that the exchange offer is subject to termination and its terms are subject to change;

(7) Any sales literature or advertising that mentions the existence of the exchange offer also discloses

(i) The existence of any administrative fee or redemption fee that would be imposed at the time of an exchange; and

(ii) If the offering company reserves the right to change the terms of or terminate the exchange offer, that the exchange offer is subject to termination and its terms are subject to change;

(8) Whenever an exchange offer is to be terminated or its terms are to be amended materially, any holder of a security subject to that offer shall be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, *Provided that:*

(i) No such notice need be given if the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange, and

(ii) No notice need be given if, under extraordinary circumstances, either

(A) There is a suspension of the redemption of the exchanged security under section 22(e) of the Act [15 U.S.C. 80a–22(e)] and the rules and regulations thereunder, or

(B) The offering company temporarily delays or ceases the sale of the acquired security because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions; and

(9) In calculating any sales load charged with respect to the acquired security:

(i) If a securityholder exchanges less than all of his securities, the security upon which the highest sales load rate was previously paid is deemed exchanged first; and

(ii) If the exchanged security was acquired through reinvestment of dividends or capital gains distributions, that security is deemed to have been sold with a sales load rate equal to the sales load rate previously paid on the security on which the dividend was paid or distribution made.

(c) If either no sales load is imposed on the acquired security or the sales load imposed is less than the maximum allowed by paragraph (b)(4) of this section, the offering company may require the exchanging securityholder to have held the exchanged security for a minimum period of time previously established by the offering company and applied uniformly to all securityholders of the class specified.

(d) Any offering company that has previously made an offer of exchange may continue to impose fees or sales loads permitted by an order under section 11(a) of the Act upon shares purchased before the earlier of (1) One year

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after the effective date of this section, or (2) When the offer has been brought into compliance with the terms of this section, and upon shares acquired through reinvestment of dividends or capital gains distributions based on such shares, until such shares are redeemed.

(e) Any offering company that has previously made an offer of exchange cannot rely on this section to amend such prior offer unless

(1) The offering company's prospectus disclosed, during at least the two year period prior to the amendment of the offer (or, if the fund is less than two years old, at all times the offer has been outstanding) that the terms of the offer were subject to change, or

(2) The only effect of such change is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange.

[54 FR 35185, Aug. 24, 1989, as amended at 61 FR 49016, Sept. 17, 1996; 70 FR 13341, Mar. 18, 2005]

§ 270.12b–1 Distribution of shares by registered open-end management investment company.

(a)(1) Except as provided in this section, it shall be unlawful for any registered open-end management investment company (other than a company complying with the provisions of section 10(d) of the Act (15 U.S.C. 80a–10(d))) to act as a distributor of securities of which it is the issuer, except through an underwriter;

(2) For purposes of this section, such a company will be deemed to be acting as a distributor of securities of which it is the issuer, other than through an underwriter, if it engages directly or indirectly in financing any activity which is primarily intended to result in the sale of shares issued by such company, including, but not necessarily limited to, advertising, compensation of underwriters, dealers, and sales personnel, the printing and mailing of prospectuses to other than current shareholders, and the printing and mailing of sales literature;

(b) A registered, open-end management investment company (''Company'') may act as a distributor of securities of which it is the issuer: *Provided*, That any payments made by such company in connection with such distribution are made pursuant to a written plan describing all material aspects of the proposed financing of distribution and that all agreements with any person relating to implementation of the plan are in writing: *And further provided*, That:

(1) Such plan has been approved by a vote of at least a majority of the outstanding voting securities of such company, if adopted after any public offering of the company's voting securities or the sale of such securities to persons who are not affiliated persons of the company, affiliated persons of such persons, promoters of the company, or affiliated persons of such promoters;

(2) Such plan, together with any related agreements, has been approved by a vote of the board of directors of such company, and of the directors who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan, cast in person at a meeting called for the purpose of voting on such plan or agreements;

(3) Such plan or agreement provides, in substance:

(i) That it shall continue in effect for a period of more than one year from the date of its execution or adoption only so long as such continuance is specifically approved at least annually in the manner described in paragraph (b)(2) of this section;

(ii) That any person authorized to direct the disposition of monies paid or payable by such company pursuant to the plan or any related agreement shall provide to the company's board of directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made; and

(iii) In the case of a plan, that it may be terminated at any time by vote of a majority of the members of the board of directors of the company who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan or by vote of a majority of the outstanding voting securities of such company;

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(iv) In the case of an agreement related to a plan:

(A) That it may be terminated at any time, without the payment of any penalty, by vote of a majority of the members of the board of directors of such company who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan or by vote of a majority of the outstanding voting securities of such company on not more than sixty days' written notice to any other party to the agreement, and

(B) For its automatic termination in the event of its assignment;

(4) Such plan provides that it may not be amended to increase materially the amount to be spent for distribution without shareholder approval and that all material amendments of the plan must be approved in the manner described in paragraph (b)(2) of this section; and

(5) Such plan is implemented and continued in a manner consistent with the provisions of paragraphs (c), (d), and (e) of this section;

(c) A registered open-end management investment company may rely on the provisions of paragraph (b) of this section only if its board of directors satisfies the fund governance standards as defined in § 270.0–1(a)(7);

(d) In considering whether a registered open-end management investment company should implement or continue a plan in reliance on paragraph (b) of this section, the directors of such company shall have a duty to request and evaluate, and any person who is a party to any agreement with such company relating to such plan shall have a duty to furnish, such information as may reasonably be necessary to an informed determination of whether such plan should be implemented or continued; in fulfilling their duties under this paragraph the directors should consider and give appropriate weight to all pertinent factors, and minutes describing the factors considered and the basis for the decision to use company assets for distribution must be made and preserved in accordance with paragraph (f) of this section;

NOTE: For a discussion of factors which may be relevant to a decision to use company assets for distribution, see Investment Company Act Releases Nos. 10862, September 7, 1979, and 11414, October 28, 1980.

(e) A registered open-end management investment company may implement or continue a plan pursuant to paragraph (b) of this section only if the directors who vote to approve such implementation or continuation conclude, in the exercise of reasonable business judgment and in light of their fiduciary duties under state law and under sections 36(a) and (b) (15 U.S.C. 80a–35 (a) and (b)) of the Act, that there is a reasonable likelihood that the plan will benefit the company and its shareholders;

(f) A registered open-end management investment company must preserve copies of any plan, agreement or report made pursuant to this section for a period of not less than six years from the date of such plan, agreement or report, the first two years in an easily accessible place;

(g) If a plan covers more than one series or class of shares, the provisions of the plan must be severable for each series or class, and whenever this rule provides for any action to be taken with respect to a plan, that action must be taken separately for each series or class affected by the matter. Nothing in this paragraph (g) shall affect the rights of any purchase class under § 270.18f–3(f)(2)(iii).

(h) Notwithstanding any other provision of this section, a company may not:

(1) Compensate a broker or dealer for any promotion or sale of shares issued by that company by directing to the broker or dealer:

(i) The company's portfolio securities transactions; or

(ii) Any remuneration, including but not limited to any commission, mark-up, mark-down, or other fee (or portion thereof) received or to be received from the company's portfolio transactions effected through any other broker (including a government securities broker) or dealer (including a municipal securities dealer or a government securities dealer); and

(2) Direct its portfolio securities transactions to a broker or dealer that promotes or sells shares issued by the

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company, unless the company (or its investment adviser):

(i) Is in compliance with the provisions of paragraph (h)(1) of this section with respect to that broker or dealer; and

(ii) Has implemented, and the company's board of directors (including a majority of directors who are not interested persons of the company) has approved, policies and procedures reasonably designed to prevent:

(A) The persons responsible for selecting brokers and dealers to effect the company's portfolio securities transactions from taking into account the brokers' and dealers' promotion or sale of shares issued by the company or any other registered investment company; and

(B) The company, and any investment adviser and principal underwriter of the company, from entering into any agreement (whether oral or written) or other understanding under which the company directs, or is expected to direct, portfolio securities transactions, or any remuneration described in paragraph (h)(1)(ii) of this section, to a broker (including a government securities broker) or dealer (including a municipal securities dealer or a government securities dealer) in consideration for the promotion or sale of shares issued by the company or any other registered investment company.

[45 FR 73905, Nov. 7, 1980, as amended at 60 FR 11885, Mar. 2, 1995; 61 FR 49011, Sept. 17, 1996; 62 FR 51765, Oct. 3, 1997; 66 FR 3758, Jan. 16, 2001; 69 FR 46389, Aug. 2, 2004; 69 FR 54733, Sept. 9, 2004; 78 FR 79299, Dec. 30, 2013]

§ 270.12d1–1 Exemptions for investments in money market funds.

(a) *Exemptions for acquisition of money market fund shares.* If the conditions of paragraph (b) of this section are satisfied, notwithstanding sections 12(d)(1)(A), 12(d)(1)(B), 12(d)(1)(G), 17(a), and 57 of the Act (15 U.S.C. 80a–12(d)(1)(A), 80a–12(d)(1)(B), 80a–12(d)(1)(G), 80a–17(a), and 80a–56)) and § 270.17d–1:

(1) An investment company (*acquiring fund*) may purchase and redeem shares issued by a money market fund; and

(2) A money market fund, any principal underwriter thereof, and a broker or a dealer may sell or otherwise dispose of shares issued by the money market fund to any acquiring fund.

(b) Conditions—(1) *Fees.* The acquiring fund pays no sales charge, as defined in rule 2830(b)(8) of the Conduct Rules of the NASD (''sales charge''), or service fee, as defined in rule 2830(b)(9) of the Conduct Rules of the NASD, charged in connection with the purchase, sale, or redemption of securities issued by a money market fund (''service fee''); or the acquiring fund's investment adviser waives its advisory fee in an amount necessary to offset any sales charge or service fee.

(2) *Unregistered money market funds.* If the money market fund is not an investment company registered under the Act:

(i) The acquiring fund reasonably believes that the money market fund satisfies the following conditions as if it were a registered open-end investment company:

(A) Operates in compliance with § 270.2a–7;

(B) Complies with sections 17(a), (d), (e), 18, and 22(e) of the Act (15 U.S.C. 80a–17(a), (d), (e), 80a–18, and 80a–22(e));

(C) Has adopted procedures designed to ensure that it complies with sections 17(a), (d), (e), 18, and 22(e) of the Act (15 U.S.C. 80a–17(a), (d), (e), 80a–18, and 80a–22(e)), periodically reviews and updates those procedures, and maintains books and records describing those procedures;

(D) Maintains the records required by §§ 270.31a–1(b)(1), 270.31a–1(b)(2)(ii), 270.31a–1(b)(2)(iv), and 270.31a–1(b)(9); and

(E) Preserves permanently, the first two years in an easily accessible place, all books and records required to be made under paragraphs (b)(2)(i)(C) and (D) of this section, and makes those records available for examination on request by the Commission or its staff; and

(ii) The adviser to the money market fund is registered with the Commission as an investment adviser under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3).

(c) *Exemption from certain monitoring and recordkeeping requirements under § 270.17e–1.* Notwithstanding the requirements of §§ 270.17e–1(b)(3) and

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270.17e–1(d)(2), the payment of a commission, fee, or other remuneration to a broker shall be deemed as not exceeding the usual and customary broker's commission for purposes of section 17(e)(2)(A) of the Act if:

(1) The commission, fee, or other remuneration is paid in connection with the sale of securities to or by an acquiring fund;

(2) The broker and the acquiring fund are affiliated persons because each is an affiliated person of the same money market fund; and

(3) The acquiring fund is an affiliated person of the money market fund solely because the acquiring fund owns, controls, or holds with power to vote five percent or more of the outstanding securities of the money market fund.

(d) *Definitions.* (1) *Investment company* includes a company that would be an investment company under section 3(a) of the Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)).

(2) *Money market fund* means:

(i) An open-end management investment company registered under the Act that is regulated as a money market fund under § 270.2a–7; or

(ii) A company that would be an investment company under section 3(a) of the Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)) and that:

(A) Is limited to investing in the types of securities and other investments in which a money market fund may invest under § 270.2a–7; and

(B) Undertakes to comply with all the other requirements of § 270.2a–7, except that, if the company has no board of directors, the company's investment adviser performs the duties of the board of directors.

[71 FR 36655, June 27, 2006, as amended at 85 FR 74005, Nov. 19, 2020]

§ 270.12d1–2 [Reserved]

§ 270.12d1–3 Exemptions for investment companies relying on section 12(d)(1)(F) of the Act.

(a) *Exemption from sales charge limits.* A registered investment company (''acquiring fund'') that relies on section 12(d)(1)(F) of the Act (15 U.S.C. 80a–12(d)(1)(F)) to acquire securities issued by an investment company (''acquired fund'') may offer or sell any security it issues through a principal underwriter or otherwise at a public offering price that includes a sales load of more than 1½ percent if any sales charges and service fees charged with respect to the acquiring fund's securities do not exceed the limits set forth in rule 2830 of the Conduct Rules of the NASD applicable to a fund of funds.

(b) *Definitions.* For purposes of this section, the terms *fund of funds*, sales charge, and *service fee* have the same meanings as in rule 2830(b) of the Conduct Rules of the NASD.

[71 FR 36655, June 27, 2006]

§ 270.12d1–4 Exemptions for investments in certain investment companies.

(a) *Exemptions for acquisition and sale of acquired fund shares.* If the conditions of paragraph (b) of this section are satisfied, notwithstanding sections 12(d)(1)(A), 12(d)(1)(B), 12(d)(1)(C), 17(a), 57(a)(1)–(2), and 57(d)(1)–(2) of the Act (15 U.S.C. 80a–12(d)(1)(A), 80a–12(d)(1)(C), 80a–17(a), 80a–56(a)(1)–(2), and 80a–56(d)(1)–(2)):

(1) A registered investment company (other than a face-amount certificate company) or business development company (an *acquiring fund*) may purchase or otherwise acquire the securities issued by another registered investment company (other than a face-amount certificate company) or business development company (an *acquired fund*);

(2) An acquired fund, any principal underwriter thereof, and any broker or dealer registered under the Securities Exchange Act of 1934 may sell or otherwise dispose of the securities issued by the acquired fund to any acquiring fund and any acquired fund may redeem or repurchase any securities

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issued by the acquired fund from any acquiring fund; and

(3) An acquiring fund that is an affiliated person of an exchange-traded fund (or who is an affiliated person of such a fund) solely by reason of the circumstances described in §270.6c–11(b)(3)(i) and (ii), may deposit and receive the exchange-traded fund's baskets, provided that the acquired exchange-traded fund is not otherwise an affiliated person (or affiliated person of an affiliated person) of the acquiring fund.

(b) *Conditions*—(1) *Control.* (i) The acquiring fund and its advisory group will not control (individually or in the aggregate) an acquired fund;

(ii) If the acquiring fund and its advisory group, in the aggregate,

(A) Hold more than 25% of the outstanding voting securities of an acquired fund that is a registered open-end management investment company or registered unit investment trust as a result of a decrease in the outstanding voting securities of the acquired fund, or

(B) Hold more than 10% of the outstanding voting securities of an acquired fund that is a registered closed-end management investment company or business development company, each of those holders will vote its securities in the same proportion as the vote of all other holders of such securities; provided, however, that in circumstances where all holders of the outstanding voting securities of the acquired fund are required by this section or otherwise under section 12(d)(1) to vote securities of the acquired fund in the same proportion as the vote of all other holders of such securities, the acquiring fund will seek instructions from its security holders with regard to the voting of all proxies with respect to such acquired fund securities and vote such proxies only in accordance with such instructions; and

(iii) The conditions in paragraphs (b)(1)(i) through (ii) of this section do not apply if:

(A) The acquiring fund is in the same group of investment companies as an acquired fund; or

(B) The acquiring fund's investment sub-adviser or any person controlling, controlled by, or under common control with such investment sub-adviser acts as an acquired fund's investment adviser or depositor.

(2) *Findings and agreements.* (i) Management companies.

(A) If the acquiring fund is a management company, prior to the initial acquisition of an acquired fund in excess of the limits in section 12(d)(1)(A)(i) of the Act (15 U.S.C. 80a–12(d)(1)(A)(i)), the acquiring fund's investment adviser must evaluate the complexity of the structure and fees and expenses associated with the acquiring fund's investment in the acquired fund, and find that the acquiring fund's fees and expenses do not duplicate the fees and expenses of the acquired fund;

(B) If the acquired fund is a management company, prior to the initial acquisition of an acquired fund in excess of the limits in section 12(d)(1)(A)(i) of the Act (15 U.S.C. 80a–12(d)(1)(A)(i)), the acquired fund's investment adviser must find that any undue influence concerns associated with the acquiring fund's investment in the acquired fund are reasonably addressed and, as part of this finding, the investment adviser must consider at a minimum the following items:

(*1*) The scale of contemplated investments by the acquiring fund and any maximum investment limits;

(*2*) The anticipated timing of redemption requests by the acquiring fund;

(*3*) Whether and under what circumstances the acquiring fund will provide advance notification of investments and redemptions; and

(*4*) The circumstances under which the acquired fund may elect to satisfy redemption requests in kind rather than in cash and the terms of any such redemptions in kind; and

(C) The investment adviser to each acquiring or acquired management company must report its evaluation, finding, and the basis for its evaluations or findings required by paragraphs (b)(2)(i)(A) or (B) of this section, as applicable, to the fund's board of directors, no later than the next regularly scheduled board of directors meeting.

(ii) Unit investment trusts. If the acquiring fund is a unit investment trust (*UIT*) and the date of initial deposit of portfolio securities into the UIT occurs

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after the effective date of this section, the UIT's principal underwriter or depositor must evaluate the complexity of the structure associated with the UIT's investment in acquired funds and, on or before such date of initial deposit, find that the UIT's fees and expenses do not duplicate the fees and expenses of the acquired funds that the UIT holds or will hold at the date of deposit.

(iii) Separate accounts funding variable insurance contracts. With respect to a separate account funding variable insurance contracts that invests in an acquiring fund, the acquiring fund must obtain a certification from the insurance company offering the separate account that the insurance company has determined that the fees and expenses borne by the separate account, acquiring fund, and acquired fund, in the aggregate, are consistent with the standard set forth in section 26(f)(2)(A) of the Act (15 U.S.C. 80a–26(f)(2)(A)).

(iv) Fund of funds investment agreement. Unless the acquiring fund's investment adviser acts as the acquired fund's investment adviser and such adviser is not acting as the sub-adviser to either fund, the acquiring fund must enter into an agreement with the acquired fund effective for the duration of the funds' reliance on this section, which must include the following:

(A) Any material terms regarding the acquiring fund's investment in the acquired fund necessary to make the finding required under paragraph (b)(2)(i) through (ii) of this section;

(B) A termination provision whereby either the acquiring fund or acquired fund may terminate the agreement subject to advance written notice no longer than 60 days; and

(C) A requirement that the acquired fund provide the acquiring fund with information on the fees and expenses of the acquired fund reasonably requested by the acquiring fund.

(3) *Complex fund structures.* (i) No investment company may rely on section 12(d)(1)(G) of the Act (15 U.S.C. 80a–12(d)(1)(G)) or this section to purchase or otherwise acquire, in excess of the limits in section 12(d)(1)(A) of the Act (15 U.S.C. 80a–12(d)(1)(A)), the outstanding voting securities of an investment company (a *second-tier fund*) that relies on this section to acquire the securities of an acquired fund, unless the second-tier fund makes investments permitted by paragraph (b)(3)(ii) of this section; and

(ii) No acquired fund may purchase or otherwise acquire the securities of an investment company or private fund if immediately after such purchase or acquisition, the securities of investment companies and private funds owned by the acquired fund have an aggregate value in excess of 10 percent of the value of the total assets of the acquired fund; provided, however, that the 10 percent limitation of this paragraph shall not apply to investments by the acquired fund in:

(A) Reliance on section 12(d)(1)(E) of the Act (15 U.S.C. 80a–12(d)(1)(E));

(B) Reliance on § 270.12d1–1;

(C) A subsidiary that is wholly-owned and controlled by the acquired fund;

(D) Securities received as a dividend or as a result of a plan of reorganization of a company; or

(E) Securities of another investment company received pursuant to exemptive relief from the Commission to engage in interfund borrowing and lending transactions.

(c) *Recordkeeping.* The acquiring and acquired funds relying upon this section must maintain and preserve for a period of not less than five years, the first two years in an easily accessible place, as applicable:

(1) A copy of each fund of funds investment agreement that is in effect, or at any time within the past five years was in effect, and any amendments thereto;

(2) A written record of the evaluations and findings required by paragraph (b)(2)(i) of this section, and the basis therefor within the past five years;

(3) A written record of the finding required by paragraph (b)(2)(ii) of this section and the basis for such finding; and

(4) The certification from each insurance company required by paragraph (b)(2)(iii) of this section.

(d) *Definitions.* For purposes of this section:

Advisory group means either:

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(1) An acquiring fund's investment adviser or depositor, and any person controlling, controlled by, or under common control with such investment adviser or depositor; or

(2) An acquiring fund's investment sub-adviser and any person controlling, controlled by, or under common control with such investment sub-adviser.

Baskets has the same meaning as in 17 CFR 270.6c–11(a)(1).

Exchange-traded fund means a fund or class, the shares of which are listed and traded on a national securities exchange, and that has formed and operates in reliance on § 6c–11 or under an exemptive order granted by the Commission.

Group of investment companies means any two or more registered investment companies or business development companies that hold themselves out to investors as related companies for purposes of investment and investor services.

Private fund means an issuer that would be an investment company under section 3(a) of the Act but for the exclusions from that definition provided for in section 3(c)(1) or section 3(c)(7) of the Act (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)).

[85 FR 74005, Nov. 19, 2020]

§ 270.12d2–1 Definition of insurance company for purposes of sections 12(d)(2) and 12(g) of the Act.

For purposes of sections 12(d)(2) and 12(g) of the Act [15 U.S.C. 80a–12(d)(2) and 80a–12(g)], *insurance company* shall include a foreign insurance company as that term is used in rule 3a–6 under the Act (17 CFR 270.3a–6).

[56 FR 56300, Nov. 4, 1991]

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

(a) Notwithstanding section 12(d)(3) of the Act, a registered investment company, or any company or companies controlled by such registered investment company (''acquiring company'') may acquire any security issued by any person that, in its most recent fiscal year, derived 15 percent or less of its gross revenues from securities related activities unless the acquiring company would control such person after the acquisition.

(b) Notwithstanding section 12(d)(3) of the Act, an acquiring company may acquire any security issued by a person that, in its most recent fiscal year, derived more than 15 percent of its gross revenues from securities related activities, *provided that:*

(1) Immediately after the acquisition of any equity security, the acquiring company owns not more than five percent of the outstanding securities of that class of the issuer's equity securities;

(2) Immediately after the acquisition of any debt security, the acquiring company owns not more than ten percent of the outstanding principal amount of the issuer's debt securities; and

(3) Immediately after any such acquisition, the acquiring company has invested not more than five percent of the value of its total assets in the securities of the issuer.

(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 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:

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(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) For purposes of this section:

(1) *Securities related activities* are a person's activities as a broker, a dealer, an underwriter, an investment adviser registered under the Investment Advisers Act of 1940, as amended, or as an investment adviser to a registered investment company.

(2) An issuer's gross revenues from its own securities related activities and from its ratable share of the securities related activities of enterprises of which it owns 20 percent or more of the voting or equity interest should be considered in determining the degree to which an issuer is engaged in securities related activities. Such information may be obtained from the issuer's annual report to shareholders, the issuer's annual reports or registration statement filed with the Commission, or the issuer's chief financial officer.

(3) *Equity security* is as defined in § 240.3a–11 of this chapter.

(4) *Debt security* includes all securities other than equity securities.

(5) Determination of the percentage of an acquiring company's ownership of any class of outstanding equity securities of an issuer shall be made in accordance with the procedures described in the rules under § 240.16 of this chapter.

(6) Where an acquiring company is considering acquiring or has acquired options, warrants, rights, or convertible securities of a securities related business, the determination required by paragraph (b) of this section shall be made as though such options, warrants, rights, or conversion privileges had been exercised.

(7) The following transactions will not be deemed to be an acquisition of securities of a securities related business:

(i) Receipt of stock dividends on securities acquired in compliance with this section;

(ii) Receipt of securities arising from a stock-for-stock split on securities acquired in compliance with this section;

(iii) Exercise of options, warrants, or rights acquired in compliance with this section;

(iv) Conversion of convertible securities acquired in compliance with this section; and

(v) Acquisition of Demand Features or Guarantees, as these terms are defined in §§ 270.2a–7(a)(9) and 270.2a–7(a)(16) respectively, provided that, immediately after the acquisition of any Demand Feature or Guarantee, the company will not, with respect to 75 percent of the total value of its assets, have invested more than ten percent of the total value of its assets in securities underlying Demand Features or Guarantees from the same institution. For the purposes of this section, a Demand Feature or Guarantee will be considered to be from the party to whom the company will look for a payment of the exercise price.

(8) Any class or series of an 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, shall be treated as if it is a registered investment company.

(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)).

[58 FR 49427, Sept. 23, 1993, as amended at 61 FR 13982, Mar. 28, 1996; 62 FR 64986, Dec. 9, 1997; 66 FR 36162, July 11, 2001; 68 FR 3152, Jan. 22, 2003; 79 FR 47967, Aug. 14, 2014; 80 FR 58155, Sept. 25, 2015]

§ 270.13a–1 Exemption for change of status by temporarily diversified company.

A change of its subclassification by a registered management company from that of a diversified company to that of a nondiversified company shall be exempt from the provisions of section 13(a)(1) of the Act (54 Stat. 811; 15 U.S.C. 80a–13), if such change occurs under the following circumstances:

(a) Such company was a nondiversified company at the time of its

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registration pursuant to section 8(a) (54 Stat. 803; 15 U.S.C. 80a–8), or thereafter legally became a nondiversified company.

(b) After its registration and within 3 years prior to such change, such company became a diversified company.

(c) At the time such company became a diversified company, its registration statement filed pursuant to section 8(b) (54 Stat. 803; 15 U.S.C. 80a–8), as supplemented and modified by any amendments and reports theretofore filed, did not stated that the registrant proposed to become a diversified company.

[Rule N–13A–1, 6 FR 3967, Aug. 8, 1941]

§ 270.14a–1 Use of notification pursuant to regulation E under the Securities Act of 1933.

For the purposes of section 14(a)(3) of the Act, registration of securities under the Securities Act of 1933 by a small business investment company operating under the Small Business Investment Act of 1958 shall be deemed to include the filing of a notification under Rule 604 of Regulation E promulgated under said Act if provision is made in connection with such notification which in the opinion of the Commission adequately insures (a) that after the effective date of such notification such company will not issue any security or receive any proceeds of any subscription for any security until firm agreements have been made with such company by not more than twenty-five responsible persons to purchase from it securities to be issued by it for an aggregate net amount which plus the then net worth of the company, if any, will equal at least $100,000; (b) that said aggregate net amount will be paid into such company before any subscriptions for such securities will be accepted from any persons in excess of twenty-five; (c) that arrangements will be made whereby any proceeds so paid in, as well as any sales load, will be refunded to any subscriber on demand without any deduction, in the event that the net proceeds so received by the company do not result in the company having a net worth of at least $100,000 within ninety days after such notification becomes effective.

[25 FR 3512, Apr. 22, 1960]

§ 270.14a–2 Exemption from section 14(a) of the Act for certain registered separate accounts and their principal underwriters.

(a) A registered separate account, and any principal underwriter for such account, shall be exempt from section 14(a) of the Act (15 U.S.C. 80a–14(a)) with respect to a public offering of variable annuity contracts participating in such account.

(b) Any registered management investment company which has as a promoter an insurance company and which offers its securities to separate accounts of such insurance company that offer variable annuity contracts and are registered under the Act as unit investment trusts (''trust accounts''), and any principal underwriter for such investment company, shall be exempt from section 14(a) with respect to such offering and to the offering of such securities to trust accounts of other insurance companies.

(c) Any registered management investment company exempt from section 14(a) of the Act pursuant to paragraph (b) of this section shall be exempt from sections 15(a), 16(a), and 32(a)(2) of the Act (15 U.S.C. 80a–15(a), 80a–16(a), and 80a–31(a)(2)), to the extent prescribed in §§ 270.15a–3, 270.16a–1, and 270.32a–2 (Rules 15a–3, 16a–1, and 32a–2 under the Act), provided that such investment company complies with the conditions set forth in Rules 15a–3, 16a–1, and 32a–2 as if it were a separate account.

[85 FR 26109, May 1, 2020]

§ 270.14a–3 Exemption from section 14(a) of the Act for certain registered unit investment trusts and their principal underwriters.

(a) A registered unit investment trust (hereinafter referred to as the ''Trust'') engaged exclusively in the business of investing in eligible trust securities, and any principal underwriter for the Trust, shall be exempt from section 14(a) of the Act with respect to a public offering of Trust units: *Provided,* That:

(1) At the commencement of such offering the Trust holds at least $100,000 principal amount of eligible trust securities (or delivery statements relating to contracts for the purchase of any

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such securities which, together with cash or an irrevocable letter of credit issued by a bank in the amount required for their purchase, are held by the Trust for purchase of the securities);

(2) If, within ninety days from the time that the Trust's registration statement has become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) the net worth of the Trust declines to less than $100,000 or the Trust is terminated, the sponsor for the Trust shall—

(i) Refund, on demand and without deduction, all sales charges to any unitholders who purchased Trust units from the sponsor (or from any underwriter or dealer participating in the distribution), and

(ii) Liquidate the eligible trust securities held by the Trust and distribute the proceeds thereof to the unitholders of the Trust;

(3) The sponsor instructs the trustee when the eligible trust securities are deposited in the Trust that, in the event that redemptions by the sponsor or any underwriter of units constituting a part of the unsold units results in the Trust having a net worth of less than 40 percent of the principal amount of the eligible trust securities (or delivery statements relating to contracts for the purchase of any such securities which, together with cash or an irrevocable letter of credit issued by a bank in the amount required for their purchase, are held by the Trust for purchase of the securities) initially deposited in the Trust—

(i) The trustee shall terminate the Trust and distribute the assets thereof to the unitholders of the Trust, and

(ii) The sponsor for the Trust shall refund, on demand and without deduction, all sales charges to any unitholder who purchased Trust units from the sponsor or from any underwriter or dealer participating in the distribution.

(b) For the purposes of determining the availability of the exemption provided by the foregoing subsection, the term ''eligible trust securities'' shall mean:

(1) Securities (other than convertible securities) which are issued by a corporation and which have their interest or dividend rate fixed at the time they are issued;

(2) Interest bearing obligations issued by a state, or by any agency, instrumentality, authority or political subdivision thereof;

(3) Government securities; and

(4) Units of a previously issued series of the Trust: *Provided*, That:

(i) The aggregate principal amount of units of existing series so deposited shall not exceed 10% of the aggregate principal amount of the portfolio of the new series;

(ii) The aggregate principal amount of units of any particular existing series so deposited shall not exceed 5% of the aggregate principal amount of the portfolio of the new series;

(iii) No units shall be so deposited which do not substantially meet investment quality criteria at least as high as those applicable to the new series in which such units are deposited;

(iv) The value of the eligible trust securities underlying units of an existing series deposited in a new series shall not, by reason of maturity of such securities according to their terms within ten years following the date of deposit, be reduced sufficiently for such existing series to be voluntarily terminated;

(v) Units of existing series so deposited shall constitute units purchased by the sponsor as market maker and not remaining unsold units from the original distribution of such units; and

(vi) The sponsor shall deposit units of existing series in the new series without a sales charge.

(Secs. 6(c) and 38(a) (15 U.S.C. 80a–6(c) and 15 U.S.C. 80a–37(a)))

[44 FR 29646, May 22, 1979; 44 FR 40064, July 9, 1979]

§ 270.15a–1 Exemption from stockholders' approval of certain small investment advisory contracts.

An investment adviser of a registered investment company shall be exempt from the requirement of sections 15(a) and 15(e) of the Act (54 Stat. 812; 15 U.S.C. 80a–15) that the written contract pursuant to which he acts shall have been approved by the vote of a majority of the outstanding votingsecurities of such company, if the following conditions are met:

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(a) Such investment adviser is not an affiliated person of such company (except as investment adviser) nor of any principal underwriter for such company.

(b) His compensation as investment adviser of such company in any fiscal year of the company during which any such contract is in effect either (1) is not more than $100 or (2) is not more than $2,500 and not more than 1/40 of 1 percent of the value of the company's net assets averaged over the year or taken as of a definite date or dates within the year.

(c) The aggregate compensation of all investment advisers of such company exempted pursuant to this section in any fiscal year of the company either (1) is not more than $200 or (2) is not more than 1/20 of 1 percent of the value of the company's net assets averaged over the year or taken as of a definite date or dates within the year.

[Rule N–15A–1, 6 FR 2275, Jan. 8, 1944]

§ 270.15a–2 Annual continuance of contracts.

(a) For purposes of sections 15(a) and 15(b) of the Act, the continuance of a contract for a period more than two years after the date of its execution shall be deemed to have been specifically approved at least annually by the board of directors or by a vote of a majority of the outstanding voting securities of a registered investment company if such approval occurs:

(1) With respect to the first continuance of a contract, during the 90 days prior to and including the earlier of (i) the date specified in such contract for its termination in the absence of such approval, or (ii) the second anniversary of the date upon which such contract was executed; or

(2) With respect to any subsequent continuance of a contract, during the 90 days prior to and including the first anniversary of the date upon which the most recent previous annual continuance of such contract became effective.

(b) The provisions of paragraph (a) of this section shall not apply to any continuance of a contract which shall have been approved not later than 90 days after the date of adoption of this section, provided that such contract shall expire, by its terms, not later than 17 months from the date of adoption of this section.

NOTE: This section does not establish the exclusive method of complying with the Act. It provides one procedure by which a registered investment company may comply with the applicable provisions of sections 15(a) and 15(b) of the Act; it does not preclude any other appropriate procedure. Any annual continuance of a contract approved in accordance with the provisions of paragraph (a)(1) or (a)(2) of § 270.15a–2 will constitute a renewal of such contract for the purposes of section 15(c) of the Act, and therefore such renewal must be approved by the disinterested directors within the times specified in the section for a continuance.

[41 FR 41911, Sept. 24, 1976]

§ 270.15a–3 Exemption for initial period of investment adviser of certain registered separate accounts from requirement of security holder approval of investment advisory contract.

(a) An investment adviser of a registered separate account shall be exempt from the requirement under section 15(a) of the Act that the initial written contract pursuant to which the investment adviser serves or acts shall have been approved by the vote of a majority of the outstanding voting securities of such registered separate account, 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) Such written contract shall be submitted to a vote of variable annuity contract owners at their first meeting after the effective date of the registration statement under the Securities Act of 1933, as amended (15 U.S.C. 77a *et seq.*) relating to variable annuity 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 12695, Aug. 5, 1969]

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§ 270.15a–4 Temporary exemption for certain investment advisers.

(a) For purposes of this section:

(1) *Fund* means an investment company, and includes a separate series of the company.

(2) *Interim contract* means a written investment advisory contract:

(i) That has not been approved by a majority of the fund's outstanding voting securities; and

(ii) That has a duration no greater than 150 days following the date on which the previous contract terminates.

(3) *Previous contract* means an investment advisory contract that has been approved by a majority of the fund's outstanding voting securities and has been terminated.

(b) Notwithstanding section 15(a) of the Act (15 U.S.C. 80a–15(a)), a person may act as investment adviser for a fund under an interim contract after the termination of a previous contract as provided in paragraphs (b)(1) or (b)(2) of this section:

(1) In the case of a previous contract terminated by an event described in section 15(a)(3) of the Act (15 U.S.C. 80a–15(a)(3)), by the failure to renew the previous contract, or by an assignment (other than an assignment by an investment adviser or a controlling person of the investment adviser in connection with which assignment the investment adviser or a controlling person directly or indirectly receives money or other benefit):

(i) The compensation to be received under the interim contract is no greater than the compensation the adviser would have received under the previous contract; and

(ii) The fund's board of directors, including a majority of the directors who are not interested persons of the fund, has approved the interim contract within 10 business days after the termination, at a meeting in which directors may participate by any means of communication that allows all directors participating to hear each other simultaneously during the meeting.

(2) In the case of a previous contract terminated by an assignment by an investment adviser or a controlling person of the investment adviser in connection with which assignment the investment adviser or a controlling person directly or indirectly receives money or other benefit:

(i) The compensation to be received under the interim contract is no greater than the compensation the adviser would have received under the previous contract;

(ii) The board of directors, including a majority of the directors who are not interested persons of the fund, has voted in person to approve the interim contract before the previous contract is terminated;

(iii) The board of directors, including a majority of the directors who are not interested persons of the fund, determines that the scope and quality of services to be provided to the fund under the interim contract will be at least equivalent to the scope and quality of services provided under the previous contract;

(iv) The interim contract provides that the fund's board of directors or a majority of the fund's outstanding voting securities may terminate the contract at any time, without the payment of any penalty, on not more than 10 calendar days' written notice to the investment adviser;

(v) The interim contract contains the same terms and conditions as the previous contract, with the exception of its effective and termination dates, provisions governed by paragraphs (b)(2)(i), (b)(2)(iv), and (b)(2)(vi) of this section, and any other differences in terms and conditions that the board of directors, including a majority of the directors who are not interested persons of the fund, finds to be immaterial;

(vi) The interim contract contains the following provisions:

(A) The compensation earned under the contract will be held in an interest-bearing escrow account with the fund's custodian or a bank;

(B) If a majority of the fund's outstanding voting securities approve a contract with the investment adviser by the end of the 150-day period, the amount in the escrow account (including interest earned) will be paid to the investment adviser; and

(C) If a majority of the fund's outstanding voting securities do not approve a contract with the investment

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adviser, the investment adviser will be paid, out of the escrow account, the lesser of:

(*1*) Any costs incurred in performing the interim contract (plus interest earned on that amount while in escrow); or

(*2*) The total amount in the escrow account (plus interest earned); and

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

[64 FR 68023, Dec. 6, 1999, as amended 66 FR 3758, Jan. 16, 2001; 69 FR 46389, Aug. 2, 2004]

§270.16a–1 Exemption for initial period of directors of certain registered accounts from requirements of election by security holders.

(a) Persons serving as the directors of a registered separate account shall, prior to the first meeting of such account's variable annuity contract owners, be exempt from the requirement of section 16(a) of the Act that such persons be elected by the holders of outstanding voting securities of such account at an annual or special meeting called for that purpose, subject to the following conditions:

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

(2) Such persons have been appointed directors of such account by the establishing insurance company; and

(3) An election of directors for such account shall be held at the first meeting of variable annuity contract owners after the effective date of the registration statement under the Securities Act of 1933, 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 12695, Aug. 5, 1969]

§270.17a–1 Exemption of certain underwriting transactions exempted by §270.10f–1.

Any transaction exempted pursuant to §270.10f–1 shall be exempt from the provisions of section 17(a)(1) of the Act (54 Stat. 815; 15 U.S.C. 80a–17).

[Rule N–17A–1, 6 FR 1191, Feb. 28, 1941]

§270.17a–2 Exemption of certain purchase, sale, or borrowing transactions.

Purchase, sale or borrowing transactions occurring in the usual course of business between affiliated persons of registered investment companies shall be exempt from section 17(a) of the Act provided (a) the transactions involve notes, drafts, time payment contracts, bills of exchange, acceptance or other property of a commercial character rather than of an investment character; (b) the buyer or lender is a bank; and (c) the seller or borrower is a bank or is engaged principally in the business of installment financing.

[Rule N–17A–2, 12 FR 5008, July 29, 1947]

§270.17a–3 Exemption of transactions with fully owned subsidiaries.

(a) The following transactions shall be exempt from section 17(a) of the Act:

(1) Transactions solely between a registered investment company and one or more of its fully owned subsidiaries or solely between two or more fully owned subsidiaries of such company.

(2) Transactions solely between any subsidiary of a registered investment company and one or more fully owned subsidiaries of such subsidiary or solely between two or more fully owned subsidiaries of such subsidiary.

(b) The term *fully owned subsidiary* as used in this section, means a subsidiary (1) all of whose outstanding securities, other than directors' qualifying shares, are owned by its parent and/or the parent's other fully owned subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent's other fully owned subsidiaries in an amount which is material in relation to the particular subsidiary, excepting (i) indebtedness incurred in the ordinary course of business which is not overdue and which

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matures within one year from the date of its creation, whether evidenced by securities or not, and (ii) any other indebtedness to one or more banks or insurance companies.

[Rule N–17A–3, 12 FR 3442, May 28, 1947]

§ 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 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

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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).

[68 FR 3153, Jan. 22, 2003]

§ 270.17a–7 Exemption of certain purchase or sale transactions between an investment company and certain affiliated persons thereof.

A purchase or sale transaction between registered investment companies or separate series of registered investment companies, which are affiliated persons, or affiliated persons of affiliated persons, of each other, between separate series of a registered investment company, or between a registered investment company or a separate series of a registered investment company and a person which is an affiliated person of such registered investment company (or affiliated person of such person) solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers, is exempt from section 17(a) of the Act; *Provided*, That:

(a) The transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available;

(b) The transaction is effected at the independent current market price of the security. For purposes of this paragraph the ''current market price'' shall be:

(1) If the security is an ''NMS stock'' as that term is defined in 17 CFR 242.600, the last sale price with respect to such security reported in the consolidated transaction reporting system (''consolidated system'') or the average of the highest current independent bid and lowest current independent offer for such security (reported pursuant to 17 CFR 242.602) if there are no reported transactions in the consolidated system that day; or

(2) If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange or the average of the highest current independent bid and lowest current independent offer on such exchange if there are no reported transactions on such exchange that day; or

(3) If the security is not a reported security and is quoted in the NASDAQ System, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ; or

(4) For all other securities, the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry;

(c) The transaction is consistent with the policy of each registered investment company and separate series of a registered investment company participating in the transaction, as recited in its registration statement and reports filed under the Act;

(d) No brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with the transaction;

(e) The board of directors of the investment company, including a majority of the directors who are not interested persons of such investment company,

(1) Adopts procedures pursuant to which such purchase or sale transactions may be effected for the company, which are reasonably designed to provide that all of the conditions of this section in paragraphs (a) through (d) have been complied with,

(2) Makes and approves such changes as the board deems necessary, and

(3) Determines no less frequently than quarterly that all such purchases or sales made during the preceding quarter were effected in compliance with such procedures;

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(f) The board of directors of the investment company satisfies the fund governance standards defined in § 270.0–1(a)(7); and

(g) The investment company (1) maintains and preserves permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph (e) of this section, and (2) maintains and preserves for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, the terms of the purchase or sale transaction, and the information or materials upon which the determinations described in paragraph (e)(3) of this section were made.

[46 FR 17013, Mar. 17, 1981, as amended at 58 FR 49921, Sept. 24, 1993; 66 FR 3758, Jan. 16, 2001; 69 FR 46389, Aug. 2, 2004; 70 FR 37632, June 29, 2005]

§ 270.17a–8 Mergers of affiliated companies.

(a) *Exemption of affiliated mergers.* A Merger of a registered investment company (or a series thereof) and one or more other registered investment companies (or series thereof) or Eligible Unregistered Funds is exempt from sections 17(a)(1) and (2) of the Act (15 U.S.C. 80a–17(a)(1)–(2)) if:

(1) *Surviving company.* The Surviving Company is a registered investment company (or a series thereof).

(2) *Board determinations.* As to any registered investment company (or series thereof) participating in the Merger (''Merging Company''):

(i) The board of directors, including a majority of the directors who are not interested persons of the Merging Company or of any other company or series participating in the Merger, determines that:

(A) Participation in the Merger is in the best interests of the Merging Company; and

(B) The interests of the Merging Company's existing shareholders will not be diluted as a result of the Merger.

NOTE TO PARAGRAPH (a)(2)(i): For a discussion of factors that may be relevant to the determinations in paragraph (a)(2)(i) of this section, see Investment Company Act Release No. 25666, July 18, 2002.

(ii) The directors have requested and evaluated such information as may reasonably be necessary to their determinations in paragraph (a)(2)(i) of this section, and have considered and given appropriate weight to all pertinent factors.

(iii) The directors, in making the determination in paragraph (a)(2)(i)(B) of this section, have approved procedures for the valuation of assets to be conveyed by each Eligible Unregistered Fund participating in the Merger. The approved procedures provide for the preparation of a report by an Independent Evaluator, to be considered in assessing the value of any securities (or other assets) for which market quotations are not readily available, that sets forth the fair value of each such asset as of the date of the Merger.

(iv) The determinations required in paragraph (a)(2)(i) of this section and the bases thereof, including the factors considered by the directors pursuant to paragraph (a)(2)(ii) of this section, are recorded fully in the minute books of the Merging Company.

(3) *Shareholder approval.* Participation in the Merger is approved by the vote of a majority of the outstanding voting securities (as provided in section 2(a)(42) of the Act (15 U.S.C. 80a–2(a)(42))) of any Merging Company that is not a Surviving Company, unless—

(i) No policy of the Merging Company that under section 13 of the Act (15 U.S.C. 80a–13) could not be changed without a vote of a majority of its outstanding voting securities, is materially different from a policy of the Surviving Company;

(ii) No advisory contract between the Merging Company and any investment adviser thereof is materially different from an advisory contract between the Surviving Company and any investment adviser thereof, except for the identity of the investment companies as a party to the contract;

(iii) Directors of the Merging Company who are not interested persons of the Merging Company and who were

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elected by its shareholders, will comprise a majority of the directors of the Surviving Company who are not interested persons of the Surviving Company; and

(iv) Any distribution fees (as a percentage of the fund's average net assets) authorized to be paid by the Surviving Company pursuant to a plan adopted in accordance with §270.12b–1 are no greater than the distribution fees (as a percentage of the fund's average net assets) authorized to be paid by the Merging Company pursuant to such a plan.

(4) *Board composition.* The board of directors of the Merging Company satisfies the fund governance standards defined in §270.0–1(a)(7).

(5) *Merger records.* Any Surviving Company preserves written records that describe the Merger and its terms for six years after the Merger (and for the first two years in an easily accessible place).

(b) *Definitions.* For purposes of this section:

(1) *Merger* means the merger, consolidation, or purchase or sale of substantially all of the assets between a registered investment company (or a series thereof) and another company;

(2) *Eligible Unregistered Fund* means:

(i) A collective trust fund, as described in section 3(c)(11) of the Act (15 U.S.C. 80a–3(c)(11));

(ii) A common trust fund or similar fund, as described in section 3(c)(3) of the Act (15 U.S.C. 80a–3(c)(3)); or

(iii) A separate account, as described in section 2(a)(37) of the Act (15 U.S.C. 80a–2(a)(37)), that is neither registered under section 8 of the Act, nor required to be so registered;

(3) *Independent Evaluator* means a person who has expertise in the valuation of securities and other financial assets and who is not an interested person, as defined in section 2(a)(19) of the Act (15 U.S.C. 80a–2(a)(19)), of the Eligible Unregistered Fund or any affiliate thereof except the Merging Company; and

(4) *Surviving Company* means a company in which shareholders of a Merging Company will obtain an interest as a result of a Merger.

[67 FR 48518, July 24, 2002, as amended at 69 FR 46389, Aug. 2, 2004]

§270.17a–9 Purchase of certain securities from a money market fund by an affiliate, or an affiliate of an affiliate.

The purchase of a security from the portfolio of an open-end investment company holding itself out as a money market fund by any affiliated person or promoter of or principal underwriter for the money market fund or any affiliated person of such person shall be exempt from section 17(a) of the Act (15 U.S.C. 80a–17(a)); provided that:

(a) In the case of a portfolio security that has ceased to be an Eligible Security (as defined in §270.2a–7(a)(12)), or has defaulted (other than an immaterial default unrelated to the financial condition of the issuer):

(1) The purchase price is paid in cash; and

(2) The purchase price is equal to the greater of the amortized cost of the security or its market price (in each case, including accrued interest).

(b) In the case of any other portfolio security:

(1) The purchase price meets the requirements of paragraph (a)(1) and (2) of this section; and

(2) In the event that the purchaser thereafter sells the security for a higher price than the purchase price paid to the money market fund, the purchaser shall promptly pay to the fund the amount by which the subsequent sale price exceeds the purchase price paid to the fund.

[75 FR 10117, Mar. 4, 2010]

§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,

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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)).

[68 FR 3153, Jan. 22, 2003]

§ 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

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(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

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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.

[22 FR 426, Jan. 23, 1957, as amended at 26 FR 11240, Nov. 29, 1961; 35 FR 13123, Aug. 18, 1970; 39 FR 37973, Oct. 25, 1974; 44 FR 58503, Oct. 10, 1979; 44 FR 58908, Oct. 12, 1979; 45 FR 12409, Feb. 26, 1980; 66 FR 3758, Jan. 16, 2001; 68 FR 3153, Jan. 22, 2003; 69 FR 46389, Aug. 2, 2004; 78 FR 79299, Dec. 30, 2013]

§ 270.17d–2 Form for report by small business investment company and affiliated bank.

Form N–17D–1 is hereby prescribed as the form for reports required by paragraph (d)(3) of § 270.17d–1.

[26 FR 11240, Nov. 29, 1961]

§ 270.17d–3 Exemption relating to certain joint enterprises or arrangements concerning payment for distribution of shares of a registered open-end management investment company.

An affiliated person of, or principal underwriter for, a registered open-end management investment company and an affiliated person of such a person or principal underwriter shall be exempt from section 17(d) of the Act (15 U.S.C. 80a–17(d)) and rule 17d–1 thereunder (17 CFR 270.17d–1), to the extent necessary to permit any such person or principal underwriter to enter into a written agreement with such company whereby the company will make payments in connection with the distribution of its shares, *Provided*, That:

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(a) Such agreement is made in compliance with the provisions of § 270.12b–1; and

(b) No other registered management investment company which is either an affiliated person of such company or an affiliated person of such a person is a party to such agreement.

[45 FR 73905, Nov. 7, 1980]

§ 270.17e–1 Brokerage transactions on a securities exchange.

For purposes of section 17(e)(2)(A) of the Act [15 U.S.C. 80a–17(e)(2)(A)], a commission, fee or other remuneration shall be deemed as not exceeding the usual and customary broker's commission, if:

(a) The commission, fee, or other remuneration received or to be received is reasonable and fair compared to the commission, fee or other remuneration received by other brokers in connection with comparable transactions involving similar securities being purchased or sold on a securities exchange during a comparable period of time;

(b) The board of directors, including a majority of the directors of the investment company who are not interested persons thereof:

(1) Has adopted procedures which are reasonably designed to provide that such commission, fee, or other remuneration is consistent with the standard described in paragraph (a) of this section;

(2) Makes and approves such changes as the board deems necessary; and

(3) Determines no less frequently than quarterly that all transactions effected pursuant to this section during the preceding quarter (other than transactions in which the person acting as broker is a person permitted to enter into a transaction with the investment company by § 270.17a–10) were effected in compliance with such procedures;

(c) The board of directors of the investment company satisfies the fund governance standards defined in § 270.0–1(a)(7); and

(d) The investment company:

(1) Shall maintain and preserve permanently in an easily accessible place a copy of the procedures (and any modification thereto) described in paragraph (b)(1) of this section; and

(2) Shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a record of each such transaction (other than any transaction in which the person acting as broker is a person permitted to enter into a transaction with the investment company by § 270.17a–10) setting forth the amount and source of the commission, fee or other remuneration received or to be received, the identity of the person acting as broker, the terms of the transaction, and the information or materials upon which the findings described in paragraph (b)(3) of this section were made.

[44 FR 37203, June 26, 1979, as amended at 58 FR 49921, Sept. 24, 1993; 66 FR 3759, Jan. 16, 2001; 68 FR 3154, Jan. 22, 2003; 69 FR 46389, Aug. 2, 2004]

§ 270.17f–1 Custody of securities with members of national securities exchanges.

(a) No registered management investment company shall place or maintain any of its securities or similar investments in the custody of a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934 (whether or not such company trades in securities for its own account) except pursuant to a written contract which shall have been approved, or if executed before January 1, 1941, shall have been ratified not later than that date, by a majority of the board of directors of such investment company.

(b) The contract shall require, and the securities and investments shall be maintained in accordance with the following:

(1) The securities and similar investments held in such custody shall at all times be individually segregated from the securities and investments of any other person and marked in such manner as to clearly identify them as the property of such registered management company, both upon physical inspection thereof and upon examination of the books of the custodian. The physical segregation and marking of such securities and investments may be accomplished by putting them in separate containers bearing the name

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of such registered management investment company or by attaching tags or labels to such securities and investments.

(2) The custodian shall have no power or authority to assign, hypothecate, pledge or otherwise to dispose of any such securities and investments, except pursuant to the direction of such registered management company and only for the account of such registered investment company.

(3) Such securities and investments shall be subject to no lien or charge of any kind in favor of the custodian or any persons claiming through the custodian.

(4) Such securities and investments shall be verified by actual examination at the end of each annual and semi-annual fiscal period by an independent public accountant retained by the investment company, and shall be examined by such accountant at least one other time, chosen by the accountant, during each fiscal year. A certificate of such accountant stating that an examination of such securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form N–17f–1 (17 CFR 274.219) and transmitted to the Commission promptly after each examination.

(5) Such securities and investments shall, at all times, be subject to inspection by the Commission through its employees or agents.

(6) The provisions of paragraphs (b)(1), (2) and (3) of this section shall not apply to securities and similar investments bought for or sold to such investment company by the company which is custodian until the securities have been reduced to the physical possession of the custodian and have been paid for by such investment company: *Provided,* That the company which is custodian shall take possession of such securities at the earliest practicable time. Nothing in this subparagraph shall be construed to relieve any company which is a member of a national securities exchange of any obligation under existing law or under the rules of any national securities exchange.

(c) A copy of any contract executed or ratified pursuant to paragraph (a) of this section shall be transmitted to the Commission promptly after execution or ratification unless it has been previously transmitted.

(d) Any contract executed or ratified pursuant to paragraph (a) of this section shall be ratified by the board of directors of the registered management investment company at least annually thereafter.

[Rule N–17F–1, 5 FR 4317, Oct. 31, 1940, as amended at 54 FR 32049, Aug. 4, 1989]

§ 270.17f–2 Custody of investments by registered management investment company.

(a) The securities and similar investments of a registered management investment company may be maintained in the custody of such company only in accordance with the provisions of this section. Investments maintained by such a company with a bank or other company whose functions and physical facilities are supervised by Federal or State authority under any arrangement whereunder the directors, officers, employees or agents of such company are authorized or permitted to withdraw such investments upon their mere receipt, are deemed to be in the custody of such company and may be so maintained only upon compliance with the provisions of this section.

(b) Except as provided in paragraph (c) of this section, all such securities and similar investments shall be deposited in the safekeeping of, or in a vault or other depository maintained by, a bank or other company whose functions and physical facilities are supervised by Federal or State authority. Investments so deposited shall be physically segregated at all times from those of any other person and shall be withdrawn only in connection with transactions of the character described in paragraph (c) of this section.

(c) The first sentence of paragraph (b) of this section shall not apply to securities on loan which are collateralized to the extent of their full market value, or to securities hypothecated, pledged, or placed in escrow for the account of such investment company in connection with a loan or other transaction authorized by specific resolution of its board of directors, or to securities in transit in connection with the sale, exchange, redemption, maturity

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or conversion, the exercise of warrants or rights, assents to changes in terms of the securities, or other transactions necessary or appropriate in the ordinary course of business relating to the management of securities.

(d) Except as otherwise provided by law, no person shall be authorized or permitted to have access to the securities and similar investments deposited in accordance with paragraph (b) of this section except pursuant to a resolution of the board of directors of such investment company. Each such resolution shall designate not more than five persons who shall be either officers or responsible employees of such company and shall provide that access to such investments shall be had only by two or more such persons jointly, at least one of whom shall be an officer; except that access to such investments shall be permitted (1) to properly authorized officers and employees of the bank or other company in whose safekeeping the investments are placed and (2) for the purpose of paragraph (f) of this section to the independent public accountant jointly with any two persons so designated or with such officer or employee of such bank or such other company. Such investments shall at all times be subject to inspection by the Commission through its authorized employees or agents accompanied, unless otherwise directed by order of the Commission, by one or more of the persons designated pursuant to this paragraph.

(e) Each person when depositing such securities or similar investments in or withdrawing them from the depository or when ordering their withdrawal and delivery from the safekeeping of the bank or other company, shall sign a notation in respect of such deposit, withdrawal or order which shall show (1) the date and time of the deposit, withdrawal or order, (2) the title and amount of the securities or other investments deposited, withdrawn or ordered to be withdrawn, and an identification thereof by certificate numbers or otherwise, (3) the manner of acquisition of the securities or similar investments deposited or the purpose for which they have been withdrawn, or ordered to be withdrawn, and (4) if withdrawn and delivered to another person the name of such person. Such notation shall be transmitted promptly to an officer or director of the investment company designated by its board of directors who shall not be a person designated for the purpose of paragraph (d) of this section. Such notation shall be on serially numbered forms and shall be preserved for at least one year.

(f) Such securities and similar investments shall be verified by actual examination by an independent public accountant retained by the investment company at least three times during each fiscal year, at least two of which shall be chosen by such accountant without prior notice to such company. A certificate of such accountant stating that an examination of such securities and investments has been made, and describing the nature and extent of the examination, shall be attached to a completed Form N–17f–2 (17 CFR 274.220) and transmitted to the Commission promptly after each examination.

[Rule N–17F–2, 12 FR 6717, Oct. 11, 1947, as amended at 54 FR 32049, Aug. 4, 1989]

§ 270.17f–3 Free cash accounts for investment companies with bank custodians.

No registered investment company having a bank custodian shall hold free cash except, upon resolution of its board or directors, a petty cash account may be maintained in an amount not to exceed $500: *Provided,* That such account is operated under the imprest system and is maintained subject to adequate controls approved by the board of directors over disbursements and reimbursements including, but not limited to fidelity bond coverage of persons having access to such funds.

(Sec. 17(f), 54 Stat. 815, 15 U.S.C. 80a–17(f), sec. 9, Pub. L. 91–547, 84 Stat. 1420)

[37 FR 9989, May 18, 1972]

§ 270.17f–4 Custody of investment company assets with a securities depository.

(a) *Custody arrangement with a securities depository.* A fund's custodian may place and maintain financial assets, corresponding to the fund's security entitlements, with a securities depository or intermediary custodian, if the custodian:

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(1) Is at a minimum obligated to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain such financial assets;

(2) Is required to provide, promptly upon request by the fund, such reports as are available concerning the internal accounting controls and financial strength of the custodian; and

(3) Requires any intermediary custodian at a minimum to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets corresponding to the security entitlements of its entitlement holders.

(b) *Direct dealings with securities depository.* A fund may place and maintain financial assets, corresponding to the fund's security entitlements, directly with a securities depository, if:

(1) The fund's contract with the securities depository or the securities depository's written rules for its participants:

(i) Obligate the securities depository at a minimum to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets corresponding to the fund's security entitlements; and

(ii) Requires the securities depository to provide, promptly upon request by the fund, such reports as are available concerning the internal accounting controls and financial strength of the securities depository; and

(2) The fund has implemented internal control systems reasonably designed to prevent unauthorized officer's instructions (by providing at least for the form, content and means of giving, recording and reviewing all officer's instructions).

(c) *Definitions.* For purposes of this section the terms:

(1) *Clearing corporation, financial asset, securities intermediary, and security entitlement* have the same meanings as is attributed to those terms in § 8–102, § 8–103, and §§ 8–501 through 8–511 of the Uniform Commercial Code, 2002 Official Text and Comments, which are incorporated by reference in this section pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the Uniform Commercial Code from the National Conference of Commissioners on Uniform State Laws, 211 East Ontario Street, Suite 1300, Chicago, Il 60611. You may inspect a copy at the following addresses: Louis Loss Library, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(2) *Custodian* means a bank or other person authorized to hold assets for the fund under section 17(f) of the Act (15 U.S.C. 80a–17(f)) or Commission rules in this chapter, but does not include a fund itself, a foreign custodian whose use is governed by § 270.17f–5 or § 270.17f–7, or a vault, safe deposit box, or other repository for safekeeping maintained by a bank or other company whose functions and physical facilities are supervised by a federal or state authority if the fund maintains its own assets there in accordance with § 270.17f–2.

(3) *Fund* means an investment company registered under the Act and, where the context so requires with respect to a fund that is a unit investment trust or a face-amount certificate company, includes the fund's trustee.

(4) *Intermediary custodian* means any subcustodian that is a securities intermediary and is qualified to act as a custodian.

(5) *Officer's instruction* means a request or direction to a securities depository or its operator, or to a registered transfer agent, in the name of the fund by one or more persons authorized by the fund's board of directors (or by the fund's trustee, if the fund is a unit investment trust or a face-amount certificate company) to give the request or direction.

(6) *Securities depository* means a clearing corporation that is:

(i) Registered with the Commission as a clearing agency under section 17A

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of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1); or

(ii) A Federal Reserve Bank or other person authorized to operate the federal book entry system described in the regulations of the Department of Treasury codified at 31 CFR 357, Subpart B, or book-entry systems operated pursuant to comparable regulations of other federal agencies.

[68 FR 8442, Feb. 20, 2003, as amended at 69 FR 18803, Apr. 9, 2004; 73 FR 32228, June 5, 2008]

§ 270.17f–5 Custody of investment company assets outside the United States.

(a) *Definitions.* For purposes of this section:

(1) *Eligible Foreign Custodian* means an entity that is incorporated or organized under the laws of a country other than the United States and that is a Qualified Foreign Bank or a majority-owned direct or indirect subsidiary of a U.S. Bank or bank-holding company.

(2) *Foreign Assets* means any investments (including foreign currencies) for which the primary market is outside the United States, and any cash and cash equivalents that are reasonably necessary to effect the Fund's transactions in those investments.

(3) *Foreign Custody Manager* means a Fund's or a Registered Canadian Fund's board of directors or any person serving as the board's delegate under paragraphs (b) or (d) of this section.

(4) *Fund* means a management investment company registered under the Act (15 U.S.C. 80a) and incorporated or organized under the laws of the United States or of a state.

(5) *Qualified Foreign Bank* means a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by the country's government or an agency of the country's government.

(6) *Registered Canadian Fund* means a management investment company incorporated or organized under the laws of Canada and registered under the Act pursuant to the conditions of § 270.7d–1.

(7) *U.S. Bank* means an entity that is:

(i) A banking institution organized under the laws of the United States;

(ii) A member bank of the Federal Reserve System;

(iii) Any other banking institution or trust company organized under the laws of any state or of the United States, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by state or federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this section; or

(iv) A receiver, conservator, or other liquidating agent of any institution or firm included in paragraphs (a)(7)(i), (ii), or (iii) of this section.

(b) *Delegation.* A Fund's board of directors may delegate to the Fund's investment adviser or officers or to a U.S. Bank or to a Qualified Foreign Bank the responsibilities set forth in paragraphs (c)(1), (c)(2), or (c)(3) of this section, *provided that:*

(1) *Reasonable Reliance.* The board determines that it is reasonable to rely on the delegate to perform the delegated responsibilities;

(2) *Reporting.* The board requires the delegate to provide written reports notifying the board of the placement of Foreign Assets with a particular custodian and of any material change in the Fund's foreign custody arrangements, with the reports to be provided to the board at such times as the board deems reasonable and appropriate based on the circumstances of the Fund's arrangements; and

(3) *Exercise of Care.* The delegate agrees to exercise reasonable care, prudence and diligence such as a person having responsibility for the safekeeping of the Fund's Foreign Assets would exercise, or to adhere to a higher standard of care, in performing the delegated responsibilities.

(c) *Maintaining Assets with an Eligible Foreign Custodian.* A Fund or its Foreign Custody Manager may place and maintain the Fund's Foreign Assets in the care of an Eligible Foreign Custodian, *provided that:*

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(1) *General Standard.* The Foreign Custody Manager determines that the Foreign Assets will be subject to reasonable care, based on the standards applicable to custodians in the relevant market, if maintained with the Eligible Foreign Custodian, after considering all factors relevant to the safekeeping of the Foreign Assets, including, without limitation:

(i) The Eligible Foreign Custodian's practices, procedures, and internal controls, including, but not limited to, the physical protections available for certificated securities (if applicable), the method of keeping custodial records, and the security and data protection practices;

(ii) Whether the Eligible Foreign Custodian has the requisite financial strength to provide reasonable care for Foreign Assets;

(iii) The Eligible Foreign Custodian's general reputation and standing; and

(iv) Whether the Fund will have jurisdiction over and be able to enforce judgments against the Eligible Foreign Custodian, such as by virtue of the existence of offices in the United States or consent to service of process in the United States.

(2) *Contract.* The arrangement with the Eligible Foreign Custodian is governed by a written contract that the Foreign Custody Manager has determined will provide reasonable care for Foreign Assets based on the standards specified in paragraph (c)(1) of this section.

(i) The contract must provide:

(A) For indemnification or insurance arrangements (or any combination) that will adequately protect the Fund against the risk of loss of Foreign Assets held in accordance with the contract;

(B) That the Foreign Assets will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the Eligible Foreign Custodian or its creditors, except a claim of payment for their safe custody or administration or, in the case of cash deposits, liens or rights in favor of creditors of the custodian arising under bankruptcy, insolvency, or similar laws;

(C) That beneficial ownership of the Foreign Assets will be freely transferable without the payment of money or value other than for safe custody or administration;

(D) That adequate records will be maintained identifying the Foreign Assets as belonging to the Fund or as being held by a third party for the benefit of the Fund;

(E) That the Fund's independent public accountants will be given access to those records or confirmation of the contents of those records; and

(F) That the Fund will receive periodic reports with respect to the safekeeping of the Foreign Assets, including, but not limited to, notification of any transfer to or from the Fund's account or a third party account containing assets held for the benefit of the Fund.

(ii) The contract may contain, in lieu of any or all of the provisions specified in paragraph (c)(2)(i) of this section, other provisions that the Foreign Custody Manager determines will provide, in their entirety, the same or a greater level of care and protection for the Foreign Assets as the specified provisions, in their entirety.

(3)(i) *Monitoring the Foreign Custody Arrangements.* The Foreign Custody Manager has established a system to monitor the appropriateness of maintaining the Foreign Assets with a particular custodian under paragraph (c)(1) of this section, and to monitor performance of the contract under paragraph (c)(2) of this section.

(ii) If an arrangement with an Eligible Foreign Custodian no longer meets the requirements of this section, the Fund must withdraw the Foreign Assets from the Eligible Foreign Custodian as soon as reasonably practicable.

(d) *Registered Canadian Funds.* Any Registered Canadian Fund may place and maintain its Foreign Assets outside the United States in accordance with the requirements of this section, *provided*

(1) The Foreign Assets are placed in the care of an overseas branch of a U.S. Bank that has aggregate capital, surplus, and undivided profits of a specified amount, which must not be less than $500,000; and

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(2) The Foreign Custody Manager is the Fund's board of directors, its investment adviser or officers, or a U.S. Bank.

NOTE TO § 270.17*f*–5: When a Fund's (or its custodian's) custody arrangement with an Eligible Securities Depository (as defined in § 270.17f–7) involves one or more Eligible Foreign Custodians through which assets are maintained with the Eligible Securities Depository, § 270.17f–5 will govern the Fund's (or its custodian's) use of each Eligible Foreign Custodian, while § 270.17f–7 will govern an Eligible Foreign Custodian's use of the Eligible Securities Depository.

[65 FR 25637, May 3, 2000]

§ 270.17f–6 Custody of investment company assets with Futures Commission Merchants and Commodity Clearing Organizations.

(a) A Fund may place and maintain cash, securities, and similar investments with a Futures Commission Merchant in amounts necessary to effect the Fund's transactions in Exchange-Traded Futures Contracts and Commodity Options, *Provided that:*

(1) The manner in which the Futures Commission Merchant maintains the Fund's assets shall be governed by a written contract, which provides that:

(i) The Futures Commission Merchant shall comply with the segregation requirements of section 4d(2) of the Commodity Exchange Act (7 U.S.C. 6d(2)) and the rules thereunder (17 CFR Chapter I) or, if applicable, the secured amount requirements of rule 30.7 under the Commodity Exchange Act (17 CFR 30.7);

(ii) The Futures Commission Merchant, as appropriate to the Fund's transactions and in accordance with the Commodity Exchange Act (7 U.S.C. 1 through 25) and the rules and regulations thereunder (including 17 CFR part 30), may place and maintain the Fund's assets to effect the Fund's transactions with another Futures Commission Merchant, a Clearing Organization, a U.S. or Foreign Bank, or a member of a foreign board of trade, and shall obtain an acknowledgment, as required under rules 1.20(a) or 30.7(c) under the Commodity Exchange Act [17 CFR 1.20(a) or 30.7(c)], as applicable, that such assets are held on behalf of the Futures Commission Merchant's customers in accordance with the provisions of the Commodity Exchange Act; and

(iii) The Futures Commission Merchant shall promptly furnish copies of or extracts from the Futures Commission Merchant's records or such other information pertaining to the Fund's assets as the Commission through its employees or agents may request.

(2) Any gains on the Fund's transactions, other than de minimis amounts, may be maintained with the Futures Commission Merchant only until the next business day following receipt.

(3) If the custodial arrangement no longer meets the requirements of this section, the Fund shall withdraw its assets from the Futures Commission Merchant as soon as reasonably practicable.

(b) For purposes of this section:

(1) *Clearing Organization* means a clearing organization as defined in rule 1.3(d) under the Commodity Exchange Act (17 CFR 1.3(d)) and includes a clearing organization for a foreign board of trade.

(2) *Exchange-Traded Futures Contracts and Commodity Options* means commodity futures contracts, options on commodity futures contracts, and options on physical commodities traded on or subject to the rules of:

(i) Any contract market designated for trading such transactions under the Commodity Exchange Act and the rules thereunder; or

(ii) Any board of trade or exchange outside the United States, as contemplated in Part 30 under the Commodity Exchange Act.

(3) *Fund* means an investment company registered under the Act (15 U.S.C. 80a–1 *et seq.*).

(4) *Futures Commission Merchant* means any person that is registered as a futures commission merchant under the Commodity Exchange Act and that is not an affiliated person of the Fund or an affiliated person of such person.

(5) *U.S. or Foreign Bank* means a bank, as defined in section 2(a)(5) of the Act (15 U.S.C. 80a–2(a)(5)), or a banking institution or trust company that is incorporated or organized under the laws of a country other than the United States and that is regulated as such by

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the country's government or an agency thereof.

[61 FR 66212, Dec. 17, 1996]

§ 270.17f–7 Custody of investment company assets with a foreign securities depository.

(a) *Custody arrangement with an eligible securities depository.* A Fund, including a Registered Canadian Fund, may place and maintain its Foreign Assets with an Eligible Securities Depository, *provided that:*

(1) *Risk-limiting safeguards.* The custody arrangement provides reasonable safeguards against the custody risks associated with maintaining assets with the Eligible Securities Depository, including:

(i) *Risk analysis and monitoring.* (A) The fund or its investment adviser has received from the Primary Custodian (or its agent) an analysis of the custody risks associated with maintaining assets with the Eligible Securities Depository; and

(B) The contract between the Fund and the Primary Custodian requires the Primary Custodian (or its agent) to monitor the custody risks associated with maintaining assets with the Eligible Securities Depository on a continuing basis, and promptly notify the Fund or its investment adviser of any material change in these risks.

(ii) *Exercise of care.* The contract between the Fund and the Primary Custodian states that the Primary Custodian will agree to exercise reasonable care, prudence, and diligence in performing the requirements of paragraphs (a)(1)(i)(A) and (B) of this section, or adhere to a higher standard of care.

(2) *Withdrawal of assets from eligible securities depository.* If a custody arrangement with an Eligible Securities Depository no longer meets the requirements of this section, the Fund's Foreign Assets must be withdrawn from the depository as soon as reasonably practicable.

(b) *Definitions.* The terms *Foreign Assets, Fund, Qualified Foreign Bank, Registered Canadian Fund,* and *U.S. Bank* have the same meanings as in § 270.17f–5. In addition:

(1) *Eligible Securities Depository* means a system for the central handling of securities as defined in § 270.17f–4 that:

(i) Acts as or operates a system for the central handling of securities or equivalent book-entries in the country where it is incorporated, or a transnational system for the central handling of securities or equivalent book-entries;

(ii) Is regulated by a foreign financial regulatory authority as defined under section 2(a)(50) of the Act (15 U.S.C. 80a–2(a)(50));

(iii) Holds assets for the custodian that participates in the system on behalf of the Fund under safekeeping conditions no less favorable than the conditions that apply to other participants;

(iv) Maintains records that identify the assets of each participant and segregate the system's own assets from the assets of participants;

(v) Provides periodic reports to its participants with respect to its safekeeping of assets, including notices of transfers to or from any participant's account; and

(vi) Is subject to periodic examination by regulatory authorities or independent accountants.

(2) *Primary Custodian* means a U.S. Bank or Qualified Foreign Bank that contracts directly with a Fund to provide custodial services related to maintaining the Fund's assets outside the United States.

NOTE TO § 270.17*f*–7: When a Fund's (or its custodian's) custody arrangement with an Eligible Securities Depository involves one or more Eligible Foreign Custodians (as defined in § 270.17f–5) through which assets are maintained with the Eligible Securities Depository, § 270.17f–5 will govern the Fund's (or its custodian's) use of each Eligible Foreign Custodian, while § 270.17f–7 will govern an Eligible Foreign Custodian's use of the Eligible Securities Depository.

[65 FR 25638, May 3, 2000]

§ 270.17g–1 Bonding of officers and employees of registered management investment companies.

(a) Each registered management investment company shall provide and maintain a bond which shall be issued by a reputable fidelity insurance company, authorized to do business in the place where the bond is issued, against

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larceny and embezzlement, covering each officer and employee of the investment company, who may singly, or jointly with others, have access to securities or funds of the investment company, either directly or through authority to draw upon such funds or to direct generally the disposition of such securities, unless the officer or employee has such access solely through his position as an officer or employee of a bank (hereinafter referred to as ''covered persons'').

(b) The bond may be in the form of (1) an individual bond for each covered person or a schedule or blanket bond covering such persons, (2) a blanket bond which names the registered management investment company as the only insured (hereinafter referred to as ''single insured bond'') or (3) a bond which names the registered management investment company and one or more other parties as insureds (hereinafter referred to as a ''joint insured bond''), such other insured parties being limited to (i) persons engaged in the management or distribution of the shares of the registered investment company, (ii) other registered investment companies which are managed and/or whose shares are distributed by the same persons (or affiliates of such persons), (iii) persons who are engaged in the management and/or distribution of shares of companies included in paragraph (b)(3)(i) of this section, (iv) affiliated persons of any registered management investment company named in the bond or of any person included in paragraph (b)(3)(i) or (b)(3)(iii) of this section who are engaged in the administration of any registered management investment company named as insured in the bond, and (v) any trust, pension, profit-sharing or other benefit plan for officers, directors or employees of persons named in the bond.

(c) A bond of the type described in paragraph (b)(1) or (b)(2) of this section shall provide that it shall not be cancelled, terminated or modified except after written notice shall have been given by the acting party to the affected party and to the Commission not less than sixty days prior to the effective date of cancellation, termination or modification. A joint insured bond described in paragraph (b)(3) of this section shall provide, that (1) it shall not be cancelled terminated or modified except after written notice shall have been given by the acting party to the affected party, and by the fidelity insurance company to all registered investment companies named as insureds and to the Commission, not less than sixty days prior to the effective date of cancellation, termination, or modification and (2) the fidelity insurance company shall furnish each registered management investment company named as an insured with (i) a copy of the bond and any amendment thereto promptly after the execution thereof, (ii) a copy of each formal filing of a claim under the bond by any other named insured promptly after the receipt thereof, and (iii) notification of the terms of the settlement of each such claim prior to the execution of the settlement.

(d) The bond shall be in such reasonable form and amount as a majority of the board of directors of the registered management investment company who are not ''interested persons'' of such investment company as defined by section 2(a)(19) of the Act shall approve as often as their fiduciary duties require, but not less than once every twelve months, with due consideration to all relevant factors including, but not limited to, the value of the aggregate assets of the registered management investment company to which any covered person may have access, the type and terms of the arrangements made for the custody and safekeeping of such assets, and the nature of the securities in the company's portfolio: *Provided, however,* That (1) the amount of a single insured bond shall be at least equal to an amount computed in accordance with the following schedule:

Amount of registered management investment company gross assets—at the end of the most recent fiscal quarter prior to date (in dollars)	Minimum amount of bond (in dollars)
Up to 500,000	50,000.
500,000 to 1,000,000	75,000.
1,000,000 to 2,500,000	100,000.
2,500,000 to 5,000,000	125,000.
5,000,000 to 7,500,000	150,000.
7,500,000 to 10,000,000	175,000.
10,000,000 to 15,000,000	200,000.
15,000,000 to 20,000,000	225,000.
20,000,000 to 25,000,000	250,000.
25,000,000 to 35,000,000	300,000.

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Amount of registered management investment company gross assets—at the end of the most recent fiscal quarter prior to date (in dollars)	Minimum amount of bond (in dollars)
35,000,000 to 50,000,000	350,000.
50,000,000 to 75,000,000	400,000.
75,000,000, to 100,000,000	450,000.
100,000,000 to 150,000,000	525,000.
150,000,000 to 250,000,000	600,000.
250,000,000 to 500,000,000	750,000.
500,000,000 to 750,000,000	900,000.
750,000,000 to 1,000,000,000	1,000,000.
1,000,000,000 to 1,500,000,000	1,250,000.
1,500,000,000 to 2,000,000,000	1,500,000.
Over 2,000,000,000	1,500,000 plus 200,000 for each 500,000,000 of gross assets up to a maximum bond of 2,500,000.

(2) A joint insured bond shall be in an amount at least equal to the sum of (i) the total amount of coverage which each registered management investment company named as an insured would have been required to provide and maintain individually pursuant to the schedule hereinabove had each such registered management investment company not been named under a joint insured bond, plus (ii) the amount of each bond which each named insured other than a registered management investment company would have been required to provide and maintain pursuant to federal statutes or regulations had it not been named as an insured under a joint insured bond.

(e) No premium may be paid for any joint insured bond or any amendment thereto unless a majority of the board of directors of each registered management investment company named as an insured therein who are not ''interested persons'' of such company shall approve the portion of the premium to be paid by such company, taking all relevant factors into consideration including, but not limited to, the number of the other parties named as insured, the nature of the business activities of such other parties, the amount of the joint insured bond, and the amount of the premium for such bond, the ratable allocation of the premium among all parties named as insureds, and the extent to which the share of the premium allocated to the investment company is less than the premium such company would have had to pay if it had provided and maintained a single insured bond.

(f) Each registered management investment company named as an insured in a joint insured bond shall enter into an agreement with all of the other named insureds providing that in the event recovery is received under the bond as a result of a loss sustained by the registered management investment company and one or more other named insureds, the registered management investment company shall receive an equitable and proportionate share of the recovery, but at least equal to the amount which it would have received had it provided and maintained a single insured bond with the minimum coverage required by paragraph (d)(1) of this section.

(g) Each registered management investment company shall:

(1) File with the Commission (i) within 10 days after receipt of an executed bond of the type described in paragraph (b)(1) or (2) of this section or any amendment thereof, (*a*) a copy of the bond, (*b*) a copy of the resolution of a majority of the board of directors who are not ''interested persons'' of the registered management investment company approving the form and amount of the bond, and (*c*) a statement as to the period for which premiums have been paid; (ii) within 10 days after receipt of an executed joint insured bond, or any amendment thereof, (*a*) a copy of the bond, (*b*) a copy of the resolution of a majority of the board of directors who are not ''interested persons'' of the registered management investment company approving the amount, type, form and coverage of the bond and the portion of the premium to be paid by such company, (*c*) a statement showing the amount of the single insured bond which the investment company would have provided and maintained had it not been named as an insured under a joint insured bond, (*d*) a statement as to the period for which premiums have been paid, and (*e*) a copy of each agreement between the investment company and all of the other named insureds entered into pursuant to paragraph (f) of this section; and (iii) a copy of any amendment to the agreement entered into pursuant to paragraph (f) of this

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section within 10 days after the execution of such amendment,

(2) File with the Commission, in writing, within five days after the making of any claim under the bond by the investment company, a statement of the nature and amount of the claim,

(3) File with the Commission, within five days of the receipt thereof, a copy of the terms of the settlement of any claim made under the bond by the investment company, and

(4) Notify by registered mail each member of the board of directors of the investment company at his last known residence address of (i) any cancellation, termination or modification of the bond, not less than forty-five days prior to the effective date of the cancellation or termination or modification, (ii) the filing and of the settlement of any claim under the bond by the investment company, at the time the filings required by paragraph (g) (2) and (3) of this section are made with the Commission, and (iii) the filing and of the proposed terms of settlement of any claim under the bond by any other named insured, within five days of the receipt of a notice from the fidelity insurance company.

(h) Each registered management investment company shall designate an officer thereof who shall make the filings and give the notices required by paragraph (g) of this section.

(i) Where the registered management investment company is an unincorporated company managed by a depositor, trustee or investment adviser, the terms ''officer'' and ''employee'' shall include, for the purposes of this rule, the officers and employees of the depositor, trustee, or investment adviser.

(j) Any joint insured bond provided and maintained by a registered management investment company and one or more other parties shall be a transaction exempt from the provisions of section 17(d) of the Act (15 U.S.C. 80a–17(d)) and the rules thereunder, if:

(1) The terms and provisions of the bond comply with the provisions of this section;

(2) The terms and provisions of any agreement required by paragraph (f) of this section comply with the provisions of that paragraph; and

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

(k) At the next anniversary date of an existing fidelity bond, but not later than one year from the effective date of this rule, arrangements between registered management investment companies and fidelity insurance companies and arrangements between registered management investment companies and other parties named as insureds under joint insured bonds which would not permit compliance with the provisions of this rule shall be modified by the parties so as to effect such compliance.

[39 FR 10579, Mar. 21, 1974, as amended at 66 FR 3759, Jan. 16, 2001; 69 FR 46390, Aug. 2, 2004]

§ 270.17j–1 Personal investment activities of investment company personnel.

(a) *Definitions.* For purposes of this section:

(1) *Access person* means:

(i) Any Advisory Person of a Fund or of a Fund's investment adviser. If an investment adviser's primary business is advising Funds or other advisory clients, all of the investment adviser's directors, officers, and general partners are presumed to be Access Persons of any Fund advised by the investment adviser. All of a Fund's directors, officers, and general partners are presumed to be Access Persons of the Fund.

(ii) Any director, officer or general partner of a principal underwriter who, in the ordinary course of business, makes, participates in or obtains information regarding, the purchase or sale of Covered Securities by the Fund for which the principal underwriter acts, or whose functions or duties in the ordinary course of business relate to the making of any recommendation to the Fund regarding the purchase or sale of Covered Securities.

(2) *Advisory person* of a Fund or of a Fund's investment adviser means:

(i) Any director, officer, general partner or employee of the Fund or investment adviser (or of any company in a control relationship to the Fund or investment adviser) who, in connection

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with his or her regular functions or duties, makes, participates in, or obtains information regarding, the purchase or sale of Covered Securities by a Fund, or whose functions relate to the making of any recommendations with respect to such purchases or sales; and

(ii) Any natural person in a control relationship to the Fund or investment adviser who obtains information concerning recommendations made to the Fund with regard to the purchase or sale of Covered Securities by the Fund.

(3) *Control* has the same meaning as in section 2(a)(9) of the Act [15 U.S.C. 80a–2(a)(9)].

(4) *Covered security* means a security as defined in section 2(a)(36) of the Act [15 U.S.C. 80a–2(a)(36)], except that it does not include:

(i) Direct obligations of the Government of the United States;

(ii) Bankers' acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements; and

(iii) Shares issued by open-end Funds.

(5) *Fund* means an investment company registered under the Investment Company Act.

(6) An *Initial public offering* means an offering of securities registered under the Securities Act of 1933 [15 U.S.C. 77a], the issuer of which, immediately before the registration, was not subject to the reporting requirements of sections 13 or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m or 78o(d)].

(7) *Investment personnel* of a Fund or of a Fund's investment adviser means:

(i) Any employee of the Fund or investment adviser (or of any company in a control relationship to the Fund or investment adviser) who, in connection with his or her regular functions or duties, makes or participates in making recommendations regarding the purchase or sale of securities by the Fund.

(ii) Any natural person who controls the Fund or investment adviser and who obtains information concerning recommendations made to the Fund regarding the purchase or sale of securities by the Fund.

(8) A *Limited offering* means an offering that is exempt from registration under the Securities Act of 1933 pursuant to section 4(a)(2) or section 4(a)(5) [15 U.S.C. 77d(a)(2) or 77d(a)(5)] or pursuant to rule 504, or rule 506 [17 CFR 230.504 or 230.506] under the Securities Act of 1933.

(9) *Purchase or sale of a covered security* includes, among other things, the writing of an option to purchase or sell a Covered Security.

(10) *Security held or to be acquired* by a Fund means:

(i) Any Covered Security which, within the most recent 15 days:

(A) Is or has been held by the Fund; or

(B) Is being or has been considered by the Fund or its investment adviser for purchase by the Fund; and

(ii) Any option to purchase or sell, and any security convertible into or exchangeable for, a Covered Security described in paragraph (a)(10)(i) of this section.

(11) *Automatic investment plan* means a program in which regular periodic purchases (or withdrawals) are made automatically in (or from) investment accounts in accordance with a predetermined schedule and allocation. An Automatic Investment Plan includes a dividend reinvestment plan.

(b) *Unlawful actions.* It is unlawful for any affiliated person of or principal underwriter for a Fund, or any affiliated person of an investment adviser of or principal underwriter for a Fund, in connection with the purchase or sale, directly or indirectly, by the person of a Security Held or to be Acquired by the Fund:

(1) To employ any device, scheme or artifice to defraud the Fund;

(2) To make any untrue statement of a material fact to the Fund or omit to state a material fact necessary in order to make the statements made to the Fund, in light of the circumstances under which they are made, not misleading;

(3) To engage in any act, practice or course of business that operates or would operate as a fraud or deceit on the Fund; or

(4) To engage in any manipulative practice with respect to the Fund.

(c) *Code of Ethics*—(1) *Adoption and approval of Code of Ethics.* (i) Every Fund (other than a money market fund

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or a Fund that does not invest in Covered Securities) and each investment adviser of and principal underwriter for the Fund, must adopt a written code of ethics containing provisions reasonably necessary to prevent its Access Persons from engaging in any conduct prohibited by paragraph (b) of this section.

(ii) The board of directors of a Fund, including a majority of directors who are not interested persons, must approve the code of ethics of the Fund, the code of ethics of each investment adviser and principal underwriter of the Fund, and any material changes to these codes. The board must base its approval of a code and any material changes to the code on a determination that the code contains provisions reasonably necessary to prevent Access Persons from engaging in any conduct prohibited by paragraph (b) of this section. Before approving a code of a Fund, investment adviser or principal underwriter or any amendment to the code, the board of directors must receive a certification from the Fund, investment adviser or principal underwriter that it has adopted procedures reasonably necessary to prevent Access Persons from violating the Fund's, investment adviser's, or principal underwriter's code of ethics. The Fund's board must approve the code of an investment adviser or principal underwriter before initially retaining the services of the investment adviser or principal underwriter. The Fund's board must approve a material change to a code no later than six months after adoption of the material change.

(iii) If a Fund is a unit investment trust, the Fund's principal underwriter or depositor must approve the Fund's code of ethics, as required by paragraph (c)(1)(ii) of this section. If the Fund has more than one principal underwriter or depositor, the principal underwriters and depositors may designate, in writing, which principal underwriter or depositor must conduct the approval required by paragraph (c)(1)(ii) of this section, if they obtain written consent from the designated principal underwriter or depositor.

(2) *Administration of Code of Ethics.* (i) The Fund, investment adviser and principal underwriter must use reasonable diligence and institute procedures reasonably necessary to prevent violations of its code of ethics.

(ii) No less frequently than annually, every Fund (other than a unit investment trust) and its investment advisers and principal underwriters must furnish to the Fund's board of directors, and the board of directors must consider, a written report that:

(A) Describes any issues arising under the code of ethics or procedures since the last report to the board of directors, including, but not limited to, information about material violations of the code or procedures and sanctions imposed in response to the material violations; and

(B) Certifies that the Fund, investment adviser or principal underwriter, as applicable, has adopted procedures reasonably necessary to prevent Access Persons from violating the code.

(3) *Exception for principal underwriters.* The requirements of paragraphs (c)(1) and (c)(2) of this section do not apply to any principal underwriter unless:

(i) The principal underwriter is an affiliated person of the Fund or of the Fund's investment adviser; or

(ii) An officer, director or general partner of the principal underwriter serves as an officer, director or general partner of the Fund or of the Fund's investment adviser.

(d) *Reporting requirements of access persons*—(1) *Reports required.* Unless excepted by paragraph (d)(2) of this section, every Access Person of a Fund (other than a money market fund or a Fund that does not invest in Covered Securities) and every Access Person of an investment adviser of or principal underwriter for the Fund, must report to that Fund, investment adviser or principal underwriter:

(i) *Initial holdings reports.* No later than 10 days after the person becomes an Access Person (which information must be current as of a date no more than 45 days prior to the date the person becomes an Access Person):

(A) The title, number of shares and principal amount of each Covered Security in which the Access Person had any direct or indirect beneficial ownership when the person became an Access Person;

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(B) The name of any broker, dealer or bank with whom the Access Person maintained an account in which any securities were held for the direct or indirect benefit of the Access Person as of the date the person became an Access Person; and

(C) The date that the report is submitted by the Access Person.

(ii) *Quarterly transaction reports.* No later than 30 days after the end of a calendar quarter, the following information:

(A) With respect to any transaction during the quarter in a Covered Security in which the Access Person had any direct or indirect beneficial ownership:

(*1*) The date of the transaction, the title, the interest rate and maturity date (if applicable), the number of shares and the principal amount of each Covered Security involved;

(*2*) The nature of the transaction (i.e., purchase, sale or any other type of acquisition or disposition);

(*3*) The price of the Covered Security at which the transaction was effected;

(*4*) The name of the broker, dealer or bank with or through which the transaction was effected; and

(*5*) The date that the report is submitted by the Access Person.

(B) With respect to any account established by the Access Person in which any securities were held during the quarter for the direct or indirect benefit of the Access Person:

(*1*) The name of the broker, dealer or bank with whom the Access Person established the account;

(*2*) The date the account was established; and

(*3*) The date that the report is submitted by the Access Person.

(iii) *Annual Holdings Reports.* Annually, the following information (which information must be current as of a date no more than 45 days before the report is submitted):

(A) The title, number of shares and principal amount of each Covered Security in which the Access Person had any direct or indirect beneficial ownership;

(B) The name of any broker, dealer or bank with whom the Access Person maintains an account in which any securities are held for the direct or indirect benefit of the Access Person; and

(C) The date that the report is submitted by the Access Person.

(2) *Exceptions from reporting requirements.* (i) A person need not make a report under paragraph (d)(1) of this section with respect to transactions effected for, and Covered Securities held in, any account over which the person has no direct or indirect influence or control.

(ii) A director of a Fund who is not an ''interested person'' of the Fund within the meaning of section 2(a)(19) of the Act [15 U.S.C. 80a–2(a)(19)], and who would be required to make a report solely by reason of being a Fund director, need not make:

(A) An initial holdings report under paragraph (d)(1)(i) of this section and an annual holdings report under paragraph (d)(1)(iii) of this section; and

(B) A quarterly transaction report under paragraph (d)(1)(ii) of this section, unless the director knew or, in the ordinary course of fulfilling his or her official duties as a Fund director, should have known that during the 15-day period immediately before or after the director's transaction in a Covered Security, the Fund purchased or sold the Covered Security, or the Fund or its investment adviser considered purchasing or selling the Covered Security.

(iii) An Access Person to a Fund's principal underwriter need not make a report to the principal underwriter under paragraph (d)(1) of this section if:

(A) The principal underwriter is not an affiliated person of the Fund (unless the Fund is a unit investment trust) or any investment adviser of the Fund; and

(B) The principal underwriter has no officer, director or general partner who serves as an officer, director or general partner of the Fund or of any investment adviser of the Fund.

(iv) An Access Person to an investment adviser need not make a separate report to the investment adviser under paragraph (d)(1) of this section to the extent the information in the report would duplicate information required to be recorded under § 275.204–2(a)(13) of this chapter.

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(v) An Access Person need not make a quarterly transaction report under paragraph (d)(1)(ii) of this section if the report would duplicate information contained in broker trade confirmations or account statements received by the Fund, investment adviser or principal underwriter with respect to the Access Person in the time period required by paragraph (d)(1)(ii), if all of the information required by that paragraph is contained in the broker trade confirmations or account statements, or in the records of the Fund, investment adviser or principal underwriter.

(vi) An Access Person need not make a quarterly transaction report under paragraph (d)(1)(ii) of this section with respect to transactions effected pursuant to an Automatic Investment Plan.

(3) *Review of reports.* Each Fund, investment adviser and principal underwriter to which reports are required to be made by paragraph (d)(1) of this section must institute procedures by which appropriate management or compliance personnel review these reports.

(4) *Notification of reporting obligation.* Each Fund, investment adviser and principal underwriter to which reports are required to be made by paragraph (d)(1) of this section must identify all Access Persons who are required to make these reports and must inform those Access Persons of their reporting obligation.

(5) *Beneficial ownership.* For purposes of this section, beneficial ownership is interpreted in the same manner as it would be under §240.16a–1(a)(2) of this chapter in determining whether a person is the beneficial owner of a security for purposes of section 16 of the Securities Exchange Act of 1934 [15 U.S.C. 78p] and the rules and regulations thereunder. Any report required by paragraph (d) of this section may contain a statement that the report will not be construed as an admission that the person making the report has any direct or indirect beneficial ownership in the Covered Security to which the report relates.

(e) *Pre-approval of investments in IPOs and limited offerings.* Investment Personnel of a Fund or its investment adviser must obtain approval from the Fund or the Fund's investment adviser before directly or indirectly acquiring beneficial ownership in any securities in an Initial Public Offering or in a Limited Offering.

(f) *Recordkeeping Requirements.* (1) Each Fund, investment adviser and principal underwriter that is required to adopt a code of ethics or to which reports are required to be made by Access Persons must, at its principal place of business, maintain records in the manner and to the extent set out in this paragraph (f), and must make these records available to the Commission or any representative of the Commission at any time and from time to time for reasonable periodic, special or other examination:

(A) A copy of each code of ethics for the organization that is in effect, or at any time within the past five years was in effect, must be maintained in an easily accessible place;

(B) A record of any violation of the code of ethics, and of any action taken as a result of the violation, must be maintained in an easily accessible place for at least five years after the end of the fiscal year in which the violation occurs;

(C) A copy of each report made by an Access Person as required by this section, including any information provided in lieu of the reports under paragraph (d)(2)(v) of this section, must be maintained for at least five years after the end of the fiscal year in which the report is made or the information is provided, the first two years in an easily accessible place;

(D) A record of all persons, currently or within the past five years, who are or were required to make reports under paragraph (d) of this section, or who are or were responsible for reviewing these reports, must be maintained in an easily accessible place; and

(E) A copy of each report required by paragraph (c)(2)(ii) of this section must be maintained for at least five years after the end of the fiscal year in which it is made, the first two years in an easily accessible place.

(2) A Fund or investment adviser must maintain a record of any decision, and the reasons supporting the decision, to approve the acquisition by investment personnel of securities under paragraph (e), for at least five

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years after the end of the fiscal year in which the approval is granted.

[64 FR 46834, Aug. 27, 1999; 65 FR 12943, Mar. 10, 2000, as amended at 69 FR 41707, July 9, 2004; 76 FR 81806, Dec. 29, 2011; 81 FR 83554, Nov. 21, 2016]

§ 270.18c–1 Exemption of privately held indebtedness.

The issuance or sale of more than one class of senior securities representing indebtedness by a small business investment company, licensed under the Small Business Investment Act of 1958, shall not be prohibited by section 18(c) so long as such small business investment company does not have outstanding any publicly held indebtedness, and all securities of any such class are (a) privately held by the Small Business Administration, or banks, insurance companies or other institutional investors, (b) not intended to be publicly distributed, and (c) not convertible into, exchangeable for, or accompanied by any option to acquire, any equity security.

[26 FR 11240, Nov. 29, 1961]

§ 270.18c–2 Exemptions of certain debentures issued by small business investment companies.

(a) The issuance or sale of any class of senior security representing indebtedness by a small business investment company licensed under the Small Business Investment Act of 1958 shall not be prohibited by section 18(c) of the Act provided such senior security representing indebtedness is (1) not convertible into, exchangeable for, or accompanied by an option to acquire any equity security; (2) fully guaranteed as to timely payment of all principal and interest by the Small Business Administration and backed by the full faith and credit of the United States; and (3) subordinated to any other debt securities not issued pursuant to this section or, if such security is not so subordinated, that such security, according to its own terms, will not be preferred over any other unsecured debt securities in the payment of principal and interest: *And further provided*, That all other debt securities then outstanding issued by such small business investment company were issued as permitted by § 270.18c–1 or this section.

(b) Any security issued and sold as permitted by paragraph (a) of this section shall be deemed for purposes of § 270.18c–1 to be privately held by the Small Business Administration and for purposes of § 270.18c–1 shall not be deemed to be publicly held outstanding indebtedness.

(c) The issuance or sale of any security as permitted by paragraph (a) of this section shall not be deemed to be a sale to any person other than the Small Business Administration by any small business investment company licensed under the Small Business Investment Company Act of 1958 which is exempt from any provision of the Investment Company Act, if such exemption is conditioned on such company not offering or selling its securities to any person other than the Small Business Administration.

(Secs. 6(c), 38(a), 54 Stat. 800, 841, 15 U.S.C. 80a–6(c), 80a–37(a))

[37 FR 7590, Apr. 18, 1972]

§ 270.18f–1 Exemption from certain requirements of section 18(f)(1) (of the Act) for registered open-end investment companies which have the right to redeem in kind.

(a) A registered open-end investment company which has the right to redeem securities of which it is the issuer in assets other than cash may file with the Commission at any time a notification of election on Form N–18F–1 (§ 274.51 of this chapter) committing itself to pay in cash all requests for redemption by any shareholder of record, limited in amount with respect to each shareholder during any 90-day period to the lesser of

(1) $250,000 or

(2) 1 percent of the net asset value of such company at the beginning of such period.

(b) An election pursuant to paragraph (a) of this section:

(1) Shall be described in either the prospectus or the Statement of Additional Information, at the discretion of the investment company, and

(2) Shall be irrevocable while this § 270.18f–1 is in effect unless the Commission by order upon application permits the withdrawal of such notification of election as being appropriate in

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the public interest and consistent with the protection of investors.

(c) Upon making the election described in paragraph (a) of this section, an investment company shall be exempt from the requirements of section 18(f)(1) (of the Act) to the extent necessary for such company to effectuate redemptions in the manner set forth in such paragraph.

(Secs. 7, 10, and 19 of the Securities Act of 1933 (15 U.S.C. 77g, 77j, and 77s) and secs. 8, 30 and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a–8, 80a–29 and 80a–37))

[36 FR 11919, June 23, 1971, as amended at 48 FR 37940, Aug. 22, 1983]

§ 270.18f–2 Fair and equitable treatment for holders of each class or series of stock of series investment companies.

(a) For purposes of this § 270.18f–2 a series company is a registered open-end investment company which, in accordance with the provisions of section 18(f)(2) of the Act, issues two or more classes or series of preferred or special stock each of which is preferred over all other classes or series in respect of assets specifically allocated to that class or series. Any matter required to be submitted by the provisions of the Act or of applicable State law, or otherwise, to the holders of the outstanding voting securities of a series company shall not be deemed to have been effectively acted upon less approved by the holders of a majority of the outstanding voting securities of each class or series of stock affected by such matter.

(b) For the purposes of paragraph (a) of this § 270.18f–2, a class or series of stock will be deemed to be affected by such a matter, unless (1) the interests of each class or series in the matter are substantially identical, or (2) the matter does not affect any interest of such class or series.

(c)(1) With respect to the submission of an investment advisory contract to the holders of the outstanding voting securities of a series company for the approval required by section 15(a) of the Act, such matter shall be deemed to be effectively acted upon with respect to any class or series of securities of such company if a majority of the outstanding voting securities of such class or series vote for the approval of such matter, notwithstanding (i) that such matter has not been approved by the holders of a majority of the outstanding voting securities of any other class or series affected by such matter, and (ii) that such matter has not been approved by the vote of a majority of the outstanding voting securities of such company, provided that if such a majority is required by State law or otherwise, such requirement shall apply.

(2) If any class or series of securities of a series company fails to approve an investment advisory contract in the manner required by paragraph (c)(1) of this section, the investment adviser of such company may continue to serve or act in such capacity for the period of time pending such required approval of such contract, of a new contract with the same or different adviser, or other definitive action: *Provided*, That the compensation received by such investment adviser during such period is equal to no more than its actual costs incurred in furnishing investment advisory services to such class or series or the amount it would have received under the advisory contract, whichever is less.

(d) With respect to the submission of a change in investment policy to the holders of the outstanding voting securities of a series company for the approval required by section 13 of the Act, such matter shall be deemed to have been effectively acted upon with respect to any class or series of such company if a majority of the outstanding voting securities of such class or series vote for the approval of such matter, notwithstanding (1) that such matter has not been approved by the holders of a majority of the outstanding voting securities of any other class or series affected by such matter, and (2) that such matter has not been approved by the vote of a majority of the outstanding voting securities of such company: *Provided*, That if such a majority is required by State law or otherwise, such requirement shall apply.

(e) The submission to shareholders of the selection of the independent public accountant of a series company required by section 32(a) (of the Act)

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shall be exempt from the separate voting requirements of paragraph (a) of this § 270.18f–2.

(f) The submission to shareholders of a contract with a principal underwriter of a series company required by section 15(b) of the Act shall be exempt from the separate voting requirements of paragraph (a) of this § 270.18f–2.

(g) The submission to shareholders of nominees for election as directors required by section 16(a) of the Act shall be exempt from the separate voting requirements of paragraph (a) of this § 270.18f–2.

(h) For the purposes of this § 270.18f–2 a ''majority of the outstanding voting securities'' of a class or series, (1) when used with respect to a matter required by any provision of the Act to be submitted to the outstanding voting securities of a series company, shall have the same meaning as a ''majority of the outstanding voting securities of a company'' as defined in section 2(a)(42) of the Act; and (2) when used with respect to any other matter required to be submitted to the outstanding voting securities of a series company, shall mean the lesser of (i) the minimum vote of the outstanding voting securities of a company required by applicable State law or other applicable requirement, or (ii) the minimum vote specified by paragraph (1) of this paragraph (h), unless State law requires approval of such matters by a specified percentage of the outstanding voting securities of a particular class or series, in which case, State law shall apply.

(Secs. 6(c), 13, 15(a), 15(b), 16(a), 18(f)(2), 32(a), 54 Stat. 800, 811, 812, 813, 817, 838, 841, 15 U.S.C. 80a–6(c), 80a–13, 80a–15(b), 80a–16(a), 80a–18(f)(2), 80a–31(a), 80a–37(a), Pub. L. 91–547, 84 Stat. 1421)

[37 FR 17386, Aug. 26, 1972]

§ 270.18f–3 Multiple class companies.

Notwithstanding sections 18(f)(1) and 18(i) of the Act (15 U.S.C. 80a–18(f)(1) and (i), respectively), a registered open-end management investment company or series or class thereof established in accordance with section 18(f)(2) of the Act (15 U.S.C. 80a–18(f)(2)) whose shares are registered on Form N–1A [§§ 239.15A and 274.11A of this chapter] (''company'') may issue more than one class of voting stock, *provided* that:

(a) Each class:

(1)(i) Shall have a different arrangement for shareholder services or the distribution of securities or both, and shall pay all of the expenses of that arrangement;

(ii) May pay a different share of other expenses, not including advisory or custodial fees or other expenses related to the management of the company's assets, if these expenses are actually incurred in a different amount by that class, or if the class receives services of a different kind or to a different degree than other classes; and

(iii) May pay a different advisory fee to the extent that any difference in amount paid is the result of the application of the same performance fee provisions in the advisory contract of the company to the different investment performance of each class;

(2) Shall have exclusive voting rights on any matter submitted to shareholders that relates solely to its arrangement;

(3) Shall have separate voting rights on any matter submitted to shareholders in which the interests of one class differ from the interests of any other class; and

(4) Shall have in all other respects the same rights and obligations as each other class.

(b) Expenses may be waived or reimbursed by the company's adviser, underwriter, or any other provider of services to the company.

(c)(1) Income, realized gains and losses, unrealized appreciation and depreciation, and Fundwide Expenses shall be allocated based on one of the following methods (which method shall be applied on a consistent basis):

(i) To each class based on the net assets of that class in relation to the net assets of the company (''relative net assets'');

(ii) To each class based on the Simultaneous Equations Method;

(iii) To each class based on the Settled Shares Method, *provided that* the company is a Daily Dividend Fund (such a company may allocate income and Fundwide Expenses based on the Settled Shares Method and realized

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gains and losses and unrealized appreciation and depreciation based on relative net assets);

(iv) To each share without regard to class, *provided that* the company is a Daily Dividend Fund that maintains the same net asset value per share in each class; that the company has received undertakings from its adviser, underwriter, or any other provider of services to the company, agreeing to waive or reimburse the company for payments to such service provider by one or more classes, as allocated under paragraph (a)(1) of this section, to the extent necessary to assure that all classes of the company maintain the same net asset value per share; and that payments waived or reimbursed under such an undertaking may not be carried forward or recouped at a future date; or

(v) To each class based on any other appropriate method, *provided that* a majority of the directors of the company, and a majority of the directors who are not interested persons of the company, determine that the method is fair to the shareholders of each class and that the annualized rate of return of each class will generally differ from that of the other classes only by the expense differentials among the classes.

(2) For purposes of this section:

(i) *Daily Dividend Fund* means any company that has a policy of declaring distributions of net income daily, including any money market fund that operates in compliance with § 270.2a–7;

(ii) *Fundwide Expenses* means expenses of the company not allocated to a particular class under paragraph (a)(1) of this section;

(iii) The *Settled Shares Method* means allocating to each class based on relative net assets, excluding the value of subscriptions receivable; and

(iv) The *Simultaneous Equations Method* means the simultaneous allocation to each class of each day's income, realized gains and losses, unrealized appreciation and depreciation, and Fundwide Expenses and reallocation to each class of undistributed net investment income, undistributed realized gains or losses, and unrealized appreciation or depreciation, based on the operating results of the company, changes in ownership interests of each class, and expense differentials between the classes, so that the annualized rate of return of each class generally differs from that of the other classes only by the expense differentials among the classes.

(d) Any payments made under paragraph (a) of this section shall be made pursuant to a written plan setting forth the separate arrangement and expense allocation of each class, and any related conversion features or exchange privileges. Before the first issuance of a share of any class in reliance upon this section, and before any material amendment of a plan, a majority of the directors of the company, and a majority of the directors who are not interested persons of the company, shall find that the plan as proposed to be adopted or amended, including the expense allocation, is in the best interests of each class individually and the company as a whole; initial board approval of a plan under this paragraph (d) is not required, however, if the plan does not make any change in the arrangements and expense allocations previously approved by the board under an existing order of exemption. Before any vote on the plan, the directors shall request and evaluate, and any agreement relating to a class arrangement shall require the parties thereto to furnish, such information as may be reasonably necessary to evaluate the plan.

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

(f) Nothing in this section prohibits a company from offering any class with:

(1) An exchange privilege providing that securities of the class may be exchanged for certain securities of another company; or

(2) A conversion feature providing that shares of one class of the company (the ''purchase class'') will be exchanged automatically for shares of another class of the company (the ''target class'') after a specified period of time, *provided that:*

(i) The conversion is effected on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee, or other charge;

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(ii) The expenses, including payments authorized under a plan adopted pursuant to § 270.12b–1 (''rule 12b–1 plan''), for the target class are not higher than the expenses, including payments authorized under a rule 12b–1 plan, for the purchase class; and

(iii) If the shareholders of the target class approve any increase in expenses allocated to the target class under paragraphs (a)(1)(i) and (a)(1)(ii) of this section, and the purchase class shareholders do not approve the increase, the company will establish a new target class for the purchase class on the same terms as applied to the target class before that increase.

(3) A conversion feature providing that shares of a class in which an investor is no longer eligible to participate may be converted to shares of a class in which that investor is eligible to participate, *provided that:*

(i) The investor is given prior notice of the proposed conversion; and

(ii) The conversion is effected on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee, or other charge.

[60 FR 11885, Mar. 2, 1995, as amended at 62 FR 51765, Oct. 3, 1997; 66 FR 3759, Jan. 16, 2001; 69 FR 46390, Aug. 2, 2004; 79 FR 47967, Aug. 14, 2014]

§ 270.18f–4 Exemption from the requirements of section 18 and section 61 for certain senior securities transactions.

(a) *Definitions.* For purposes of this section:

Absolute VaR test means that the VaR of the fund's portfolio does not exceed 20% of the value of the fund's net assets, or in the case of a closed-end company that has issued to investors and has then outstanding shares of a class of senior security that is a stock, that the VaR of the fund's portfolio does not exceed 25% of the value of the fund's net assets.

Derivatives exposure means the sum of the gross notional amounts of the fund's derivatives transactions described in paragraph (1) of the definition of the term ''derivatives transaction'' of this section, and in the case of short sale borrowings, the value of the assets sold short. If a fund's derivatives transactions include reverse repurchase agreements or similar financing transactions under paragraph (d)(1)(ii) of this section, the fund's derivatives exposure also includes, for each transaction, the proceeds received but not yet repaid or returned, or for which the associated liability has not been extinguished, in connection with the transaction. In determining derivatives exposure a fund may convert the notional amount of interest rate derivatives to 10-year bond equivalents and delta adjust the notional amounts of options contracts and exclude any closed-out positions, if those positions were closed out with the same counterparty and result in no credit or market exposure to the fund.

Derivatives risk manager means an officer or officers of the fund's investment adviser responsible for administering the program and policies and procedures required by paragraph (c)(1) of this section, provided that the derivatives risk manager:

(1) May not be a portfolio manager of the fund, or if multiple officers serve as derivatives risk manager, may not have a majority composed of portfolio managers of the fund; and

(2) Must have relevant experience regarding the management of derivatives risk.

Derivatives risks means the risks associated with a fund's derivatives transactions or its use of derivatives transactions, including leverage, market, counterparty, liquidity, operational, and legal risks and any other risks the derivatives risk manager (or, in the case of a fund that is a limited derivatives user as described in paragraph (c)(4) of this section, the fund's investment adviser) deems material.

Derivatives transaction means:

(1) Any swap, security-based swap, futures contract, forward contract, option, any combination of the foregoing, or any similar instrument (''derivatives instrument''), under which a fund is or may be required to make any payment or delivery of cash or other assets during the life of the instrument or at maturity or early termination, whether as margin or settlement payment or otherwise;

(2) Any short sale borrowing; and

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(3) If a fund relies on paragraph (d)(1)(ii) of this section, any reverse repurchase agreement or similar financing transaction.

Designated index means an unleveraged index that is approved by the derivatives risk manager for purposes of the relative VaR test and that reflects the markets or asset classes in which the fund invests and is not administered by an organization that is an affiliated person of the fund, its investment adviser, or principal underwriter, or created at the request of the fund or its investment adviser, unless the index is widely recognized and used. In the case of a blended index, none of the indexes that compose the blended index may be administered by an organization that is an affiliated person of the fund, its investment adviser, or principal underwriter, or created at the request of the fund or its investment adviser, unless the index is widely recognized and used.

Designated reference portfolio means a designated index or the fund's securities portfolio. Notwithstanding the first sentence of the definition of *designated index* of this section, if the fund's investment objective is to track the performance (including a leverage multiple or inverse multiple) of an unleveraged index, the fund must use that index as its designated reference portfolio.

Fund means a registered open-end or closed-end company or a business development company, including any separate series thereof, but does not include a registered open-end company that is regulated as a money market fund under § 270.2a–7.

Leveraged/inverse fund means a fund that seeks, directly or indirectly, to provide investment returns that correspond to the performance of a market index by a specified multiple (''leverage multiple''), or to provide investment returns that have an inverse relationship to the performance of a market index (''inverse multiple''), over a predetermined period of time.

Relative VaR test means that the VaR of the fund's portfolio does not exceed 200% of the VaR of the designated reference portfolio, or in the case of a closed-end company that has issued to investors and has then outstanding shares of a class of senior security that is a stock, that the VaR of the fund's portfolio does not exceed 250% of the VaR of the designated reference portfolio.

Securities portfolio means the fund's portfolio of securities and other investments, excluding any derivatives transactions, that is approved by the derivatives risk manager for purposes of the relative VaR test, provided that the fund's securities portfolio reflects the markets or asset classes in which the fund invests (*i.e.*, the markets or asset classes in which the fund invests directly through securities and other investments and indirectly through derivatives transactions).

Unfunded commitment agreement means a contract that is not a derivatives transaction, under which a fund commits, conditionally or unconditionally, to make a loan to a company or to invest equity in a company in the future, including by making a capital commitment to a private fund that can be drawn at the discretion of the fund's general partner.

Value-at-risk or *VaR* means an estimate of potential losses on an instrument or portfolio, expressed as a percentage of the value of the portfolio's assets (or net assets when computing a fund's VaR), over a specified time horizon and at a given confidence level, provided that any VaR model used by a fund for purposes of determining the fund's compliance with the relative VaR test or the absolute VaR test must:

(1) Take into account and incorporate all significant, identifiable market risk factors associated with a fund's investments, including, as applicable:

(i) Equity price risk, interest rate risk, credit spread risk, foreign currency risk and commodity price risk;

(ii) Material risks arising from the nonlinear price characteristics of a fund's investments, including options and positions with embedded optionality; and

(iii) The sensitivity of the market value of the fund's investments to changes in volatility;

(2) Use a 99% confidence level and a time horizon of 20 trading days; and

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(3) Be based on at least three years of historical market data.

(b) *Derivatives transactions.* If a fund satisfies the conditions of paragraph (c) of this section, the fund may enter into derivatives transactions, notwithstanding the requirements of sections 18(a)(1), 18(c), 18(f)(1), and 61 of the Investment Company Act (15 U.S.C. 80a–18(a)(1), 80a–18(c), 80a–18(f)(1), and 80a–60), and derivatives transactions entered into by the fund in compliance with this section will not be considered for purposes of computing asset coverage, as defined in section 18(h) of the Investment Company Act (15 U.S.C. 80a–18(h)).

(c) *Conditions*—(1) *Derivatives risk management program.* The fund adopts and implements a written derivatives risk management program (''program''), which must include policies and procedures that are reasonably designed to manage the fund's derivatives risks and to reasonably segregate the functions associated with the program from the portfolio management of the fund. The program must include the following elements:

(i) *Risk identification and assessment.* The program must provide for the identification and assessment of the fund's derivatives risks. This assessment must take into account the fund's derivatives transactions and other investments.

(ii) *Risk guidelines.* The program must provide for the establishment, maintenance, and enforcement of investment, risk management, or related guidelines that provide for quantitative or otherwise measurable criteria, metrics, or thresholds of the fund's derivatives risks. These guidelines must specify levels of the given criterion, metric, or threshold that the fund does not normally expect to exceed, and measures to be taken if they are exceeded.

(iii) *Stress testing.* The program must provide for stress testing to evaluate potential losses to the fund's portfolio in response to extreme but plausible market changes or changes in market risk factors that would have a significant adverse effect on the fund's portfolio, taking into account correlations of market risk factors and resulting payments to derivatives counterparties. The frequency with which the stress testing under this paragraph is conducted must take into account the fund's strategy and investments and current market conditions, provided that these stress tests must be conducted no less frequently than weekly.

(iv) *Backtesting.* The program must provide for backtesting to be conducted no less frequently than weekly, of the results of the VaR calculation model used by the fund in connection with the relative VaR test or the absolute VaR test by comparing the fund's gain or loss that occurred on each business day during the backtesting period with the corresponding VaR calculation for that day, estimated over a one-trading day time horizon, and identifying as an exception any instance in which the fund experiences a loss exceeding the corresponding VaR calculation's estimated loss.

(v) *Internal reporting and escalation*—(A) *Internal reporting.* The program must identify the circumstances under which persons responsible for portfolio management will be informed regarding the operation of the program, including exceedances of the guidelines specified in paragraph (c)(1)(ii) of this section and the results of the stress tests specified in paragraph (c)(1)(iii) of this section.

(B) *Escalation of material risks.* The derivatives risk manager must inform in a timely manner persons responsible for portfolio management of the fund, and also directly inform the fund's board of directors as appropriate, of material risks arising from the fund's derivatives transactions, including risks identified by the fund's exceedance of a criterion, metric, or threshold provided for in the fund's risk guidelines established under paragraph (c)(1)(ii) of this section or by the stress testing described in paragraph (c)(1)(iii) of this section.

(vi) *Periodic review of the program.* The derivatives risk manager must review the program at least annually to evaluate the program's effectiveness and to reflect changes in risk over time. The periodic review must include a review of the VaR calculation model used by the fund under paragraph (c)(2) of this section (including the backtesting required by paragraph (c)(1)(iv) of this section) and any designated reference

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portfolio to evaluate whether it remains appropriate.

(2) *Limit on fund leverage risk.* (i) The fund must comply with the relative VaR test unless the derivatives risk manager reasonably determines that a designated reference portfolio would not provide an appropriate reference portfolio for purposes of the relative VaR test, taking into account the fund's investments, investment objectives, and strategy. A fund that does not apply the relative VaR test must comply with the absolute VaR test.

(ii) The fund must determine its compliance with the applicable VaR test at least once each business day. If the fund determines that it is not in compliance with the applicable VaR test, the fund must come back into compliance promptly after such determination, in a manner that is in the best interests of the fund and its shareholders.

(iii) If the fund is not in compliance with the applicable VaR test within five business days:

(A) The derivatives risk manager must provide a written report to the fund's board of directors and explain how and by when (*i.e.*, number of business days) the derivatives risk manager reasonably expects that the fund will come back into compliance;

(B) The derivatives risk manager must analyze the circumstances that caused the fund to be out of compliance for more than five business days and update any program elements as appropriate to address those circumstances; and

(C) The derivatives risk manager must provide a written report within thirty calendar days of the exceedance to the fund's board of directors explaining how the fund came back into compliance and the results of the analysis and updates required under paragraph (c)(2)(iii)(B) of this section. If the fund remains out of compliance with the applicable VaR test at that time, the derivatives risk manager's written report must update the report previously provided under paragraph (c)(2)(iii)(A) of this section and the derivatives risk manager must update the board of directors on the fund's progress in coming back into compliance at regularly scheduled intervals at a frequency determined by the board.

(3) *Board oversight and reporting*—(i) *Approval of the derivatives risk manager.* A fund's board of directors, including a majority of directors who are not interested persons of the fund, must approve the designation of the derivatives risk manager.

(ii) *Reporting on program implementation and effectiveness.* On or before the implementation of the program, and at least annually thereafter, the derivatives risk manager must provide to the board of directors a written report providing a representation that the program is reasonably designed to manage the fund's derivatives risks and to incorporate the elements provided in paragraphs (c)(1)(i) through (vi) of this section. The representation may be based on the derivatives risk manager's reasonable belief after due inquiry. The written report must include the basis for the representation along with such information as may be reasonably necessary to evaluate the adequacy of the fund's program and, for reports following the program's initial implementation, the effectiveness of its implementation. The written report also must include, as applicable, the derivatives risk manager's basis for the approval of any designated reference portfolio or any change in the designated reference portfolio during the period covered by the report; or an explanation of the basis for the derivatives risk manager's determination that a designated reference portfolio would not provide an appropriate reference portfolio for purposes of the relative VaR test.

(iii) *Regular board reporting.* The derivatives risk manager must provide to the board of directors, at a frequency determined by the board, a written report regarding the derivatives risk manager's analysis of exceedances described in paragraph (c)(1)(ii) of this section, the results of the stress testing conducted under paragraph (c)(1)(iii) of this section, and the results of the backtesting conducted under paragraph (c)(1)(iv) of this section since the last report to the board. Each report under this paragraph must include such information as may be reasonably necessary for the board of

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directors to evaluate the fund's response to exceedances and the results of the fund's stress testing.

(4) *Limited derivatives users.* (i) A fund is not required to adopt a program as prescribed in paragraph (c)(1) of this section, comply with the limit on fund leverage risk in paragraph (c)(2) of this section, or comply with the board oversight and reporting requirements as prescribed in paragraph (c)(3) of this section, if:

(A) The fund adopts and implements written policies and procedures reasonably designed to manage the fund's derivatives risk; and

(B) The fund's derivatives exposure does not exceed 10 percent of the fund's net assets, excluding, for this purpose, currency or interest rate derivatives that hedge currency or interest rate risks associated with one or more specific equity or fixed-income investments held by the fund (which must be foreign-currency-denominated in the case of currency derivatives), or the fund's borrowings, provided that the currency or interest rate derivatives are entered into and maintained by the fund for hedging purposes and that the notional amounts of such derivatives do not exceed the value of the hedged investments (or the par value thereof, in the case of fixed-income investments, or the principal amount, in the case of borrowing) by more than 10 percent.

(ii) If a fund's derivatives exposure exceeds 10 percent of its net assets, as calculated in accordance with paragraph (c)(4)(i)(B) of this section, and the fund is not in compliance with that paragraph within five business days, the fund's investment adviser must provide a written report to the fund's board of directors informing them whether the investment adviser intends either:

(A) To reduce the fund's derivatives exposure to less than 10 percent of the fund's net assets promptly, but within no more than thirty calendar days of the exceedance, in a manner that is in the best interests of the fund and its shareholders; or

(B) For the fund to establish a program as prescribed in paragraph (c)(1) of this section, comply with the limit on fund leverage risk in paragraph (c)(2) of this section, and comply with the board oversight and reporting requirements as prescribed in paragraph (c)(3) of this section, as soon as reasonably practicable.

(5) *Leveraged/inverse funds.* A leveraged/inverse fund that cannot comply with the limit on fund leverage risk in paragraph (c) of this section is not required to comply with the limit on fund leverage risk if, in addition to complying with all other applicable requirements of this section:

(i) As of October 28, 2020, the fund is in operation; has outstanding shares issued in one or more public offerings to investors; and discloses in its prospectus a leverage multiple or inverse multiple that exceeds 200% of the performance or the inverse of the performance of the underlying index;

(ii) The fund does not change the underlying market index or increase the level of leveraged or inverse market exposure the fund seeks, directly or indirectly, to provide; and

(iii) The fund discloses in its prospectus that it is not subject to the limit on fund leverage risk in paragraph (c)(2) of this section.

(6) *Recordkeeping*—(i) *Records to be maintained.* A fund must maintain a written record documenting, as applicable:

(A) The fund's written policies and procedures required by paragraph (c)(1) of this section, along with:

(*1*) The results of the fund's stress tests under paragraph (c)(1)(iii) of this section;

(*2*) The results of the backtesting conducted under paragraph (c)(1)(iv) of this section;

(*3*) Records documenting any internal reporting or escalation of material risks under paragraph (c)(1)(v)(B) of this section; and

(*4*) Records documenting the reviews conducted under paragraph (c)(1)(vi) of this section.

(B) Copies of any materials provided to the board of directors in connection with its approval of the designation of the derivatives risk manager, any written reports provided to the board of directors relating to the program, and any written reports provided to the board of directors under paragraphs (c)(2)(iii)(A) and (C) of this section.

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(C) Any determination and/or action the fund made under paragraphs (c)(2)(i) and (ii) of this section, including a fund's determination of: The VaR of its portfolio; the VaR of the fund's designated reference portfolio, as applicable; the fund's VaR ratio (the value of the VaR of the fund's portfolio divided by the VaR of the designated reference portfolio), as applicable; and any updates to any VaR calculation models used by the fund and the basis for any material changes thereto.

(D) If applicable, the fund's written policies and procedures required by paragraph (c)(4) of this section, along with copies of any written reports provided to the board of directors under paragraph (c)(4)(ii) of this section.

(ii) *Retention periods.* (A) A fund must maintain a copy of the written policies and procedures that the fund adopted under paragraph (c)(1) or (4) of this section that are in effect, or at any time within the past five years were in effect, in an easily accessible place.

(B) A fund must maintain all records and materials that paragraphs (c)(6)(i)(A)(*1*) through (*4*) and (c)(6)(i)(B) through (D) of this section describe for a period of not less than five years (the first two years in an easily accessible place) following each determination, action, or review that these paragraphs describe.

(7) *Current reports.* A fund that experiences an event specified in the parts of Form N–RN [referenced in 17 CFR 274.223] titled ''Relative VaR Test Breaches,'' ''Absolute VaR Test Breaches,'' or ''Compliance with VaR Test'' must file with the Commission a report on Form N–RN within the period and according to the instructions specified in that form.

(d) *Reverse repurchase agreements.* (1) A fund may enter into reverse repurchase agreements or similar financing transactions, notwithstanding the requirements of sections 18(c) and 18(f)(1) of the Investment Company Act, if the fund:

(i) Complies with the asset coverage requirements of section 18, and combines the aggregate amount of indebtedness associated with all reverse repurchase agreements or similar financing transactions with the aggregate amount of any other senior securities representing indebtedness when calculating the asset coverage ratio; or

(ii) Treats all reverse repurchase agreements or similar financing transactions as derivatives transactions for all purposes under this section.

(2) A fund relying on paragraph (d) of this section must maintain a written record documenting whether the fund is relying on paragraph (d)(1)(i) or (ii) of this section for a period of not less than five years (the first two years in an easily accessible place) following the determination.

(e) *Unfunded commitment agreements.* (1) A fund may enter into an unfunded commitment agreement, notwithstanding the requirements of sections 18(a), 18(c), 18(f)(1), and 61 of the Investment Company Act, if the fund reasonably believes, at the time it enters into such agreement, that it will have sufficient cash and cash equivalents to meet its obligations with respect to all of its unfunded commitment agreements, in each case as they come due. In forming a reasonable belief, the fund must take into account its reasonable expectations with respect to other obligations (including any obligation with respect to senior securities or redemptions), and may not take into account cash that may become available from the sale or disposition of any investment at a price that deviates significantly from the market value of those investments, or from issuing additional equity. Unfunded commitment agreements entered into by the fund in compliance with this section will not be considered for purposes of computing asset coverage, as defined in section 18(h) of the Investment Company Act (15 U.S.C. 80a–18(h)).

(2) For each unfunded commitment agreement that a fund enters into under paragraph (e)(1) of this section, a fund must document the basis for its reasonable belief regarding the sufficiency of its cash and cash equivalents to meet its unfunded commitment agreement obligations, and maintain a record of this documentation for a period of not less than five years (the first two years in an easily accessible place) following the date that the fund entered into the agreement.

(f) *When issued, forward-settling, and non-standard settlement cycle securities*

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transactions. Notwithstanding the requirements of sections 18(a)(1), 18(c), 18(f)(1), and 61 of the Investment Company Act (15 U.S.C. 80a–18(a)(1), 80a018(c), 80a–18(f)(1), and 80a–60), a fund or registered open-end company that is regulated as a money market fund under § 270.2a–7 may invest in a security on a when-issued or forward-settling basis, or with a non-standard settlement cycle, and the transaction will be deemed not to involve a senior security, provided that: The fund intends to physically settle the transaction; and the transaction will settle within 35 days of its trade date.

[85 FR 83291, Dec. 21, 2020, as amended at 87 FR 22446, Apr. 15, 2022]

§ 270.19a–1 Written statement to accompany dividend payments by management companies.

(a) Every written statement made pursuant to section 19 by or on behalf of a management company shall be made on a separate paper and shall clearly indicate what portion of the payment per share is made from the following sources:

(1) Net income for the current or preceding fiscal year, or accumulated undistributed net income, or both, not including in either case profits or losses from the sale of securities or other properties.

(2) Accumulated undistributed net profits from the sale of securities or other properties (except that an open-end company may treat as a separate source its net profits from such sales during its current fiscal year).

(3) Paid-in surplus or other capital source.

To the extent that a payment is properly designated as being made from a source specified in paragraph (a) (1) or (2) of this section, it need not be designated as having been made from a source specified in this paragraph.

(b) If the payment is made in whole or in part from a source specified in paragraph (a)(2) of this section the written statement shall indicate, after giving effect to the part of such payment so specified, the deficit, if any, in the aggregate of (1) accumulated undistributed realized profits less losses on the sale of securities or other properties and (2) the net unrealized appreciation or depreciation of portfolio securities, all as of a date reasonably close to the end of the period as of which the dividend is paid. Any statement made pursuant to the preceding sentence shall specify the amount, if any, of such deficit which represents unrealized depreciation of portfolio securities.

(c) Accumulated undistributed net income and accumulated undistributed net profits from the sale of securities or other properties shall be determined, at the option of the company, either (1) from the date of the organization of the company, (2) from the date of a reorganization, as defined in clause (A) or (B) of section 2(a)(33) of the Act (54 Stat. 790; 15 U.S.C. 80a–2(a)(33)), (3) from the date as of which a write-down of portfolio securities was made in connection with a corporate readjustment, approved by stockholders, of the type known as ''quasi- reorganization,'' or (4) from January 1, 1925, to the close of the period as of which the dividend is paid, without giving effect to such payment.

(d) For the purpose of this section, open-end companies which upon the sale of their shares allocate to undistributed income or other similar account that portion of the consideration received which represents the approximate per share amount of undistributed net income included in the sales price, and make a corresponding deduction from undistributed net income upon the purchase or redemption of shares, need not treat the amounts so allocated as paid-in surplus or other capital source.

(e) For the purpose of this section, the source or sources from which a dividend is paid shall be determined (or reasonably estimated) to the close of the period as of which it is paid without giving effect to such payment. If any such estimate is subsequently ascertained to be inaccurate in a significant amount, a correction thereof shall be made by a written statement pursuant to section 19(a) of the Act or in the first report to stockholders following discovery of the inaccuracy.

(f) Insofar as a written statement made pursuant to section 19(a) of the Act relates to a dividend on preferred stock paid for a period of less than a

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year, a company may elect to indicate only that portion of the payment which is made from sources specified in paragraph (a)(1) of this section, and need not specify the sources from which the remainder was paid. Every company which in any fiscal year elects to make a statement pursuant to the preceding sentence shall transmit to the holders of such preferred stock, at a date reasonably near the end of the last dividend period in such fiscal year, a statement meeting the requirements of paragraph (a) of this section on an annual basis.

(g) The purpose of this section, in the light of which it shall be construed, is to afford security holders adequate disclosure of the sources from which dividend payments are made. Nothing in this section shall be construed to prohibit the inclusion in any written statement of additional information in explanation of the information required by this section. Nothing in this section shall be construed to permit a dividend payment in violation of any State law or to prevent compliance with any requirement of State law regarding dividends consistent with this rule.

CROSS REFERENCE: For interpretative release applicable to §270.19a–1, see No. 71 in tabulation, part 271 of this chapter.

[Rule N–19–1, 6 FR 1114, Feb. 25, 1941. Redesignated at 36 FR 22901, Dec. 2, 1971, and amended at 38 FR 8593, Apr. 4, 1973]

§ 270.19b–1 Frequency of distribution of capital gains.

(a) No registered investment company which is a ''regulated investment company'' as defined in section 851 of the Internal Revenue Code of 1986 (''Code'') shall distribute more than one capital gain dividend (''distribution''), as defined in section 852(b)(3)(C) of the Code, with respect to any one taxable year of the company, other than a distribution otherwise permitted by this rule or made pursuant to section 855 of the Code which is supplemental to the prior distribution with respect to the same taxable year of the company and which does not exceed 10% of the aggregate amount distributed for such taxable year.

(b) No registered investment company which is not a ''regulated investment company'' as defined in section 851 of the Code shall make more than one distribution of long-term capital gains, as defined in the Code, in any one taxable year of the company: *Provided*, That a unit investment trust may distribute capital gain dividends received from a ''regulated investment company'' within a reasonable time after receipt.

(c) The provisions of this rule shall not apply to a unit investment trust (hereinafter referred to as the ''Trust'') engaged exclusively in the business of investing in eligible trust securities (as defined in Rule 14a–3(b) (17 CFR 270.14a–3(b)) under this Act); *Provided*, That:

(1) The capital gain distribution is a result of—

(i) An issuer's calling or redeeming an eligible trust security held by the Trust,

(ii) The sale of an eligible trust security by the Trust to provide funds for redemption of Trust units when the amount received by the Trust for such sale exceeds the amount required to satisfy the redemption distribution,

(iii) The sale of an eligible trust security to maintain qualification of the Trust as a ''regulated investment company'' under section 851 of the Code,

(iv) Regular distributions of principal and prepayment of principal on eligible trust securities, or

(v) The sale of an eligible trust security in order to maintain the investment stability of the Trust; and

(2) Capital gains distributions are clearly described as such in a report to the unitholder which accompanies each such distribution.

(d) For purposes of paragraph (c) of this section, sales made to maintain the investment stability of the Trust means sales made to prevent deterioration of the value of the eligible trust securities held in the Trust portfolio when one or more of the following factors exist:

(1) A default in the payment of principal or interest on an eligible trust security;

(2) An action involving the issuer of an eligible trust security which adversely affects the ability of such

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issuer to continue payment of principal or interest on its eligible trust securities; or

(3) A change in market, revenue or credit factors which adversely affects the ability of such issuer to continue payment of principal or interest on its eligible trust securities.

(e) If a registered investment company because of unforeseen circumstances in a particular taxable year proposes to make a distribution which would be prohibited by the provisions of this section, it may file a request with the Commission for authorization to make such a distribution. Such request shall comply with the requirements of § 270.0–2 of this chapter and shall set forth the pertinent facts and explain the circumstances which the company believes justify such distribution. The request shall be deemed granted unless the Commission within 15 days after receipt thereof shall deny such request as not being necessary or appropriate in the public interest or for the protection of investors and notify the company in writing of such denial.

(f) A registered investment company may make one additional distribution of long-term capital gains, as defined in the Code, with respect to any one taxable year of the company, which distribution is made, in whole or in part, for the purpose of not incurring any tax under section 4982 of the Code. Such additional distribution may be made prior or subsequent to any distribution otherwise permitted by paragraph (a) of this section.

(Secs. 6(c), 19(b) (15 U.S.C. 80a–19(b), and sec. 38(a)))

[36 FR 22901, Dec. 2, 1971, as amended at 44 FR 29647, May 22, 1979; 44 FR 40064, July 9, 1979; 52 FR 42428, Nov. 5, 1987]

§ 270.20a–1 Solicitation of proxies, consents and authorizations.

(a) No person shall solicit or permit the use of his or her name to solicit any proxy, consent, or authorization with respect to any security issued by a registered fund, except upon compliance with Regulation 14A (§ 240.14a–1 of this chapter), Schedule 14A (§ 240.14a–101 of this chapter), and all other rules and regulations adopted pursuant to section 14(a) of the Securities Exchange Act of 1934 that would be applicable to such solicitation if it were made in respect of a security registered pursuant to section 12 of the Securities Exchange Act of 1934. Unless the solicitation is made in respect of a security registered on a national securities exchange, none of the soliciting material need be filed with such exchange.

(b) If the solicitation is made by or on behalf of the management of the investment company, then the investment adviser or any prospective investment adviser and any affiliated person thereof as to whom information is required in the solicitation shall upon request of the investment company promptly transmit to the investment company all information necessary to enable the management of such company to comply with the rules and regulations applicable to such solicitation. If the solicitation is made by any person other than the management of the investment company, on behalf of and with the consent of the investment adviser or prospective investment adviser, then the investment adviser or prospective investment adviser and any affiliated person thereof as to whom information is required in the solicitation shall upon request of the person making the solicitation promptly transmit to such person all information necessary to enable such person to comply with the rules and regulations applicable to the solicitation.

Instruction. Registrants that have made a public offering of securities and that hold security holder votes for which proxies, consents, or authorizations are not being solicited pursuant to the requirements of this section should refer to section 14(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(c)) and the information statement requirements set forth in the rules thereunder.

[25 FR 1865, Mar. 3, 1960, as amended at 37 FR 1472, Jan. 29, 1972; 52 FR 48985, Dec. 29, 1987; 57 FR 1102, Jan. 10, 1992; 59 FR 52700, Oct. 19, 1994; 87 FR 22446, Apr. 15, 2022]

§§ 270.20a–2—270.20a–4 [Reserved]

§ 270.22c–1 Pricing of redeemable securities for distribution, redemption and repurchase.

(a) No registered investment company issuing any redeemable security,

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no person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and no principal underwriter of, or dealer in, any such security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security: *Provided,* That:

(1) This paragraph shall not prevent a sponsor of a unit investment trust (hereinafter referred to as the ''Trust'') engaged exclusively in the business of investing in eligible trust securities (as defined in Rule 14a–3(b) (17 CFR 270.14a–3(b))) from selling or repurchasing Trust units in a secondary market at a price based on the offering side evaluation of the eligible trust securities in the Trust's portfolio, determined at any time on the last business day of each week, effective for all sales made during the following week, if on the days that such sales or repurchases are made the sponsor receives a letter from a qualified evaluator stating, in its opinion, that:

(i) In the case of repurchases, the current bid price is not higher than the offering side evaluation, computed on the last business day of the previous week; and

(ii) In the case of resales, the offering side evaluation, computed as of the last business day of the previous week, is not more than one-half of one percent ($5.00 on a unit representing $1,000 principal amount of eligible trust securities) greater than the current offering price.

(2) This paragraph shall not prevent any registered investment company from adjusting the price of its redeemable securities sold pursuant to a merger, consolidation or purchase of substantially all of the assets of a company which meets the conditions specified in § 270.17a–8.

(3) Notwithstanding this paragraph (a), a registered open-end management investment company (but not a registered open-end management investment company that is regulated as a money market fund under § 270.2a–7 or an exchange-traded fund as defined in paragraph (a)(3)(v)(A) of this section) (a ''fund'') may use swing pricing to adjust its current net asset value per share to mitigate dilution of the value of its outstanding redeemable securities as a result of shareholder purchase or redemption activity, provided that it has established and implemented swing pricing policies and procedures in compliance with the paragraphs (a)(3)(i) through (v) of this section.

(i) The fund's swing pricing policies and procedures must:

(A) Provide that the fund must adjust its net asset value per share by a single swing factor or multiple factors that may vary based on the swing threshold(s) crossed once the level of net purchases into or net redemptions from such fund has exceeded the applicable swing threshold for the fund. In determining whether the fund's level of net purchases or net redemptions has exceeded the applicable swing threshold(s), the person(s) responsible for administering swing pricing shall be permitted to make such determination based on receipt of sufficient information about the fund investors' daily purchase and redemption activity (''investor flow'') to allow the fund to reasonably estimate whether it has crossed the swing threshold(s) with high confidence, and shall exclude any purchases or redemptions that are made in kind and not in cash. This investor flow information may consist of individual, aggregated, or netted orders, and may include reasonable estimates where necessary.

(B) Specify the process for how the fund's swing threshold(s) shall be determined, considering:

(1) The size, frequency, and volatility of historical net purchases or net redemptions of fund shares during normal and stressed periods;

(2) The fund's investment strategy and the liquidity of the fund's portfolio investments;

(3) The fund's holdings of cash and cash equivalents, and borrowing arrangements and other funding sources; and

(4) The costs associated with transactions in the markets in which the fund invests.

(C) Specify the process for how the swing factor(s) shall be determined, which must include: The establishment

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of an upper limit on the swing factor(s) used, which may not exceed two percent of net asset value per share; and the determination that the factor(s) used are reasonable in relationship to the costs discussed in this paragraph. In determining the swing factor(s) and the upper limit, the person(s) responsible for administering swing pricing may take into account only the near-term costs expected to be incurred by the fund as a result of net purchases or net redemptions that occur on the day the swing factor(s) is used, including spread costs, transaction fees and charges arising from asset purchases or asset sales resulting from those purchases or redemptions, and borrowing-related costs associated with satisfying redemptions.

(ii) The fund's board of directors, including a majority of directors who are not interested persons of the fund must:

(A) Approve the fund's swing pricing policies and procedures;

(B) Approve the fund's swing threshold(s) and the upper limit on the swing factor(s) used, and any changes to the swing threshold(s) or the upper limit on the swing factor(s) used;

(C) Designate the fund's investment adviser, officer, or officers responsible for administering the swing pricing policies and procedures (''person(s) responsible for administering swing pricing''). The administration of swing pricing must be reasonably segregated from portfolio management of the fund and may not include portfolio managers; and

(D) Review, no less frequently than annually, a written report prepared by the person(s) responsible for administering swing pricing that describes:

(1) Its review of the adequacy of the fund's swing pricing policies and procedures and the effectiveness of their implementation, including the impact on mitigating dilution;

(2) Any material changes to the fund's swing pricing policies and procedures since the date of the last report; and

(3) Its review and assessment of the fund's swing threshold(s), swing factor(s), and swing factor upper limit considering the requirements of paragraphs (a)(3)(i)(B) and (C) of this section, including the information and data supporting the determination of the swing threshold(s), swing factor(s), and swing factor upper limit.

(iii) The fund shall maintain the policies and procedures adopted by the fund under this paragraph (a)(3) that are in effect, or at any time within the past six years were in effect, in an easily accessible place, and shall maintain a written copy of the report provided to the board under paragraph (a)(3)(ii)(C) of this section for six years, the first two in an easily accessible place.

(iv) Any fund (a ''feeder fund'') that invests, pursuant to section 12(d)(1)(E) of the Act (15 U.S.C. 80a–12(d)(1)(E)), in another fund (a ''master fund'') may not use swing pricing to adjust the feeder fund's net asset value per share; however, a master fund may use swing pricing to adjust the master fund's net asset value per share, pursuant to the requirements set forth in this paragraph (a)(3).

(v) For purposes of this paragraph (a)(3):

(A) *Exchange-traded fund* means an open-end management investment company (or series or class thereof), the shares of which are listed and traded on a national securities exchange, and that has formed and operates under an exemptive order under the Act granted by the Commission or in reliance on an exemptive rule adopted by the Commission.

(B) *Swing factor* means the amount, expressed as a percentage of the fund's net asset value and determined pursuant to the fund's swing pricing policies and procedures, by which a fund adjusts its net asset value per share once a fund's applicable swing threshold has been exceeded.

(C) *Swing pricing* means the process of adjusting a fund's current net asset value per share to mitigate dilution of the value of its outstanding redeemable securities as a result of shareholder purchase and redemption activity, pursuant to the requirements set forth in this paragraph (a)(3).

(D) *Swing threshold* means an amount of net purchases or net redemptions, expressed as a percentage of the fund's net asset value, that triggers the application of swing pricing.

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(E) *Transaction fees and charges* means brokerage commissions, custody fees, and any other charges, fees, and taxes associated with portfolio asset purchases and sales.

(b) For the purposes of this section,

(1) The current net asset value of any such security shall be computed no less frequently than once daily, Monday through Friday, at the specific time or times during the day that the board of directors of the investment company sets, in accordance with paragraph (d) of this section, except on:

(i) Days on which changes in the value of the investment company's portfolio securities will not materially affect the current net asset value of the investment company's redeemable securities;

(ii) Days during which no security is tendered for redemption and no order to purchase or sell such security is received by the investment company; or

(iii) Customary national business holidays described or listed in the prospectus and local and regional business holidays listed in the prospectus; and

(2) A ''qualified evaluator'' shall mean any evaluator which represents it is in a position to determine, on the basis of an informal evaluation of the eligible trust securities held in the Trust's portfolio, whether—

(i) The current bid price is higher than the offering side evaluation, computed on the last business day of the previous week, and

(ii) The offering side evaluation, computed as of the last business day of the previous week, is more than one-half of one percent ($5.00 on a unit representing $1,000 principal amount of eligible trust securities) greater than the current offering price.

(c) Notwithstanding the provisions above, any registered separate account offering variable annuity contracts, any person designated in such account's prospectus as authorized to consummate transactions in such contracts, and any principal underwriter of or dealer in such contracts shall be permitted to apply the initial purchase payment for any such contract at a price based on the current net asset value of such contract which is next computed:

(1) Not later than two business days after receipt of the order to purchase by the insurance company sponsoring the separate account (''insurer''), if the contract application and other information necessary for processing the order to purchase (collectively, ''application'') are complete upon receipt; or

(2) Not later than two business days after an application which is incomplete upon receipt by the insurer is made complete, *Provided*, That, if an incomplete application is not made complete within five business days after receipt,

(i) The prospective purchaser shall be informed of the reasons for the delay, and

(ii) The initial purchase payment shall be returned immediately and in full, unless the prospective purchaser specifically consents to the insurer retaining the purchase payment until the application is made complete.

(3) As used in this section:

(i) *Prospective Purchaser* shall mean either an individual contractowner or an individual participant in a group contract.

(ii) *Initial Purchase Payment* shall refer to the first purchase payment submitted to the insurer by, or on behalf of, a prospective purchaser.

(d) The board of directors shall initially set the time or times during the day that the current net asset value shall be computed, and shall make and approve such changes as the board deems necessary.

(Secs. 6(c), 22(c) and 38(a), 15 U.S.C. 80a–6(c), 80a–22(c) and 80a–37(a))

[44 FR 29647, May 22, 1979, as amended at 44 FR 48660, Aug. 20, 1979; 45 FR 12409, Feb. 26, 1980; 50 FR 7911, Feb. 27, 1985; 50 FR 24763, June 13, 1985; 50 FR 42682, Oct. 22, 1985; 58 FR 49922, Sept. 24, 1993; 81 FR 82137, Nov. 18, 2016; 87 FR 22446, Apr. 15, 2022]

§ 270.22c–2 Redemption fees for redeemable securities.

(a) *Redemption fee.* It is unlawful for any fund issuing redeemable securities, its principal underwriter, or any dealer in such securities, to redeem a redeemable security issued by the fund within seven calendar days after the security was purchased, unless it complies with the following requirements:

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(1) *Board determination.* The fund's board of directors, including a majority of directors who are not interested persons of the fund, must either:

(i) Approve a redemption fee, in an amount (but no more than two percent of the value of shares redeemed) and on shares redeemed within a time period (but no less than seven calendar days), that in its judgment is necessary or appropriate to recoup for the fund the costs it may incur as a result of those redemptions or to otherwise eliminate or reduce so far as practicable any dilution of the value of the outstanding securities issued by the fund, the proceeds of which fee will be retained by the fund; or

(ii) Determine that imposition of a redemption fee is either not necessary or not appropriate.

(2) *Shareholder information.* With respect to each financial intermediary that submits orders, itself or through its agent, to purchase or redeem shares directly to the fund, its principal underwriter or transfer agent, or to a registered clearing agency, the fund (or on the fund's behalf, the principal underwriter or transfer agent) must either:

(i) Enter into a shareholder information agreement with the financial intermediary (or its agent); or

(ii) Prohibit the financial intermediary from purchasing in nominee name on behalf of other persons, securities issued by the fund. For purposes of this paragraph, ''purchasing'' does not include the automatic reinvestment of dividends.

(3) *Recordkeeping.* The fund must maintain a copy of the written agreement under paragraph (a)(2)(i) of this section that is in effect, or at any time within the past six years was in effect, in an easily accessible place.

(b) *Excepted funds.* The requirements of paragraph (a) of this section do not apply to the following funds, unless they elect to impose a redemption fee pursuant to paragraph (a)(1) of this section:

(1) Money market funds;

(2) Any fund that issues securities that are listed on a national securities exchange; and

(3) Any fund that affirmatively permits short-term trading of its securities, if its prospectus clearly and prominently discloses that the fund permits short-term trading of its securities and that such trading may result in additional costs for the fund.

(c) *Definitions.* For the purposes of this section:

(1) *Financial intermediary* means:

(i) Any broker, dealer, bank, or other person that holds securities issued by the fund, in nominee name;

(ii) A unit investment trust or fund that invests in the fund in reliance on section 12(d)(1)(E) of the Act (15 U.S.C. 80a–12(d)(1)(E)); and

(iii) In the case of a participant-directed employee benefit plan that owns the securities issued by the fund, a retirement plan's administrator under section 3(16)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(16)(A)) or any person that maintains the plan's participant records.

(iv) *Financial intermediary* does not include any person that the fund treats as an individual investor with respect to the fund's policies established for the purpose of eliminating or reducing any dilution of the value of the outstanding securities issued by the fund.

(2) *Fund* means an open-end management investment company that is registered or required to register under section 8 of the Act (15 U.S.C. 80a–8), and includes a separate series of such an investment company.

(3) *Money market fund* means an open-end management investment company that is registered under the Act and is regulated as a money market fund under § 270.2a–7.

(4) *Shareholder* includes a beneficial owner of securities held in nominee name, a participant in a participant-directed employee benefit plan, and a holder of interests in a fund or unit investment trust that has invested in the fund in reliance on section 12(d)(1)(E) of the Act. A shareholder does not include a fund investing pursuant to section 12(d)(1)(G) of the Act (15 U.S.C. 80a–12(d)(1)(G)), a trust established pursuant to section 529 of the Internal Revenue Code (26 U.S.C. 529), or a holder of an interest in such a trust.

(5) *Shareholder information agreement* means a written agreement under which a financial intermediary agrees to:

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(i) Provide, promptly upon request by a fund, the Taxpayer Identification Number (or in the case of non U.S. shareholders, if the Taxpayer Identification Number is unavailable, the International Taxpayer Identification Number or other government issued identifier) of all shareholders who have purchased, redeemed, transferred, or exchanged fund shares held through an account with the financial intermediary, and the amount and dates of such shareholder purchases, redemptions, transfers, and exchanges;

(ii) Execute any instructions from the fund to restrict or prohibit further purchases or exchanges of fund shares by a shareholder who has been identified by the fund as having engaged in transactions of fund shares (directly or indirectly through the intermediary's account) that violate policies established by the fund for the purpose of eliminating or reducing any dilution of the value of the outstanding securities issued by the fund; and

(iii) Use best efforts to determine, promptly upon request of the fund, whether any specific person about whom it has received the identification and transaction information set forth in paragraph (c)(5)(i) of this section, is itself a financial intermediary (''indirect intermediary'') and, upon further request by the fund:

(A) Provide (or arrange to have provided) the identification and transaction information set forth in paragraph (c)(5)(i) of this section regarding shareholders who hold an account with an indirect intermediary; or

(B) Restrict or prohibit the indirect intermediary from purchasing, in nominee name on behalf of other persons, securities issued by the fund.

[71 FR 58272, Oct. 3, 2006]

§ 270.22d–1 Exemption from section 22(d) to permit sales of redeemable securities at prices which reflect sales loads set pursuant to a schedule.

A registered investment company that is the issuer of redeemable securities, a principal underwriter of such securities or a dealer therein shall be exempt from the provisions of section 22(d) to the extent necessary to permit the sale of such securities at prices that reflect scheduled variations in, or elimination of, the sales load. These price schedules may offer such variations in or elimination of the sales load to particular classes of investors or transactions, *Provided*, That:

(a) The company, the principal underwriter and dealers in the company's shares apply any scheduled variation uniformly to all offerees in the class specified;

(b) The company furnishes to existing shareholders and prospective investors adequate information concerning any scheduled variation, as prescribed in applicable registration statement form requirements;

(c) Before making any new sales load variation available to purchasers of the company's shares, the company revises its prospectus and statement of additional information to describe that new variation; and

(d) The company advises existing shareholders of any new sales load variation within one year of the date when that variation is first made available to purchasers of the company's shares.

(Secs. 6(c) (15 U.S.C. 80a–6(c)) and 38(a) (15 U.S.C. 80a–37(a)))

[50 FR 7911, Feb. 27, 1985]

§ 270.22d–2 Exemption from section 22(d) for certain registered separate accounts.

A registered separate account, any principal underwriter for such account, any dealer in contracts or units of interest or participations in such contracts issued by such account and any insurance company maintaining such account shall, with respect to any variable annuity contracts, units, or participations therein issued by such account, be exempted from section 22(d) to the extent necessary to permit the sale of such contracts, units or participations by such persons at prices which reflect variations in the sales load or in any administrative charge or other deductions from the purchase payments; *Provided*, *however*, That (a) the prospectus discloses as precisely as possible the amount of the variations and the circumstances, if any, in which such variations shall be available or describes the basis for such variations and the manner in which entitlement shall be determined, and (b) any such

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variations reflect differences in costs or services and are not unfairly discriminatory against any person.

(Secs. 6(c) (15 U.S.C. 80a–6(c)) and 38(a) (15 U.S.C. 80a–37(a)))

[40 FR 33970, Aug. 13, 1975. Redesignated at 50 FR 7911, Feb. 27, 1985]

§ 270.22e–1 Exemption from section 22(e) of the Act during annuity payment period of variable annuity contracts participating in certain registered separate accounts.

(a) A registered separate account, shall during the annuity payment period of variable annuity contracts participating in such account, be exempt from the provisions of section 22(e) of the Act prohibiting the suspension of the right of redemption or postponement of the date of payment or satisfaction upon redemption of any redeemable security, with respect to such contracts under which payments are being made based upon life contingencies.

(Sec. 6, 54 Stat. 800; 15 U.S.C. 80a–6)

[34 FR 12696, Aug. 5, 1969]

§ 270.22e–2 Pricing of redemption requests in accordance with Rule 22c–1.

An investment company shall not be deemed to have suspended the right of redemption if it prices a redemption request by computing the net asset value of the investment company's redeemable securities in accordance with the provisions of Rule 22c–1.

[50 FR 24764, June 13, 1985]

§ 270.22e–3 Exemption for liquidation of money market funds.

(a) *Exemption.* A registered open-end management investment company or series thereof (''fund'') that is regulated as a money market fund under § 270.2a–7 is exempt from the requirements of section 22(e) of the Act (15 U.S.C. 80a–22(e)) if:

(1) The fund, at the end of a business day, has invested less than ten percent of its total assets in weekly liquid assets or, in the case of a fund that is a government money market fund, as defined in § 270.2a–7(a)(14) or a retail money market fund, as defined in § 270.2a–7(a)(21), the fund's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one percent, has deviated from the stable price established by the board of directors or the fund's board of directors, including a majority of directors who are not interested persons of the fund, determines that such a deviation is likely to occur;

(2) The fund's board of directors, including a majority of directors who are not interested persons of the fund, irrevocably has approved the liquidation of the fund; and

(3) The fund, prior to suspending redemptions, notifies the Commission of its decision to liquidate and suspend redemptions by electronic mail directed to the attention of the Director of the Division of Investment Management or the Director's designee.

(b) *Conduits.* Any registered investment company, or series thereof, that owns, pursuant to section 12(d)(1)(E) of the Act (15 U.S.C. 80a–12(d)(1)(E)), shares of a money market fund that has suspended redemptions of shares pursuant to paragraph (a) of this section also is exempt from the requirements of section 22(e) of the Act (15 U.S.C. 80a–22(e)). A registered investment company relying on the exemption provided in this paragraph must promptly notify the Commission that it has suspended redemptions in reliance on this section. Notification under this paragraph shall be made by electronic mail directed to the attention of the Director of the Division of Investment Management or the Director's designee.

(c) *Commission Orders.* For the protection of shareholders, the Commission may issue an order to rescind or modify the exemption provided by this section, after appropriate notice and opportunity for hearing in accordance with section 40 of the Act (15 U.S.C. 80a–39).

(d) *Definitions.* Each of the terms *business day*, *total assets*, and *weekly liquid assets* has the same meaning as defined in § 270.2a–7.

[75 FR 10117, Mar. 4, 2010, as amended at 79 FR 47967, Aug. 14, 2014; 87 FR 22446, Apr. 15, 2022]

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§ 270.22e–4 Liquidity risk management programs.

(a) *Definitions.* For purposes of this section:

(1) *Acquisition (or acquire)* means any purchase or subsequent rollover.

(2) *Business day* means any day, other than Saturday, Sunday, or any customary business holiday.

(3) *Convertible to cash* means the ability to be sold, with the sale settled.

(4) *Exchange-traded fund* or *ETF* means an open-end management investment company (or series or class thereof), the shares of which are listed and traded on a national securities exchange, and that has formed and operates under an exemptive order under the Act granted by the Commission or in reliance on an exemptive rule adopted by the Commission.

(5) *Fund* means an open-end management investment company that is registered or required to register under section 8 of the Act (15 U.S.C. 80a–8) and includes a separate series of such an investment company, but does not include a registered open-end management investment company that is regulated as a money market fund under § 270.2a–7 or an In-Kind ETF.

(6) *Highly liquid investment* means any cash held by a fund and any investment that the fund reasonably expects to be convertible into cash in current market conditions in three business days or less without the conversion to cash significantly changing the market value of the investment, as determined pursuant to the provisions of paragraph (b)(1)(ii) of this section.

(7) *Highly liquid investment minimum* means the percentage of the fund's net assets that the fund invests in highly liquid investments that are assets pursuant to paragraph (b)(1)(iii) of this section.

(8) *Illiquid investment* means any investment that the fund reasonably expects cannot be sold or disposed of in current market conditions in seven calendar days or less without the sale or disposition significantly changing the market value of the investment, as determined pursuant to the provisions of paragraph (b)(1)(ii) of this section.

(9) *In-Kind Exchange Traded Fund* or *In-Kind ETF* means an ETF that meets redemptions through in-kind transfers of securities, positions, and assets other than a *de minimis* amount of cash and that publishes its portfolio holdings daily.

(10) *Less liquid investment* means any investment that the fund reasonably expects to be able to sell or dispose of in current market conditions in seven calendar days or less without the sale or disposition significantly changing the market value of the investment, as determined pursuant to the provisions of paragraph (b)(1)(ii) of this section, but where the sale or disposition is reasonably expected to settle in more than seven calendar days.

(11) *Liquidity risk* means the risk that the fund could not meet requests to redeem shares issued by the fund without significant dilution of remaining investors' interests in the fund.

(12) *Moderately liquid investment* means any investment that the fund reasonably expects to be convertible into cash in current market conditions in more than three calendar days but in seven calendar days or less, without the conversion to cash significantly changing the market value of the investment, as determined pursuant to the provisions of paragraph (b)(1)(ii) of this section.

(13) *Person(s) designated to administer the program* means the fund or In-Kind ETF's investment adviser, officer, or officers (which may not be solely portfolio managers of the fund or In-Kind ETF) responsible for administering the program and its policies and procedures pursuant to paragraph (b)(2)(ii) of this section.

(14) *Unit Investment Trust* or *UIT* means a unit investment trust as defined in section 4(2) of the Act (15 U.S.C. 80a–4).

(b) *Liquidity Risk Management Program.* Each fund and In-Kind ETF must adopt and implement a written liquidity risk management program (''program'') that is reasonably designed to assess and manage its liquidity risk.

(1) *Required program elements.* The program must include policies and procedures reasonably designed to incorporate the following elements:

(i) *Assessment, management, and periodic review of liquidity risk.* Each fund and In-Kind ETF must assess, manage,

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and periodically review (with such review occurring no less frequently than annually) its liquidity risk, which must include consideration of the following factors, as applicable:

(A) The fund or In-Kind ETF's investment strategy and liquidity of portfolio investments during both normal and reasonably foreseeable stressed conditions, including whether the investment strategy is appropriate for an open-end fund, the extent to which the strategy involves a relatively concentrated portfolio or large positions in particular issuers, and the use of borrowings for investment purposes and derivatives;

(B) Short-term and long-term cash flow projections during both normal and reasonably foreseeable stressed conditions;

(C) Holdings of cash and cash equivalents, as well as borrowing arrangements and other funding sources; and

(D) For an ETF:

(*1*) The relationship between the ETF's portfolio liquidity and the way in which, and the prices and spreads at which, ETF shares trade, including, the efficiency of the arbitrage function and the level of active participation by market participants (including authorized participants); and

(*2*) The effect of the composition of baskets on the overall liquidity of the ETF's portfolio.

(ii) *Classification*. Each fund must, using information obtained after reasonable inquiry and taking into account relevant market, trading, and investment-specific considerations, classify each of the fund's portfolio investments (including each of the fund's derivatives transactions) as a highly liquid investment, moderately liquid investment, less liquid investment, or illiquid investment. A fund must review its portfolio investments' classifications, at least monthly in connection with reporting the liquidity classification for each portfolio investment on Form N–PORT in accordance with § 270.30b1–9, and more frequently if changes in relevant market, trading, and investment-specific considerations are reasonably expected to materially affect one or more of its investments' classifications.

NOTE TO PARAGRAPH (b)(1)(ii)INTRODUCTORY TEXT: If an investment could be viewed as either a highly liquid investment or a moderately liquid investment, because the period to convert the investment to cash depends on the calendar or business day convention used, a fund should classify the investment as a highly liquid investment. For a discussion of considerations that may be relevant in classifying the liquidity of the fund's portfolio investments, see Investment Company Act Release No. IC–32315 (Oct. 13, 2016).

(A) The fund may generally classify and review its portfolio investments (including the fund's derivatives transactions) according to their asset class, provided, however, that the fund must separately classify and review any investment within an asset class if the fund or its adviser has information about any market, trading, or investment-specific considerations that are reasonably expected to significantly affect the liquidity characteristics of that investment as compared to the fund's other portfolio holdings within that asset class.

(B) In classifying and reviewing its portfolio investments or asset classes (as applicable), the fund must determine whether trading varying portions of a position in a particular portfolio investment or asset class, in sizes that the fund would reasonably anticipate trading, is reasonably expected to significantly affect its liquidity, and if so, the fund must take this determination into account when classifying the liquidity of that investment or asset class.

(C) For derivatives transactions that the fund has classified as moderately liquid investments, less liquid investments, and illiquid investments, identify the percentage of the fund's highly liquid investments that it has pledged as margin or collateral in connection with derivatives transactions in each of these classification categories.

NOTE TO PARAGRAPH (b)(1)(ii)(C): For purposes of calculating these percentages, a fund that has pledged highly liquid investments and non-highly liquid investments as margin or collateral in connection with derivatives transactions classified as moderately liquid, less liquid, or illiquid investments first should apply pledged assets that are highly liquid investments in connection

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with these transactions, unless it has specifically identified non-highly liquid investments as margin or collateral in connection with such derivatives transactions.

(iii) *Highly liquid investment minimum.* (A) Any fund that does not primarily hold assets that are highly liquid investments must:

(*1*) Determine a highly liquid investment minimum, considering the factors specified in paragraphs (b)(1)(i)(A) through (D) of this section, as applicable (but considering those factors specified in paragraphs (b)(1)(i)(A) and (B) only as they apply during normal conditions, and during stressed conditions only to the extent they are reasonably foreseeable during the period until the next review of the highly liquid investment minimum). The highly liquid investment minimum determined pursuant to this paragraph may not be changed during any period of time that a fund's assets that are highly liquid investments are below the determined minimum without approval from the fund's board of directors, including a majority of directors who are not interested persons of the fund;

(*2*) Periodically review, no less frequently than annually, the highly liquid investment minimum; and

(*3*) Adopt and implement policies and procedures for responding to a shortfall of the fund's highly liquid investments below its highly liquid investment minimum, which must include requiring the person(s) designated to administer the program to report to the fund's board of directors no later than its next regularly scheduled meeting with a brief explanation of the causes of the shortfall, the extent of the shortfall, and any actions taken in response, and if the shortfall lasts more than 7 consecutive calendar days, must include requiring the person(s) designated to administer the program to report to the board within one business day thereafter with an explanation of how the fund plans to restore its minimum within a reasonable period of time.

(B) For purposes of determining whether a fund primarily holds assets that are highly liquid investments, a fund must exclude from its calculations the percentage of the fund's assets that are highly liquid investments that it has pledged as margin or collateral in connection with derivatives transactions that the fund has classified as moderately liquid investments, less liquid investments, and illiquid investments, as determined pursuant to paragraph (b)(1)(ii)(C) of this section.

(iv) *Illiquid investments.* No fund or In-Kind ETF may acquire any illiquid investment if, immediately after the acquisition, the fund or In-Kind ETF would have invested more than 15% of its net assets in illiquid investments that are assets. If a fund or In-Kind ETF holds more than 15% of its net assets in illiquid investments that are assets:

(A) It must cause the person(s) designated to administer the program to report such an occurrence to the fund's or In-Kind ETF's board of directors within one business day of the occurrence, with an explanation of the extent and causes of the occurrence, and how the fund or In-Kind ETF plans to bring its illiquid investments that are assets to or below 15% of its net assets within a reasonable period of time; and

(B) If the amount of the fund's or In-Kind ETF's illiquid investments that are assets is still above 15% of its net assets 30 days from the occurrence (and at each consecutive 30 day period thereafter), the fund or In-Kind ETF's board of directors, including a majority of directors who are not interested persons of the fund or In-Kind ETF, must assess whether the plan presented to it pursuant to paragraph (b)(1)(iv)(A) continues to be in the best interest of the fund or In-Kind ETF.

(v) *Redemptions in Kind.* A fund that engages in, or reserves the right to engage in, redemptions in kind and any In-Kind ETF must establish policies and procedures regarding how and when it will engage in such redemptions in kind.

(2) *Board oversight.* A fund or In-Kind ETF's board of directors, including a majority of directors who are not interested persons of the fund or In-Kind ETF, must:

(i) Initially approve the liquidity risk management program;

(ii) Approve the designation of the person(s) designated to administer the program; and

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(iii) Review, no less frequently than annually, a written report prepared by the person(s) designated to administer the program that addresses the operation of the program and assesses its adequacy and effectiveness of implementation, including, if applicable, the operation of the highly liquid investment minimum, and any material changes to the program.

(3) *Recordkeeping*. The fund or In-Kind ETF must maintain:

(i) A written copy of the program and any associated policies and procedures adopted pursuant to paragraphs (b)(1) through (b)(2) of this section that are in effect, or at any time within the past five years were in effect, in an easily accessible place;

(ii) Copies of any materials provided to the board of directors in connection with its approval under paragraph (b)(2)(i) of this section, and materials provided to the board of directors under paragraph (b)(2)(iii) of this section, for at least five years after the end of the fiscal year in which the documents were provided, the first two years in an easily accessible place; and

(iii) If applicable, a written record of the policies and procedures related to how the highly liquid investment minimum, and any adjustments thereto, were determined, including assessment of the factors incorporated in paragraphs (b)(1)(iii)(A) through (B) of this section and any materials provided to the board pursuant to paragraph (b)(1)(iii)(A)(*3*) of this section, for a period of not less than five years (the first two years in an easily accessible place) following the determination of, and each change to, the highly liquid investment minimum.

(c) *UIT liquidity*. On or before the date of initial deposit of portfolio securities into a registered UIT, the UIT's principal underwriter or depositor must determine that the portion of the illiquid investments that the UIT holds or will hold at the date of deposit that are assets is consistent with the redeemable nature of the securities it issues, and must maintain a record of that determination for the life of the UIT and for five years thereafter.

[81 FR 82264, Nov. 18, 2016, as amended at 85 FR 83295, Dec. 21, 2020]

§ 270.23c–1 Repurchase of securities by closed-end companies.

(a) A registered closed-end company may purchase for cash a security of which it is the issuer, subject to the following conditions:

(1) If the security is a stock entitled to cumulative dividends, such dividends are not in arrears.

(2) If the security is a stock not entitled to cumulative dividends, at least 90 percent of the net income of the issuer for the last preceding fiscal year, determined in accordance with good accounting practice and not including profits or losses realized from the sale of securities or other properties, was distributed to its shareholders during such fiscal year or within 60 days after the close of such fiscal year.

(3) If the security to be purchased is junior to any class of outstanding security of the issuer representing indebtedness (except notes or other evidences of indebtedness held by a bank or other person, the issuance of which did not involve a public offering) all securities of such class shall have an asset coverage of at least 300 percent immediately after such purchase; and if the security to be purchased is junior to any class of outstanding senior security of the issuer which is a stock, all securities of such class shall have an asset coverage of at least 200 percent immediately after such purchase, and shall not be in arrears as to dividends.

(4) The seller of the security is not to the knowledge of the issuer an affiliated person of the issuer.

(5) Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase.

(6) The purchase is made at a price not above the market value, if any, or the asset value of such security, whichever is lower, at the time of such purchase.

(7) The issuer discloses to the seller or, if the seller is acting through a broker, to the seller's broker, either prior to or at the time of purchase the approximate or estimated asset coverage per unit of the security to be purchased.

(8) No brokerage commission is paid by the issuer to any affiliated person of the issuer in connection with the purchase.

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(9) The purchase is not made in a manner or on a basis which discriminates unfairly against any holders of the class of securities purchased.

(10) If the security is a stock, the issuer has, within the preceding six months, informed stockholders of its intention to purchase stock of such class by letter or report addressed to all the stockholders of such class.

(11) The issuer files with the Commission, as an exhibit to Form N-CSR (§ 249.331 and § 274.128), a copy of any written solicitation to purchase securities under this section sent or given during the period covered by the report by or on behalf of the issuer to 10 or more persons.

(b) Notwithstanding the conditions of paragraph (a) of this section, a closed-end company may purchase fractional interests in, or fractional rights to receive, any security of which it is the issuer.

(c) This rule does not apply to purchase of securities made pursuant to section 23(c)(1) or (2) of the Act (54 Stat. 825; 15 U.S.C. 80a–23). A registered closed-end company may file an application with the Commission for an order under section 23(c)(3) of the Act permitting the purchase of any security of which it is the issuer which does not meet the conditions of this rule and which is not to be made pursuant to section 23(c)(1) or (2) of the Act.

(d) This rule relates exclusively to the requirements of section 23(c) of the Act, and the provisions hereof shall not be construed to authorize any action which contravenes any other applicable law, statutory or otherwise, or the provision of any indenture or other instrument pursuant to which securities of the issuer were issued.

[Rule N–23C–1, 7 FR 10424, Dec. 15, 1942, as amended at 68 FR 64975, Nov. 17, 2003]

CROSS REFERENCE: For interpretative release applicable to § 270.23c–1, see No. 78 in tabulation, part 271 of this chapter.

§ 270.23c–2 Call and redemption of securities issued by registered closed-end companies.

(a) Notwithstanding the provisions of § 270.23c–1 (Rule N–23c–1), a registered closed-end investment company may call or redeem any securities of which it is the issuer, in accordance with the terms of such securities or the charter, indenture or other instrument pursuant to which such securities were issued: *Provided*, That, if less than all the outstanding securities of a class or series are to be called or redeemed the call or redemption shall be made by lot, on a pro rata basis, or in such other manner as will not discriminate unfairly against any holder of the securities of such class or series.

(b) A registered closed-end investment company which proposes to call or redeem any securities of which it is the issuer shall file with the Commission notice of its intention to call or redeem such securities at least 30 days prior to the date set for the call or redemption; *Provided*, *however*, That if notice of the call or the redemption is required to be published in a newspaper or otherwise, notice shall be given to the Commission at least 10 days in advance of the date of publication. Such notice shall be filed in triplicate and shall include (1) the title of the class of securities to be called or redeemed, (2) the date on which the securities are to be called or redeemed, (3) the applicable provisions of the governing instrument pursuant to which the securities are to be called or redeemed and, (4) if less than all the outstanding securities of a class or series are to be called or redeemed, the principal amount or number of shares and the basis upon which the securities to be called or redeemed are to be selected.

[Rule N–23C–2, 7 FR 6669, Aug. 25, 1942]

§ 270.23c–3 Repurchase offers by closed-end companies.

(a) *Definitions.* For purposes of this section:

(1) *Periodic interval* shall mean an interval of three, six, or twelve months.

(2) *Repurchase offer* shall mean an offer pursuant to this section by an investment company to repurchase common stock of which it is the issuer.

(3) *Repurchase offer amount* shall mean the amount of common stock that is the subject of a repurchase offer, expressed as a percentage of such stock outstanding on the repurchase request deadline, that an investment company offers to repurchase in a repurchase offer. The repurchase offer

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amount shall not be less than five percent nor more than twenty-five percent of the common stock outstanding on a repurchase request deadline. Before each repurchase offer, the repurchase offer amount for that repurchase offer shall be determined by the directors of the company.

(4) *Repurchase payment deadline* with respect to a tender of common stock shall mean the date by which an investment company must pay securities holders for any stock repurchased. A repurchase payment deadline shall occur seven days after the repurchase pricing date applicable to such tender.

(5) *Repurchase pricing date* with respect to a tender of common stock shall mean the date on which an investment company determines the net asset value applicable to the repurchase of the securities. A repurchase pricing date shall occur no later than the fourteenth day after a repurchase request deadline, or the next business day if the fourteenth day is not a business day. In no event shall an investment company determine the net asset value applicable to the repurchase of the stock before the close of business on the repurchase request deadline.

(i) For an investment company making a repurchase offer pursuant to paragraph (b) of this section, the number of days between the repurchase request deadline and the repurchase pricing date for a repurchase offer shall be the maximum number specified by the company pursuant to paragraph (b)(2)(i)(D) of this section.

(ii) For an investment company making a repurchase offer pursuant to paragraph (c) of this section, the repurchase pricing date shall be such date as the company shall disclose to security holders in the notification pursuant to paragraph (b)(4) of this section with respect to such offer.

(iii) For purposes of paragraph (b)(1) of this section, a repurchase pricing date may be a date earlier than the date determined pursuant to paragraph (a)(5) (i) or (ii) of this section if, on or immediately following the repurchase request deadline, it appears that the use of an earlier repurchase pricing date is not likely to result in significant dilution of the net asset value of either stock that is tendered for repurchase or stock that is not tendered.

(6) *Repurchase request* shall mean the tender of common stock in response to a repurchase offer.

(7) *Repurchase request deadline* with respect to a repurchase offer shall mean the date by which an investment company must receive repurchase requests submitted by security holders in response to that offer or withdrawals or modifications of previously submitted repurchase requests. The first repurchase request deadline after the effective date of the registration statement for the common stock that is the subject of a repurchase offer, or after a shareholder vote adopting the fundamental policy specifying a company's periodic interval, whichever is later, shall occur no later than two periodic intervals thereafter.

(b) *Periodic repurchase offers.* A registered closed-end company or a business development company may repurchase common stock of which it is the issuer from the holders of the stock at periodic intervals, pursuant to repurchase offers made to all holders of the stock, *Provided* that:

(1) The company shall repurchase the stock for cash at the net asset value determined on the repurchase pricing date and shall pay the holders of the stock by the repurchase payment deadline except as provided in paragraph (b)(3) of this section. The company may deduct from the repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the company and is reasonably intended to compensate the company for expenses directly related to the repurchase. A company may not condition a repurchase offer upon the tender of any minimum amount of shares.

(2)(i) The company shall repurchase the security pursuant to a fundamental policy, changeable only by a majority vote of the outstanding voting securities of the company, stating:

(A) That the company will make repurchase offers at periodic intervals pursuant to this section, as this section may be amended from time to time;

(B) The periodic intervals between repurchase request deadlines;

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(C) The dates of repurchase request deadlines or the means of determining the repurchase request deadlines; and

(D) The maximum number of days between each repurchase request deadline and the next repurchase pricing date.

(ii) The company shall include a statement in its annual report to shareholders of the following:

(A) Its policy under paragraph (b)(2)(i) of this section; and

(B) With respect to repurchase offers by the company during the period covered by the annual report, the number of repurchase offers, the repurchase offer amount and the amount tendered in each repurchase offer, and the extent to which in any repurchase offer the company repurchased stock pursuant to the procedures in paragraph (b)(5) of this section.

(iii) A company shall be deemed to be making repurchase offers pursuant to a policy within paragraph (b)(2)(i) of this section if:

(A) The company makes repurchase offers to its security holders at periodic intervals and, before May 14, 1993, has disclosed in its registration statement its intention to make or consider making such repurchase offers; and

(B) The company's board of directors adopts a policy specifying the matters required by paragraph (b)(2)(i) of this section, and the periodic interval specified therein conforms generally to the frequency of the company's prior repurchase offers.

(3)(i) The company shall not suspend or postpone a repurchase offer except pursuant to a vote of a majority of the directors, including a majority of the directors who are not interested persons of the company, and only:

(A) If the repurchase would cause the company to lose its status as a regulated investment company under Subchapter M of the Internal Revenue Code [26 U.S.C. 851–860];

(B) If the repurchase would cause the stock that is the subject of the offer that is either listed on a national securities exchange or quoted in an inter-dealer quotation system of a national securities association to be neither listed on any national securities exchange nor quoted on any inter-dealer quotation system of a national securities association;

(C) For any period during which the New York Stock Exchange or any other market in which the securities owned by the company are principally traded is closed, other than customary week-end and holiday closings, or during which trading in such market is restricted;

(D) For any period during which an emergency exists as a result of which disposal by the company of securities owned by it is not reasonably practicable, or during which it is not reasonably practicable for the company fairly to determine the value of its net assets; or

(E) For such other periods as the Commission may by order permit for the protection of security holders of the company.

(ii) If a repurchase offer is suspended or postponed, the company shall provide notice to security holders of such suspension or postponement. If the company renews the repurchase offer, the company shall send a new notification to security holders satisfying the requirements of paragraph (b)(4) of this section.

(4)(i) No less than twenty-one and no more than forty-two days before each repurchase request deadline, the company shall send to each holder of record and to each beneficial owner of the stock that is the subject of the repurchase offer a notification providing the following information:

(A) A statement that the company is offering to repurchase its securities from security holders at net asset value;

(B) Any fees applicable to such repurchase;

(C) The repurchase offer amount;

(D) The dates of the repurchase request deadline, repurchase pricing date, and repurchase payment deadline, the risk of fluctuation in net asset value between the repurchase request deadline and the repurchase pricing date, and the possibility that the company may use an earlier repurchase pricing date pursuant to paragraph (a)(5)(iii) of this section;

(E) The procedures for security holders to tender their shares and the right of the security holders to withdraw or modify their tenders until the repurchase request deadline;

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(F) The procedures under which the company may repurchase such shares on a pro rata basis pursuant to paragraph (b)(5) of this section;

(G) The circumstances in which the company may suspend or postpone a repurchase offer pursuant to paragraph (b)(3) of this section;

(H) The net asset value of the common stock computed no more than seven days before the date of the notification and the means by which security holders may ascertain the net asset value thereafter; and

(I) The market price, if any, of the common stock on the date on which such net asset value was computed, and the means by which security holders may ascertain the market price thereafter.

(ii) The company shall file three copies of the notification with the Commission within three business days after sending the notification to security holders. Those copies shall be accompanied by copies of Form N–23c–3 (§ 274.221 of this chapter) (''Notification of Repurchase Offer''). The format of the copies shall comply with the requirements for registration statements and reports under § 270.8b–12 of this chapter.

(iii) For purposes of sending a notification to a beneficial owner pursuant to paragraph (b)(4)(i) of this section, where the company knows that shares of common stock that is the subject of a repurchase offer are held of record by a broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers in nominee name or otherwise, the company shall follow the procedures for transmitting materials to beneficial owners of securities that are set forth in § 240.14a–13 of this chapter.

(5) If security holders tender more than the repurchase offer amount, the company may repurchase an additional amount of stock not to exceed two percent of the common stock outstanding on the repurchase request deadline. If the company determines not to repurchase more than the repurchase offer amount, or if security holders tender stock in an amount exceeding the repurchase offer amount plus two percent of the common stock outstanding on the repurchase request deadline, the company shall repurchase the shares tendered on a pro rata basis; *Provided, however,* That this provision shall not prohibit the company from:

(i) Accepting all stock tendered by persons who own, beneficially or of record, an aggregate of not more than a specified number which is less than one hundred shares and who tender all of their stock, before prorating stock tendered by others; or

(ii) Accepting by lot stock tendered by security holders who tender all stock held by them and who, when tendering their stock, elect to have either all or none or at least a minimum amount or none accepted, if the company first accepts all stock tendered by security holders who do not so elect.

(6) The company shall permit tenders of stock for repurchase to be withdrawn or modified at any time until the repurchase request deadline but shall not permit tenders to be withdrawn or modified thereafter.

(7)(i) The current net asset value of the company's common stock shall be computed no less frequently than weekly on such day and at such specific time or times during the day that the board of directors of the company shall set.

(ii) The current net asset value of the company's common stock shall be computed daily on the five business days preceding a repurchase request deadline at such specific time or times during the day that the board of directors of the company shall set.

(iii) For purposes of section 23(b) [15 U.S.C. 80a–23(b)], the current net asset value applicable to a sale of common stock by the company shall be the net asset value next determined after receipt of an order to purchase such stock. During any period when the company is offering its common stock, the current net asset value of the common stock shall be computed no less frequently than once daily, Monday through Friday, at the specific time or times during the day that the board of directors of the company shall set, except on:

(A) Days on which changes in the value of the company's portfolio securities will not materially affect the current net asset value of the common stock;

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(B) Days during which no order to purchase its common stock is received, other than days when the net asset value would otherwise be computed pursuant to paragraph (b)(7)(i) of this section; or

(C) Customary national, local, and regional business holidays described or listed in the prospectus.

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

(9) Any senior security issued by the company or other indebtedness contracted by the company either shall mature by the next repurchase pricing date or shall provide for the redemption or call of such security or the repayment of such indebtedness by the company by the next repurchase pricing date, either in whole or in part, without penalty or premium, as necessary to permit the company to repurchase securities in such repurchase offer amount as the directors of the company shall determine in compliance with the asset coverage requirements of section 18 [15 U.S.C. 80a–18] or 61 [15 U.S.C. 80a–60], as applicable.

(10)(i) From the time a company sends a notification to shareholders pursuant to paragraph (b)(4) of this section until the repurchase pricing date, a percentage of the company's assets equal to at least 100 percent of the repurchase offer amount shall consist of assets that can be sold or disposed of in the ordinary course of business, at approximately the price at which the company has valued the investment, within a period equal to the period between a repurchase request deadline and the repurchase payment deadline, or of assets that mature by the next repurchase payment deadline.

(ii) In the event that the company's assets fail to comply with the requirements in paragraph (b)(10)(i) of this section, the board of directors shall cause the company to take such action as it deems appropriate to ensure compliance.

(iii) In supervising the company's operations and portfolio management by the investment adviser, the company's board of directors shall adopt written procedures reasonably designed, taking into account current market conditions and the company's investment objectives, to ensure that the company's portfolio assets are sufficiently liquid so that the company can comply with its fundamental policy on repurchases, and comply with the liquidity requirements of paragraph (b)(10)(i) of this section. The board of directors shall review the overall composition of the portfolio and make and approve such changes to the procedures as the board deems necessary.

(11) The company, or any underwriter for the company, shall comply, as if the company were an open-end company, with the provisions of section 24(b) [15 U.S.C. 80a–24(b)] and rules issued thereunder with respect to any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors.

(c) *Discretionary repurchase offers.* A registered closed-end company or a business development company may repurchase common stock of which it is the issuer from the holders of the stock pursuant to a repurchase offer that is not made pursuant to a fundamental policy and that is made to all holders of the stock not earlier than two years after another offer pursuant to this paragraph (c) if the company complies with the requirements of paragraphs (b) (1), (3), (4), (5), (6), (7)(ii), (8), (10)(i), and (10)(ii) of this section.

(d) *Exemption from the definition of redeemable security.* A company that makes repurchase offers pursuant to paragraph (b) or (c) of this section shall not be deemed thereby to be an issuer of redeemable securities within section 2(a)(32) [15 U.S.C. 80a–2(a)(32)].

(e) *Registration of an indefinite amount of securities.* A company that makes repurchase offers pursuant to paragraph (b) of this section shall be deemed to have registered an indefinite amount of securities pursuant to Section 24(f) of the Act (15 U.S.C. 80a–24(f)) upon the effective date of its registration statement.

[58 FR 19343, Apr. 14, 1993; 58 FR 29695, May 21, 1993, as amended at 66 FR 3759, Jan. 16, 2001; 69 FR 46390, Aug. 2, 2004; 85 FR 33360, June 1, 2020]

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§ 270.24b–1 Definitions.

(a) The term *form letter* as used in section 24(b) of the Act includes (1) one of a series of identical sales letters, and (2) any sales letter a substantial portion of which consists of a statement which is in essence identical with similar statements in sales letters sent to 25 or more persons within any period of 90 consecutive days.

(b) The term *distribution* as used in section 24(b) of the Act includes the distribution or redistribution to prospective investors of the content of any written sales literature, whether such distribution or redistribution is effected by means of written or oral representations or statements.

(c) The terms *rules and regulations* as used in section 24 (a) and (c) of the Act shall include the forms for registration of securities under the Securities Act of 1933 and the related instructions thereto.

(Sec. 19, 48 Stat. 85, as amended, sec. 319, 53 Stat. 1173; 15 U.S.C. 77s, 77sss)

[Rule N–24B–1, 6 FR 3020, June 21, 1941, as amended by 21 FR 1046, Feb. 15, 1956]

§ 270.24b–2 Filing copies of sales literature.

Copies of material filed with the Commission for the sole purpose of complying with section 24(b) of the Act (15 U.S.C. 80a–24(b)) either shall be accompanied by a letter of transmittal which makes appropriate references to said section or shall make such appropriate reference on the face of the material.

[70 FR 43570, July 27, 2005]

§ 270.24b–3 Sales literature deemed filed.

Any advertisement, pamphlet, circular, form letter or other sales literature addressed to or intended for distribution to prospective investors shall be deemed filed with the Commission for purposes of section 24(b) of the Act [15 U.S.C. 80a–24(b)] upon filing with a national securities association registered under section 15A of the Securities Exchange Act of 1934 [15 U.S.C. 78*o*] that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising.

[53 FR 3880, Feb. 10, 1988]

§ 270.24b–4 Filing copies of covered investment fund research reports.

A covered investment fund research report, as defined in paragraph (c)(3) of § 230.139b of this chapter under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), of a covered investment fund registered as an investment company under the Act, shall not be subject to section 24(b) of the Act or the rules and regulations thereunder, except that such report shall be subject to such section and the rules and regulations thereunder to the extent that it is otherwise not subject to the content standards in the rules of any self-regulatory organization related to research reports, including those contained in the rules governing communications with the public regarding investment companies or substantially similar standards.

[83 FR 64222, Dec. 13, 2018]

§ 270.24e–1 Filing of certain prospectuses as post-effective amendments to registration statements under the Securities Act of 1933.

Section 24(e) of the Act requires that when a prospectus is revised so that it may be available for use in compliance with section 10(a)(3) of the Securities Act of 1933 for a period extending beyond the time when the previous prospectus would have ceased to be available for such use, such revised prospectus, in order to meet the requirements of section 10 of said Act, must be filed as an amendment to the registration statement under said Act and such amendment must have become effective prior to the use of the revised prospectus. Except as hereinabove provided, section 24(e) of the Act shall not be deemed to govern the times and conditions under which post-effective amendments shall be filed to registration statements under the Securities Act of 1933.

(Sec. 24, 54 Stat. 825, as amended; 15 U.S.C. 80a–24)

[20 FR 2856, Apr. 28, 1955, as amended at 62 FR 47938, Sept. 12, 1997]

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§ 270.24f–2 Registration under the Securities Act of 1933 of certain investment company securities.

(a) *General.* Any face-amount certificate company, open-end management company, closed-end management company that makes periodic repurchase offers pursuant to § 270.23c–3(b), or unit investment trust (''issuer'') that is deemed to have registered an indefinite amount of securities pursuant to Section 24(f) of the Act (15 U.S.C. 80a–24(f)) must not later than 90 days after the end of any fiscal year during which it has publicly offered such securities, file Form 24F–2 (17 CFR 274.24) with the Commission. Form 24F–2 must be prepared in accordance with the requirements of that form, and must be accompanied by the payment of a registration fee with respect to the securities sold during the fiscal year in reliance upon registration pursuant to section 24(f) of the Act calculated in the manner specified in section 24(f) of the Act and in the Form. An issuer that pays the registration fee more than 90 days after the end of its fiscal year must pay interest in the manner specified in section 24(f) of the Act and in Form 24F–2.

(b) *Issuer ceasing operations; mergers and other transactions.* For purposes of this section, if an issuer ceases operations, the date the issuer ceases operations will be deemed to be the end of its fiscal year. In the case of a liquidation, merger, or sale of all or substantially all of the assets (''merger'') of the issuer, the issuer will be deemed to have ceased operations for the purposes of this section on the date the merger is consummated; *provided, however,* that in the case of a merger of an issuer or a series of an issuer (''Predecessor Issuer'') with another issuer or a series of an issuer (''Successor Issuer''), the Predecessor Issuer will not be deemed to have ceased operations and the Successor issuer will assume the obligations, fees, and redemption credits of the Predecessor Issuer incurred pursuant to section 24(f) of the Act and § 270.24e–2 (as in effect prior to October 11, 1997; see 17 CFR part 240 to end, revised as of April 1, 1997) if the Successor Issuer:

(1) had no assets or liabilities, other than nominal assets or liabilities, and no operating history immediately prior to the merger;

(2) Acquired substantially all of the assets and assumed substantially all of the liabilities and obligations of the Predecessor Issuer; and

(3) The merger is not designed to result in the Predecessor Issuer merging with, or substantially all of its assets being acquired by, an issuer (or a series of an issuer) that would not meet the conditions of paragraph (b)(1) of this section.

(c) *Counting days.* To determine the date on which Form 24F–2 must be filed with the Commission under paragraph (a) of this section, the first day of the 90–day period is the first calendar day of the fiscal year following the fiscal year for which the Form is to be filed. If the last day of the 90–day period falls on a Saturday, Sunday, or federal holiday, the period ends on the first business day thereafter.

NOTE TO PARAGRAPH (c): For example, a Form 24F–2 for a fiscal year ending on June 30 must be filed no later than September 28. If September 28 falls on a Saturday, Sunday, the Form must be filed on the following Monday.

[62 FR 47938, Sept. 12, 1997, as amended at 85 FR 33360, June 1, 2020]

§ 270.26a–1 Payment of administrative fees to the depositor or principal underwriter of a unit investment trust; exemptive relief for separate accounts.

For purposes of section 26(a)(2)(C) of the Act, payment of a fee to the depositor of or a principal underwriter for a registered unit investment trust, or to any affiliated person or agent of such depositor or underwriter (collectively, ''depositor''), for bookkeeping or other administrative services provided to the trust shall be allowed the custodian or trustee (''trustee'') as an expense, provided that such fee is an amount not greater than the expenses, without profit:

(a) Actually paid by such depositor directly attributable to the services provided; and

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(b) Increased by the services provided directly by such depositor, as determined in accordance with generally accepted accounting principles consistently applied.

[85 FR 26110, May 1, 2020]

§ 270.27c–1 [Reserved]

§ 270.27d–1 Reserve requirements for principal underwriters and depositors to carry out the obligations to refund charges required by section 27(d) and section 27(f) of the Act.

(a)(1) Every depositor of or principal underwriter for the issuer of a periodic payment plan certificate sold subject to section 27(d) or section 27(f) of the Act or both, shall deposit and maintain funds in a segregated trust account as a reserve and as security for the purpose of assuring the refund of charges required by sections 27(d) and 27(f) of the Act.

(2) The assets of such trust account may be held as cash or invested only in one or more of (i) government securities as defined in section 2(a)(16) of the Act (except equity securities) or (ii) negotiable certificates of deposit issued by a bank, as defined in section 2(a)(5) of the Act and having capital and surplus of at least $10 million: *Provided*, That no such investment may have a maturity of more than 5 years, no more than 50 percent of the assets may be invested in obligations having a maturity of more than 1 year, and certificates of deposit of a single issuer may not constitute more than 10 percent of the value of the assets in the account.

(3) Any income, gains, or losses from assets allocated to such account, whether or not realized, shall be credited to or charged against such account without regard to other income, gains, or losses of the depositor or principal underwriter.

(4) The assets of such trust account may be withdrawn only as permitted by paragraph (f) of this section and shall in no event be chargeable with liabilities arising out of any aspect of the business of the depositor or principal underwriter other than assuring the ability of the depositor or principal underwriter to refund the amounts required by such sections.

(b) For purposes of this section:

(1) ''Excess sales load'' on any payment is that portion of the sales load in excess of 15 percent of that payment.

(2) ''Monthly payment'' shall be the amount of the smallest monthly installment scheduled to be paid during the life of the plan. If payments are required or permitted to be made on a basis less frequently than monthly, an equivalent monthly payment shall be the amount determined by dividing the smallest minimum payment required or permitted in a payment period by the number of months included in such period.

(3) The assets in the segregated trust account shall be valued as follows: (i) With respect to securities for which market quotations are readily available, the market value of such securities; and (ii) with respect to other securities, fair value as determined in good faith by the depositor or principal underwriter.

(c) For every periodic payment plan certificate governed by section 27(d), the depositor or principal underwriter shall deposit into the segregated trust account not less than 45 percent of the excess sales load on each of the first six monthly payments or their equivalent.

(d) For all periodic payment plan certificates governed by section 27(d) which have not been surrendered in accordance with their terms, and for which the depositor or principal underwriter may be liable for the refund of any sales load, the depositor or principal underwriter shall maintain in the segregated trust account an amount equal to not less than 15% of the total refundable sales load on the payments made on those certificates. The depositor or principal underwriter shall also maintain in the segregated trust account such additional amounts as the Commission by order may require for the depositor or principal underwriter to carry out refund obligations pursuant to sections 27(d) and 27(f) of the Act.

(e) For every periodic payment plan certificate governed by section 27(f) of the Act, and for which the depositor or principal underwriter has no obligation to refund any excess sales load pursuant to section 27(d) of the Act, the depositor or principal underwriter shall deposit and maintain during the refund

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period, at least the following amounts in the segregated trust account:

(1) For certificates that require monthly payments of $100 or less, 20 percent of the difference between the gross payments made and the net amount invested;

(2) For certificates that require monthly payments in excess of $100 and for single payment plan certificates, 30 percent of the difference between the gross payments made and the net amount invested;

(3) For certificates with respect to which the holder is entitled to receive the greater of the refund provided by section 27(f) (of the Act) or a refund of total payments and upon which a total of at least $1,000 has been paid, 100 percent of the difference between the gross payments made and net amount invested; and

(4) Such additional amounts as the Commission by order may require to carry out the obligation to refund charges pursuant to section 27(f) of the Act.

(f) Assets may be withdrawn from the segregated trust account by each depositor or principal underwriter:

(1) To refund excess sales load to a certificate holder exercising the right of surrender specified in section 27(d) of the Act; or

(2) To refund to a certificate holder exercising the right of withdrawal specified in section 27(f) of the Act the difference between the amount of his gross payments and the net amount invested; or

(3) For any other purpose: *Provided, however,* That such withdrawal shall not reduce the segregated trust account to an amount less than the sum of (i) 130 percent of the amount required to be maintained by paragraph (d) of this section, if any, and (ii) 100 percent of that amount required to be maintained by paragraph (e) of this section, if any.

(g) The minimum amounts required to be maintained by paragraphs (d) and (e) of this section shall be computed at least monthly. Any additional deposits required by paragraph (d) or (e) of this section shall be made immediately after such computation, and any withdrawals permitted by paragraph (f)(3) of this section may be made only at such time.

(h) Nothing in this section shall be construed to prohibit a depositor or principal underwriter, acting as such for two or more registered investment companies issuing periodic payment plan certificates, from combining in a single segregated trust account the reserves for such companies required by this section.

(i) The refunds required to be made to certificate holders pursuant to sections 27(d) and 27(f) (of the Act) shall be paid in cash not more than 7 days from the date the certificate is received in proper form by the custodian bank or such other paying agent as may be designated under the periodic payment plan.

(j) Each depositor or principal underwriter shall file with the Commission, within the appropriate period of time specified, an Accounting of Segregated Trust Account. Form N–27D–1 (§ 274.127d–1 of this chapter) is hereby prescribed as such accounting form.

[36 FR 13136, July 15, 1971, as amended at 40 FR 50712, Oct. 31, 1975]

§ 270.27d–2 [Reserved]

§ 270.27e–1 [Reserved]

§ 270.27f–1 [Reserved]

§ 270.27g–1 [Reserved]

§ 270.27h–1 [Reserved]

§ 270.27i–1 Exemption from Section 27(i)(2)(A) of the Act during annuity payment period of variable annuity contracts participating in certain registered separate accounts.

A registered separate account, and any depositor of or underwriter for such account, shall, during the annuity payment period of variable annuity contracts participating in such account, be exempt from the requirement of paragraph (1) of section 27(i)(2)(A) of the Act that a periodic payment plan certificate be a redeemable security.

[85 FR 26110, May 1, 2020]

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§ 270.28b–1 Investment in loans partially or wholly guaranteed under the Servicemen's Readjustment Act of 1944, as amended.

(a) The term *qualified investments* as used in section 28(b) of the Investment Company Act of 1940 shall include:

(1) Any loan, any portion of which is guaranteed under Title III of the Servicemen's Readjustment Act of 1944, as amended, and which is secured by a first lien on real estate: *Provided,* The amount of the loan not so guaranteed does not exceed 66⅔ percent of the reasonable value of such real estate as determined by proper appraisal made by an appraiser designated by the Administrator of Veterans' Affairs;

(2) Any secondary loan the full amount of which is guaranteed under section 505(a) of Title III of the above mentioned act and which is secured by a second lien on real estate:

Provided, however, That any such loan shall be deemed a qualified investment only so long as (i) insurance policies are required to be procured and maintained in an amount sufficient to protect the security against the risks or hazards to which it may be subjected to the extent customary in the locality, and (ii) the loan shall remain guaranteed under Title III of the Servicemen's Readjustment Act of 1944, as amended, to the extent specified in paragraph (a) (1) or (2) of this section, as the case may be.

(b) Loans made pursuant to this section shall be valued at the original principal amount of the loan less all payments made thereon which have been applied to the reduction of such principal amount.

(Secs. 28(b), 38, 54 Stat. 832, 841; 15 U.S.C. 80a–28(b), 80a–38)

[Rule N–28B–1, 11 FR 6483, June 13, 1946]

§ 270.30a–1 Annual report for registered investment companies.

Every management investment company must file an annual report on Form N–CEN (§ 274.101 of this chapter) at least every twelve months and not more than seventy-five calendar days after the close of each fiscal year. Every unit investment trust must file an annual report on Form N–CEN (§ 274.101 of this chapter) at least every twelve months and not more than seventy-five calendar days after the close of each calendar year. A registered investment company that has filed a registration statement with the Commission registering its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn.

[81 FR 82020, Nov. 18, 2016]

§ 270.30a–2 Certification of Form N–CSR.

(a) Each report filed on Form N–CSR (§§ 249.331 and 274.128 of this chapter) by a registered management investment company must include certifications in the form specified in Item 19(a)(3) of Form N–CSR, and such certifications must be filed as an exhibit to such report. Each principal executive and principal financial officer of the investment company, or persons performing similar functions, at the time of filing of the report must sign a certification.

(b) Each report on Form N–CSR filed by a registered management investment company under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) and that contains financial statements must be accompanied by the certifications required by Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350) and such certifications must be furnished as an exhibit to such report as specified in Item 19(b) of Form N–CSR. Each principal executive and principal financial officer of the investment company (or equivalent thereof) must sign a certification. This requirement may be satisfied by a single certification signed by an investment company's principal executive and principal financial officers.

[87 FR 73141, Nov. 27, 2022]

§ 270.30a–3 Controls and procedures.

(a) Every registered management investment company, other than a small business investment company registered on Form N–5 (§§ 239.24 and 274.5

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of this chapter), must maintain disclosure controls and procedures (as defined in paragraph (c) of this section) and internal control over financial reporting (as defined in paragraph (d) of this section).

(b) Each such registered management investment company's management must evaluate, with the participation of the company's principal executive and principal financial officers, or persons performing similar functions, the effectiveness of the company's disclosure controls and procedures, within the 90-day period prior to the filing date of each report on Form N-CSR (§§ 249.331 and 274.128 of this chapter).

(c) For purposes of this section, the term disclosure controls and procedures means controls and other procedures of a registered management investment company that are designed to ensure that information required to be disclosed by the investment company on Form N-CSR (§§ 249.331 and 274.128 of this chapter) is recorded, processed, summarized, and reported within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an investment company in the reports that it files or submits on Form N-CSR is accumulated and communicated to the investment company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

(d) The term *internal control over financial reporting* is defined as a process designed by, or under the supervision of, the registered management investment company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

(1) Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the investment company;

(2) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the investment company are being made only in accordance with authorizations of management and directors of the investment company; and

(3) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the investment company's assets that could have a material effect on the financial statements.

[68 FR 36671, June 18, 2003, as amended at 69 FR 11264, Mar. 9, 2004; 81 FR 82021, Nov. 18, 2016]

§ 270.30a–4 Annual report for wholly-owned registered management investment company subsidiary of registered management investment company.

Notwithstanding the provisions of § 270.30a–1, a registered management investment company that is a wholly-owned subsidiary of a registered management investment company need not file an annual report on Form N–CEN if financial information with respect to that subsidiary is reported in the parent's annual report on Form N–CEN.

[81 FR 82021, Nov. 18, 2016]

§§ 270.30b1–1—270.b1–3 [Reserved]

§ 270.30b1–4 Report of proxy voting record.

Every registered management investment company, other than a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), shall file an annual report on Form N-PX (§ 274.129 of this chapter) not later than August 31 of each year, containing the registrant's proxy voting record for the most recent twelve-month period ended June 30.

[68 FR 6581, Feb. 7, 2003]

EFFECTIVE DATE NOTE: At 87 FR 78809, Dec. 22, 2022, § 270.30b1–4 was amended by removing the phrase ''Form N–PX (§ 274.129 of this

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chapter)'' and adding in its place ''Form N–PX (§§ 249.326 and 274.129 of this chapter)'', effective July 1, 2024.

§ 270.30b1–5 [Reserved]

§ 270.30b1–7 Monthly report for money market funds.

Every registered open-end management investment company, or series thereof, that is regulated as a money market fund under § 270.2a-7 must file with the Commission a monthly report of portfolio holdings on Form N–MFP (§ 274.201 of this chapter), current as of the last business day or any subsequent calendar day of the preceding month, no later than the fifth business day of each month.

[79 FR 47967, Aug. 14, 2014]

§ 270.30b1–8 Current report for money market funds.

Every registered open-end management investment company, or series thereof, that is regulated as a money market fund under § 270.2a–7, that experiences any of the events specified on Form N–CR (274.222 of this chapter), must file with the Commission a current report on Form N–CR within the period specified in that form.

[79 FR 47967, Aug. 14, 2014]

§ 270.30b1–9 Monthly report.

Each registered management investment company or exchange-traded fund organized as a unit investment trust, or series thereof, other than a registered open-end management investment company that is regulated as a money market fund under § 270.2a–7 or a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), must file a monthly report of portfolio holdings on Form N–PORT (§ 274.150 of this chapter), current as of the last business day, or last calendar day, of the month. A registered investment company that has filed a registration statement with the Commission registering its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn. Each registered investment company that is required to file reports on Form N–PORT must maintain in its records the information that is required to be included on Form N–PORT no later than 30 days after the end of each month. Such information shall be treated as a record under section 31(a)(1) of the Act [15 U.S.C. 80a–30(a)(1)] and § 270.31a–1(b) of this chapter subject to the requirements of § 270.31a–2(a)(2) of this chapter. Reports on Form N–PORT for each month in each fiscal quarter of a registered investment company must be filed with the Commission no later than 60 days after the end of such fiscal quarter.

[84 FR 7987, Mar. 6, 2019]

§ 270.30b1–9(T) Temporary rule regarding monthly report.

(a) Until April 1, 2019, each registered management investment company subject to § 270.30b1–9 of this chapter must satisfy its reporting obligation under that section by maintaining in its records the information that is required to be included in Form N–PORT (§ 274.150 of this chapter).

(b) The information maintained in the registered management investment company's records under paragraph (a) of this section shall be treated as a record under section 31(a)(1) of the Act [15 U.S.C. 80a–30(a)(1)] and § 270.31a–1(b) of this chapter subject to the requirements of § 270.31a–2(a)(2) of this chapter.

(c) This section will expire and no longer be effective on March 31, 2026.

[82 FR 58739, Dec. 14, 2017]

EFFECTIVE DATE NOTE: At 82 FR 58739, Dec. 14, 2017, § 270.30b1–9(T) was added, effective Jan. 16, 2018, to Mar. 31, 2026.

§ 270.30b1–10 Current report for open-end and closed-end management investment companies.

Every registered open-end management investment company, or series thereof, and every registered closed-end management investment company, but not a fund that is regulated as a money market fund under § 270.2a–7, that experiences an event specified on Form N–RN, must file with the Commission a current report on Form N–

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RN within the period and according to the instructions specified in that form.

[85 FR 83295, Dec. 21, 2020]

§ 270.30b2–1 Filing of reports to stockholders.

(a) Every registered management investment company shall file a report on Form N-CSR (§§ 249.331 and 274.128 of this chapter) not later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under § 270.30e–1.

(b) A registered investment company shall file with the Commission a copy of every periodic or interim report or similar communication containing financial statements that is transmitted by or on behalf of such registered investment company to any class of such company's security holders and that is not required to be filed with the Commission under paragraph (a) of this section. The filing shall be made not later than 10 days after the transmission to security holders.

[68 FR 5366, Feb. 3, 2003]

§ 270.30d–1 Filing of copies of reports to shareholders.

A registered management investment company, other than a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), that is required to file annual and quarterly reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall satisfy its requirement to file such reports by the filing, in accordance with the rules and procedures specified therefor, of reports on Form N-CSR (§§ 249.331 and 274.128 of this chapter). A registered unit investment trust or a small business investment company registered on Form N–5 that is required to file annual and quarterly reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 shall satisfy its requirement to file such reports by the filing, in accordance with the rules and procedures specified therefor, of reports on Form N-CEN (§§ 249.330 and 274.101 of this chapter).

[69 FR 11264, Mar. 9, 2004, as amended at 81 FR 82021, Nov. 18, 2016]

§ 270.30e–1 Reports to stockholders of management companies.

(a) Every registered management company shall transmit to each stockholder of record, at least semi-annually, a report containing the information required to be included in such reports by the company's registration statement form under the 1940 Act, except that the initial report of a newly registered company shall be made as of a date not later than the close of the fiscal year or half-year occurring on or after the date on which the company's notification of registration under the 1940 Act is filed with the Commission.

(b)(1) To satisfy its obligations under section 30(e) of the 1940 Act, an open-end management investment company registered on Form N–1A (§§ 239.15A and 274.11A of this chapter) also must:

(i) Make certain materials available on a website, as described under paragraph (b)(2) of this section; and

(ii) Deliver certain materials upon request, as described under paragraph (b)(3) of this section.

(2) The following website availability requirements are applicable to an open-end management investment company registered on Form N–1A (§§ 239.15A and 274.11A of this chapter).

(i) The company must make the disclosures required by Items 7 through 11 of Form N–CSR (§§ 249.331 and 274.128 of this chapter) publicly accessible, free of charge, at the website address specified at the beginning of the report to stockholders under paragraph (a) of this section, no later than 60 days after the end of the fiscal half-year or fiscal year of the company until 60 days after the end of the next fiscal half-year or fiscal year of the company, respectively. The company may satisfy the requirement in this paragraph (b)(2)(i) by making its most recent report on Form N–CSR publicly accessible, free of charge, at the specified website address for the time period that this paragraph (b)(2)(i) specifies.

(ii) Unless the company is a money market fund under § 270.2a–7, the company must make the company's complete portfolio holdings, if any, as of the close of the company's most recent first and third fiscal quarters, after the

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date on which the company's registration statement became effective, presented in accordance with the schedules set forth in §§ 210.12–12 through 210.12–14 of this chapter (Regulation S–X), which need not be audited. The complete portfolio holdings required by this paragraph (b)(2)(ii) must be made publicly accessible, free of charge, at the website address specified at the beginning of the report to stockholders under paragraph (a) of this section, not later than 60 days after the close of the of the first and third fiscal quarters until 60 days after the end of the next first and third fiscal quarters of the company, respectively.

(iii) The website address relied upon for compliance with this section may not be the address of the Commission's electronic filing system.

(iv) The materials that are accessible in accordance with paragraph (b)(2)(i) or (ii) of this section must be presented on the website in a format, or formats, that are convenient for both reading online and printing on paper.

(v) Persons accessing the materials specified in paragraph (b)(2)(i) or (ii) of this section must be able to permanently retain, free of charge, an electronic version of such materials in a format, or formats, that meet the requirements of paragraph (b)(2)(iv) of this section.

(vi) The requirements set forth in paragraphs (b)(2)(i) through (v) of this section will be deemed to be met, notwithstanding the fact that the materials specified in paragraphs (b)(2)(i) and (ii) of this section are not available for a time in the manner required by paragraphs (b)(2)(i) through (v) of this section, provided that:

(A) The company has reasonable procedures in place to ensure that the specified materials are available in the manner required by paragraphs (b)(2)(i) through (v) of this section; and

(B) The company takes prompt action to ensure that the specified materials become available in the manner required by paragraphs (b)(2)(i) through (v) of this section, as soon as practicable following the earlier of the time at which it knows or reasonably should have known that the materials are not available in the manner required by paragraphs (b)(2)(i) through (v) of this section.

(vii) The materials specified in paragraph (b)(2)(i) or (ii) of this section may either be separately available for each series of a fund, or the materials may be grouped by the types of materials and/or by series, so long as the grouped information:

(A) Is presented in a format designed to communicate the information effectively;

(B) Clearly distinguishes the different types of materials and/or each series (as applicable); and

(C) Provides a means of easily locating the relevant information (including, for example, a table of contents that includes hyperlinks to the specific materials and series).

(3) The following requirements to deliver certain materials upon request are applicable to an open-end management investment company registered on Form N–1A (§§ 239.15A and 274.11A of this chapter).

(i) The company (or a financial intermediary through which shares of the company may be purchased or sold) must send, at no cost to the requestor and by U.S. first class mail or other reasonably prompt means, a paper copy of any of the materials specified in paragraph (b)(2)(i) or (ii) of this section, to any person requesting such a copy within three business days after receiving a request for a paper copy.

(ii) The company (or a financial intermediary through which shares of the company may be purchased or sold) must send, at no cost to the requestor, and by email or other reasonably prompt means, an electronic copy of any of the materials specified in paragraph (b)(2)(i) or (ii) of this section, to any person requesting such a copy within three business days after receiving a request for an electronic copy. The requirement to send an electronic copy of the requested materials may be satisfied by sending a direct link to the online location of the materials; provided that a current version of the materials is directly accessible through the link from the time that the email is sent through the date that is six months after the date that the email is sent and the email explains both how long the link will remain useable and

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that, if recipients desire to retain a copy of the materials, they should access and save the materials.

(c) For registered management companies other than open-end management investment companies registered on Form N–1A, if any matter was submitted during the period covered by the shareholder report to a vote of shareholders, through the solicitation of proxies or otherwise, furnish the following information:

(1) The date of the meeting and whether it was an annual or special meeting.

(2) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(3) A brief description of each matter voted upon at the meeting and the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes as to each such matter, including a separate tabulation with respect to each matter or nominee for office.

(i) *Instruction 1 to paragraph (c).* The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of shareholders within the meaning of this paragraph (c).

(ii) [Reserved]

(d) Each report shall be transmitted within 60 days after the close of the period for which such report is being made.

(e) The period of time within which any report prescribed by this rule shall be transmitted may be extended by the Commission upon written request showing good cause therefor. Section 270.0–5 shall not apply to such requests.

(f)(1) A company will be considered to have transmitted a report to shareholders who share an address if:

(i) The company transmits a report to the shared address;

(ii) The company addresses the report to the shareholders as a group (for example, ''ABC Fund [or Corporation] Shareholders,'' ''Jane Doe and Household,'' ''The Smith Family'') or to each of the shareholders individually (for example, ''John Doe and Richard Jones''); and

(iii) The shareholders consent in writing to delivery of one report.

(2) The company need not obtain written consent from a shareholder under paragraph (f)(1)(iii) of this section if all of the following conditions are met:

(i) The shareholder has the same last name as the other shareholders, or the company reasonably believes that the shareholders are members of the same family;

(ii) The company has transmitted a notice to the shareholder at least 60 days before the company begins to rely on this section concerning transmission of reports to that shareholder. The notice must be a separate written statement and:

(A) State that only one report will be delivered to the shared address unless the company receives contrary instructions;

(B) Include a toll-free telephone number or be accompanied by a reply form that is pre-addressed with postage provided, that the shareholder can use to notify the company that he or she wishes to receive a separate report;

(C) State the duration of the consent;

(D) Explain how a shareholder can revoke consent;

(E) State that the company will begin sending individual copies to a shareholder within 30 days after the company receives revocation of the shareholder's consent; and

(F) Contain the following prominent statement, or similar clear and understandable statement, in bold-face type: ''Important Notice Regarding Delivery of Shareholder Materials''. This statement also must appear on the envelope in which the notice is delivered. Alternatively, if the notice is delivered separately from other communications to investors, this statement may appear either on the notice or on the envelope in which the notice is delivered;

NOTE TO PARAGRAPH (f)(2)(ii): The notice should be written in plain English. See § 230.421(d)(2) of this chapter for a discussion of plain English principles.

(iii) The company has not received the reply form or other notification indicating that the shareholder wishes to continue to receive an individual copy

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of the report, within 60 days after the company sent the notice; and

(iv) The company transmits the report to a post office box or to a residential street address. The company can assume a street address is a residence unless it has information that indicates it is a business.

(3) At least once a year, the company must explain to shareholders who have consented under paragraph (f)(1)(iii) or paragraph (f)(2) of this section how they can revoke their consent. The explanation must be reasonably designed to reach these investors. If a shareholder, orally or in writing, revokes consent to delivery of one report to a shared address, the company must begin sending individual copies to that shareholder within 30 days after the company receives the revocation.

(4) For purposes of this section, *address* means a street address, a post office box number, an electronic mail address, a facsimile telephone number, or other similar destination to which paper or electronic documents are transmitted, unless otherwise provided in this section. If the company has reason to believe that the address is a street address of a multi-unit building, the address must include the unit number.

[46 FR 36126, July 14, 1981, as amended at 48 FR 37940, Aug. 22, 1983; 48 FR 44477, Sept. 29, 1983; 50 FR 26160, June 25, 1985; 57 FR 56836, Dec. 1, 1992; 59 FR 52700, Oct. 19, 1994; 61 FR 24657, May 15, 1996; 64 FR 62547, Nov. 16, 1999. Redesignated and amended at 66 FR 3759, Jan. 16, 2001; 87 FR 72847, Nov. 25, 2022]

§ 270.30e–2 Reports to shareholders of unit investment trusts.

(a) At least semiannually every registered unit investment trust substantially all the assets of which consist of securities issued by a management company must transmit to each shareholder of record (including record holders of periodic payment plan certificates), a report containing all the applicable information and financial statements or their equivalent, required by § 270.30d–1 to be included in reports of the management company for the same fiscal period. Each of these reports must be transmitted within the period allowed the management company by § 270.30e–1 for transmitting reports to its shareholders.

(b) Any report required by this section will be considered transmitted to a shareholder of record if the unit investment trust satisfies the conditions set forth in § 270.30e–1(f) with respect to that shareholder.

[64 FR 62547, Nov. 16, 1999. Redesignated and amended at 66 FR 3759, Jan. 16, 2001]

§ 270.30e–3 Internet availability of reports to shareholders.

(a) *General.* A Fund may satisfy its obligation to transmit a report required by § 270.30e–1 (''Report'') to a shareholder of record if all of the conditions set forth in paragraphs (b) through (e) of this section are satisfied.

(b) *Availability of report to shareholders and other materials.* (1) The following materials are publicly accessible, free of charge, at the website address specified in the Notice from the date the Fund transmits the Report as required by § 270.30e–1 until the Fund next transmits a report required by § 270.30e–1 with respect to the Fund:

(i) *Current report to shareholders.* The Report.

(ii) *Prior report to shareholders.* Any report with respect to the Fund for the prior reporting period that was transmitted to shareholders of record pursuant to § 270.30e–1.

(iii) *Complete portfolio holdings from reports containing a summary schedule of investments.* If a report specified in paragraph (b)(1)(i) or (ii) of this section includes a summary schedule of investments (§ 210.12–12B of this chapter) in lieu of Schedule I—Investments in securities of unaffiliated issuers (§ 210.12–12 of this chapter), the Fund's complete portfolio holdings as of the close of the period covered by the report, presented in accordance with the schedules set forth in §§ 210.12–12 through 210.12–14 of Regulation S–X (§§ 210.12–12 through 210.12–14 of this chapter), which need not be audited.

(iv) *Portfolio holdings for most recent first and third fiscal quarters.* The Fund's complete portfolio holdings as of the close of the Fund's most recent first and third fiscal quarters, if any, after

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the date on which the Fund's registration statement became effective, presented in accordance with the schedules set forth in §§ 210.12–12 through 210.12–14 of Regulation S–X [§§ 210.12–12 through 210.12–14 of this chapter], which need not be audited. The complete portfolio holdings required by this paragraph (b)(1)(iv) must be made publicly available not later than 60 days after the close of the fiscal quarter.

(2) The website address relied upon for compliance with this section may not be the address of the Commission's electronic filing system.

(3) The materials that are accessible in accordance with paragraph (b)(1) of this section must be presented on the website in a format, or formats, that are convenient for both reading online and printing on paper.

(4) Persons accessing the materials specified in paragraph (b)(1) of this section must be able to retain permanently, free of charge, an electronic version of such materials in a format, or formats, that meet the conditions of paragraph (b)(3) of this section.

(5) The conditions set forth in paragraphs (b)(1) through (4) of this section shall be deemed to be met, notwithstanding the fact that the materials specified in paragraph (b)(1) of this section are not available for a time in the manner required by paragraphs (b)(1) through (4) of this section, provided that:

(i) The Fund has reasonable procedures in place to ensure that the specified materials are available in the manner required by paragraphs (b)(1) through (4) of this section; and

(ii) The Fund takes prompt action to ensure that the specified documents become available in the manner required by paragraphs (b)(1) through (4) of this section, as soon as practicable following the earlier of the time at which it knows or reasonably should have known that the documents are not available in the manner required by paragraphs (b)(1) through (4) of this section.

(c) *Notice.* A paper notice (''Notice'') meeting the conditions of this paragraph (c) must be sent to the shareholder within 70 days after the close of the period for which the Report is being made. The Notice may contain only the information specified by paragraphs (c)(1), (2), and (3) of this section, and may include pictures, logos, or similar design elements so long as the design is not misleading and the information is clear.

(1) The Notice must be written using plain English principles pursuant to paragraph (d) of this section and:

(i) Contain a prominent legend in bold-face type that states ''[An] Important Report[s] to [Shareholders] of [Fund] [is/are] Now Available Online and In Print by Request.'' The Notice may also include information identifying the Fund, the Fund's sponsor (including any investment adviser or subadviser to the Fund), a variable annuity or variable life insurance contract or insurance company issuer thereof, or a financial intermediary through which shares of the Fund are held.

(ii) State that the Report contains important information about the Fund, including its portfolio holdings and financial statements. The statement may also include a brief listing of other types of information contained in the Report.

(iii) State that the Report is available at the website address specified in the Notice or, upon request, by mail, and encourage the shareholder to access and review the Report.

(iv) Include a website address where the Report and other materials specified in paragraph (b)(1) of this section are available. The website address must be specific enough to lead investors directly to the documents that are required to be accessible under paragraph (b)(1) of this section, rather than to the home page or a section of the website other than on which the documents are posted. The website may be a central site with prominent links to each document. In addition to the website address, the Notice may contain any other equivalent method or means to access the Report or other materials specified in paragraph (b)(1) of this section.

(v) Provide a toll-free (or collect) telephone number to contact the Fund or the shareholder's financial intermediary, and:

(A) Provide instructions describing how a shareholder may request a paper

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or email copy of the Report and other materials specified in paragraph (b)(1) of this section at no charge, and an indication that the shareholder will not otherwise receive a paper or email copy;

(B) Explain that the shareholder can at any time elect to receive print reports in the future and provide instructions describing how a shareholder may make that election (*e.g.*, by contacting the Fund or by contacting the shareholder's financial intermediary); and

(C) If applicable, provide instructions describing how a shareholder can elect to receive shareholder reports or other documents and communications by electronic delivery.

(2) The Notice may include additional methods by which a shareholder can contact the Fund or the shareholder's financial intermediary (*e.g.*, by email or through a website), which may include any information needed to identify the shareholder.

(3) A Notice may include content from the Report if such content is set forth after the information required by paragraph (c)(1) of this section.

(4) The Notice may not be incorporated into, or combined with, another document, except that the Notice may incorporate or combine one or more other Notices.

(5) The Notice must be sent separately from other types of shareholder communications and may not accompany any other document or materials; provided, however, that the Notice may accompany:

(i) One or more other Notices;

(ii) A current Statutory Prospectus, Statement of Additional Information, or Notice of internet Availability of Proxy Materials under § 240.14a–16 of this chapter;

(iii) In the case of a Fund held in a separate account funding a variable annuity or variable life insurance contract, such contract or the Statutory Prospectus and Statement of Additional Information for such contract; or

(iv) The shareholder's account statement.

(6) A Notice required by this paragraph (c) will be considered transmitted to a shareholder of record if the conditions set forth in § 270.30e–1(f), § 240.14a–3(e), or § 240.14c–3(c) of this chapter are satisfied with respect to that shareholder.

(d) *Plain English requirements.* (1) To enhance the readability of the Notice, plain English principles must be used in the organization, language, and design of the Notice.

(2) The Notice must be drafted so that, at a minimum, it substantially complies with each of the following plain English writing principles:

(i) Short sentences;

(ii) Definite, concrete, everyday words;

(iii) Active voice;

(iv) Tabular presentation or bullet lists for complex material, whenever possible;

(v) No legal jargon or highly technical business terms; and

(vi) No multiple negatives.

(e) *Delivery of paper copy upon request.* A paper copy of any of the materials specified in paragraph (b)(1) of this section must be transmitted to any person requesting such a copy, at no cost to the requestor and by U.S. first class mail or other reasonably prompt means, within three business days after a request for a paper copy is received.

(f) *Investor elections to receive future reports in paper.* (1) This section may not be relied upon to transmit a Report to a shareholder if the shareholder has notified the Fund (or the shareholder's financial intermediary) that the shareholder wishes to receive paper copies of shareholder reports at any time after the Fund has first notified the shareholder of its intent to rely on the rule or provided a Notice to the shareholder.

(2) A shareholder who has notified the Fund (or the shareholder's financial intermediary) that the shareholder wishes to receive paper copies of shareholder reports with respect to a Fund will be deemed to have requested paper copies of shareholder reports with respect to:

(i) Any and all current and future Funds held through an account or accounts with:

(A) The Fund's transfer agent or principal underwriter or agent thereof for the same ''group of related investment companies'' as such term is defined in § 270.0–10; or

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(B) A financial intermediary; and

(ii) Any and all Funds held currently and in the future in a separate account funding a variable annuity or variable life insurance contract.

(g) *Delivery of other documents.* This section may not be relied upon to transmit a copy of a Fund's currently effective Statutory Prospectus or Statement of Additional Information, or both, under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) as otherwise permitted by paragraph (d) of § 270.30e–1.

(h) *Definitions.* For purposes of this section:

(1) Fund means a management company registered on Form N–2 (§§ 239.14 and 274.11a of this chapter) or Form N–3 (§§ 239.17a and 274.11b of this chapter) and any separate series of the management company that is required to transmit a report to shareholders pursuant to 270.30e–1.

(2) Statement of Additional Information means the statement of additional information required by Part B of the applicable registration form.

(3) Statutory Prospectus means a prospectus that satisfies the requirements of section 10(a) of the Securities Act of 1933 (15 U.S.C. 77(j)(a)).

NOTE 1 TO § 270.30.E–3: For a discussion of how the conditions and requirements of this rule may apply in the context of investors holding Fund shares through financial intermediaries, see Investment Company Release No. 33115 (June 5, 2018).

[87 FR 72848, Nov. 25, 2022]

§ 270.30h–1 Applicability of section 16 of the Exchange Act to section 30(h).

(a) The filing of any statement prescribed under section 16(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(a)) shall satisfy the corresponding requirements of section 30(h) of the Act (15 U.S.C. 80a–29(h)).

(b) The rules under section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) shall apply to any duty, liability or prohibition imposed with respect to a transaction involving any security of a registered closed-end company under section 30(h) of the Act (15 U.S.C. 80a–29(h)).

(c) No statements need be filed pursuant to section 30(h) of the Act (15 U.S.C. 80a–29(h)) by an affiliated person of an investment adviser in his or her capacity as such if such person is solely an employee, other than an officer, of such investment adviser.

[67 FR 43537, June 28, 2002]

§ 270.31a–1 Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

(a) Every registered investment company, and every underwriter, broker, dealer, or investment adviser which is a majority-owned subsidiary of such a company, shall maintain and keep current the accounts, books, and other documents relating to its business which constitute the record forming the basis for financial statements required to be filed pursuant to section 30 of the Investment Company Act of 1940 and of the auditor's certificates relating thereto.

(b) Every registered investment company shall maintain and keep current the following books, accounts, and other documents:

(1) Journals (or other records of original entry) containing an itemized daily record in detail of all purchases and sales of securities (including sales and redemptions of its own securities), all receipts and deliveries of securities (including certificate numbers if such detail is not recorded by custodian or transfer agent), all receipts and disbursements of cash and all other debits and credits. Such records shall show for each such transaction the name and quantity of securities, the unit and aggregate purchase or sale price, commission paid, the market on which effected, the trade date, the settlement date, and the name of the person through or from whom purchased or received or to whom sold or delivered. In the case of a money market fund, also identify the provider of any Demand Feature or Guarantee (as defined in § 270.2a–7(a)(9) or § 270.2a–7(a)(16) respectively) and give a brief description of the nature of the Demand Feature or Guarantee (e.g., unconditional demand feature, conditional demand feature, letter of credit, or bond insurance) and, in a subsidiary portfolio investment

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record, provide the complete legal name and accounting and other information (including sufficient information to calculate coupons, accruals, maturities, puts, and calls) necessary to identify, value, and account for each investment.

(2) General and auxiliary ledgers (or other records) reflecting all assets, liability, reserve, capital, income and expense accounts, including:

(i) Separate ledger accounts (or other records) reflecting the following:

(*a*) Securities in transfer;

(*b*) Securities in physical possession;

(*c*) Securities borrowed and securities loaned;

(*d*) Monies borrowed and monies loaned (together with a record of the collateral therefor and substitutions in such collateral);

(*e*) Dividends and interest received;

(*f*) Dividends receivable and interest accrued.

INSTRUCTION. (a) and (b) of this subdivision shall be stated in terms of securities quantities only; (c) and (d) of this subdivision shall be stated in dollar amounts and securities quantities as appropriate; (e) and (f) of this subdivision shall be stated in dollar amounts only.

(ii) Separate ledger accounts (or other records) for each portfolio security, showing (as of trade dates) (*a*) the quantity and unit and aggregate price for each purchase, sale, receipt, and delivery of securities and commodities for such accounts, and (*b*) all other debits and credits for such accounts. Securities positions and money balances in such ledger accounts (or other records) shall be brought forward periodically but not less frequently than at the end of fiscal quarters. Any portfolio security, the salability of which is conditioned, shall be so noted. A memorandum record shall be available setting forth, with respect to each portfolio security account, the amount and declaration ex-dividend, and payment dates of each dividend declared thereon.

(iii) Separate ledger accounts (or other records) for each broker-dealer bank or other person with or through which transactions in portfolio securities are effected, showing each purchase or sale of securities with or through such persons, including details as to the date of the purchase or sale, the quantity and unit and aggregate price of such securities, and the commissions or other compensation paid to such persons. Purchases or sales effected during the same day at the same price may be aggregated.

(iv) Separate ledger accounts (or other records), which may be maintained by a transfer agent or registrar, showing for each shareholder of record of the investment company the number of shares of capital stock of the company held. In respect of share accumulation accounts (arising from periodic investment plans, dividend reinvestment plans, deposit of issued shares by the owner thereof, etc.), details shall be available as to the dates and number of shares of each accumulation, and except with respect to already issued shares deposited by the owner thereof, prices of each such accumulation.

(3) A securities record or ledger reflecting separately for each portfolio security as of trade date all ''long'' and ''short'' positions carried by the investment company for its own account and showing the location of all securities long and the off-setting position to all securities short. The record called for by this paragraph shall not be required in circumstances under which all portfolio securities are maintained by a bank or banks or a member or members of a national securities exchange as custodian under a custody agreement or as agent for such custodian.

(4) Corporate charters, certificates of incorporation or trust agreements, and by-laws, and minute books of stockholders' and directors' or trustees' meetings; and minute books of directors' or trustees' committee and advisory board or advisory committee meetings.

(5) A record of each brokerage order given by or in behalf of the investment company for, or in connection with, the purchase or sale of securities, whether executed or unexecuted. Such record shall include the name of the broker, the terms and conditions of the order and of any modification or cancellation thereof, the time of entry or cancellation, the price at which executed, and the time of receipt of report of execution. The record shall indicate the name of the person who placed the

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order in behalf of the investment company.

(6) A record of all other portfolio purchases or sales showing details comparable to those prescribed in paragraph (b)(5) of this section.

(7) A record of all puts, calls, spreads, straddles, and other options in which the investment company has any direct or indirect interest or which the investment company has granted or guaranteed; and a record of any contractual commitments to purchase, sell, receive or deliver securities or other property (but not including open orders placed with broker-dealers for the purchase or sale of securities, which may be cancelled by the company on notices without penalty or cost of any kind); containing, at least, an identification of the security, the number of units involved, the option price, the date of maturity, the date of issuance, and the person to whom issued.

(8) A record of the proof of money balances in all ledger accounts (except shareholder accounts), in the form of trial balances. Such trial balances shall be prepared currently at least once a month.

(9) A record for each fiscal quarter, which shall be completed within ten days after the end of such quarter, showing specifically the basis or bases upon which the allocation of orders for the purchase and sale of portfolio securities to named brokers or dealers and the division of brokerage commissions or other compensation on such purchase and sale orders among named persons were made during such quarter. The record shall indicate the consideration given to (i) sales of shares of the investment company by brokers or dealers, (ii) the supplying of services or benefits by brokers or dealers to the investment company, its investment adviser or principal underwriter or any persons affiliated therewith, and (iii) any other considerations other than the technical qualifications of the brokers and dealers as such. The record shall show the nature of the services or benefits made available, and shall describe in detail the application of any general or specific formula or other determinant used in arriving at such allocation of purchase and sale orders and such division of brokerage commissions or other compensation. The record shall also include the identities of the persons responsible for the determination of such allocation and such division of brokerage commissions or other compensation.

(10) A record in the form of an appropriate memorandum identifying the person or persons, committees, or groups authorizing the purchase or sale of portfolio securities. Where an authorization is made by a committee or group, a record shall be kept of the names of its members who participated in the authorization. There shall be retained as part of the record required by this paragraph any memorandum, recommendation, or instruction supporting or authorizing the purchase or sale of portfolio securities. The requirements of this paragraph are applicable to the extent they are not met by compliance with the requirements of paragraph (b)(4) of this section.

(11) Files of all advisory material received from the investment adviser, any advisory board or advisory committee, or any other persons from whom the investment company accepts investment advice, other than material which is furnished solely through uniform publications distributed generally.

(12) The term ''other records'' as used in the expressions ''journals (or other records of original entry)'' and ''ledger accounts (or other records)'' shall be construed to include, where appropriate, copies of voucher checks, confirmations, or similar documents which reflect the information required by the applicable rule or rules in appropriate sequence and in permanent form, including similar records developed by the use of automatic data processing systems.

(c) Every underwriter, broker, or dealer which is a majority-owned subsidiary of a registered investment company shall maintain in the form prescribed therein such accounts, books and other documents as are required to be maintained by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934.

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(d) Every depositer of any registered investment company, and every principal underwriter for any registered investment company other than a closed-end investment company, shall maintain such accounts, books and other documents as are required to be maintained by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934, to the extent such records are necessary or appropriate to record such person's transactions with such registered investment company.

(e) Every investment advisor which is a majority-owned subsidiary of a registered investment company shall maintain in the form prescribed therein such accounts, books and other documents as are required to be maintained by registered investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940.

(f) Every investment adviser not a majority-owned subsidiary of a registered investment company shall maintain such accounts, books and other documents as are required to be maintained by registered investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940, to the extent such records are necessary or appropriate to record such person's transactions with such registered investment company.

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

[27 FR 11993, Dec. 5, 1962, as amended at 61 FR 13983, Mar. 28, 1996; 62 FR 64986, Dec. 9, 1997; 79 FR 47968, Aug. 14, 2014; 80 FR 58155, Sept. 25, 2015]

§ 270.31a–2 Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

(a) Every registered investment company shall:

(1) Preserve permanently, the first two years in an easily accessible place, all books and records required to be made pursuant to paragraphs (1) through (4) of § 270.31a–1(b);

(2) Preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, all books and records required to be made pursuant to paragraphs (b)(5) through (12) of § 270.31a–1 and all vouchers, memoranda, correspondence, checkbooks, bank statements, cancelled checks, cash reconciliations, cancelled stock certificates, and all schedules evidencing and supporting each computation of net asset value of the investment company shares, including schedules evidencing and supporting each computation of an adjustment to net asset value of the investment company shares based on swing pricing policies and procedures established and implemented pursuant to § 270.22c–1(a)(3), and other documents required to be maintained by § 270.31a–1(a) and not enumerated in § 270.31a–1(b).

(3) Preserve for a period not less than 6 years from the end of the fiscal year last used, the first 2 years in an easily accessible place, any advertisement, pamphlet, circular, form letter or other sales literature addressed to or intended for distribution to prospective investors;

(4) Preserve for a period not less than six years, the first two years in an easily accessible place, any record of the initial determination that a director is not an interested person of the investment company, and each subsequent determination that the director is not an interested person of the investment company. These records must include any questionnaire and any other document used to determine that a director is not an interested person of the company;

(5) Preserve for a period not less than six years, the first two years in an easily accessible place, any materials used by the disinterested directors of an investment company to determine that a person who is acting as legal counsel to those directors is an independent legal counsel;

(6) Preserve for a period not less than six years, the first two years in an easily accessible place, any documents or other written information considered by the directors of the investment company pursuant to section 15(c) of the Act (15 U.S.C. 80a–15(c)) in approving the terms or renewal of a contract or agreement between the company and an investment adviser; and

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(7) Preserve for a period not less than six years, the first two years in an easily accessible place, any shareholder report required by § 270.30e–1 (including any version posted on a website or otherwise provided electronically) that is not filed with the Commission in the exact form in which it was used.

(b) Every underwriter, broker, or dealer which is a majority-owned subsidiary of a registered investment company shall preserve for the periods prescribed therein such accounts, books and other documents as are required to be preserved by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934.

(c) Every depositor of any registered investment company, and every principal underwriter for any registered investment company other than a closed-end company, shall preserve for a period of not less than six years such accounts, books and other documents as are required to be maintained by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934, to the extent such records are necessary or appropriate to record such person's transactions with such registered investment company.

(d) Every investment adviser which is a majority-owned subsidiary of a registered investment company shall preserve for the periods prescribed therein such accounts, books and other documents as are required to be preserved by investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940.

(e) Every investment adviser not a majority-owned subsidiary of a registered investment company shall preserve for a period of not less than six years such accounts, books and other documents as are required to be maintained by registered investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940, to the extent such records are necessary or appropriate to record such person's transactions with such registered investment company.

(f) *Micrographic and electronic storage permitted*—(1) *General.* The records required to be maintained and preserved under this part may be maintained and preserved for the required time by, or on behalf of, an investment company on:

(i) Micrographic media, including microfilm, microfiche, or any similar medium; or

(ii) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) *General requirements.* The investment company, or person that maintains and preserves records on its behalf, must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the Commission (by its examiners or other representatives) or the directors of the company may request:

(A) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, view, and print the records; and

(iii) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) *Special requirements for electronic storage media.* In the case of records on 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

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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; 81 FR 82138, Nov. 18, 2016; 87 FR 72850, Nov. 25, 2022]

§ 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]

§ 270.31a–4 Records to be maintained and preserved by registered investment companies relating to fair value determinations.

(a) *Appropriate documentation.* Every registered investment company shall maintain appropriate documentation to support fair value determinations made pursuant to § 270.2a–5 for at least six years from the time that the determination was made, the first two years in an easily accessible place.

(b) *Records when designating.* If the board of a registered investment company has designated performance of fair value determinations to a valuation designee under § 270.2a–5(b), in addition to the records required in paragraph (a) of this section, the registered investment company must maintain copies of:

(1) The reports and other information provided to the board as required under § 270.2a–5(b)(1) for at least six years after the end of the fiscal year in which the documents were provided to the board, the first two years in an easily accessible place; and

(2) A specified list of the investments or investment types whose fair value determination has been designated to the valuation designee to perform pursuant to § 270.2a–5(b) for a period beginning with the designation and ending at least six years after the end of the fiscal year in which the designation was terminated, in an easily accessible place until two years after such termination.

(c) *Party to maintain.* If the board of a registered investment company has designated performance of fair value determinations to its investment adviser under § 270.2a–5(b), such investment adviser shall maintain the records required by this section. If the investment adviser is not so designated, the fund shall maintain such records.

[86 FR 808, Jan. 6, 2021]

§ 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 accountants 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

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(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, as amended at 87 FR 22446, Apr. 15, 2022]

§ 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, 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'');

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(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 bylaws; 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)] (for purposes of paragraph (a) and (b) of this section, ''sales literature'') will 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. Any registered investment company or business development company advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors in connection with a public offering (for purposes of paragraph (c) of this section, ''sales literature'') will have omitted to state a fact necessary in order to make the statements therein not materially misleading unless the sales literature includes the information specified in paragraph (c) of this section.

NOTE 1 TO § 270.34b–1 INTRODUCTORY TEXT: The fact that the sales literature includes the information specified in paragraphs (a) and (b) of this section does not relieve the investment company, underwriter, or dealer of any obligations with respect to the sales literature under the antifraud provisions of the Federal securities laws. For guidance about factors to be weighed in determining whether statements, representations, illustrations, and descriptions contained in investment company sales literature are misleading, *see* § 230.156 of this chapter.

(a) Sales literature for a money market fund shall contain the information required by paragraph (b)(4) of § 230.482 of this chapter, presented in the manner required by paragraph (b)(5) of § 230.482 of this chapter.

(b)(1) Except as provided in paragraph (b)(3) of this section:

(i) In any sales literature that contains performance data for an investment company, include the disclosure required by paragraph (b)(3) of § 230.482 of this chapter, presented in the manner required by paragraph (b)(5) of § 230.482 of this chapter.

(ii) In any sales literature for a money market fund:

(A) Accompany any quotation of yield or similar quotation purporting to demonstrate the income earned or distributions made by the money market fund with a quotation of current yield specified by paragraph (e)(1)(i) of § 230.482 of this chapter;

(B) Accompany any quotation of the money market fund's tax equivalent yield or tax equivalent effective yield with a quotation of current yield as specified in § 230.482(d)(1)(iii) of this chapter; and

(C) Accompany any quotation of the money market fund's total return with a quotation of the money market fund's current yield specified in paragraph (e)(1)(i) of § 230.482 of this chapter. Place the quotations of total return and current yield next to each other, in the same size print, and if there is a material difference between the quoted total return and the quoted current yield, include a statement that the yield quotation more closely reflects the current earnings of the money market fund than the total return quotation.

(iii) In any sales literature for an investment company other than a money market fund that contains performance data:

(A) Include the total return information required by paragraph (d)(3) of § 230.482 of this chapter;

(B) Accompany any quotation of performance adjusted to reflect the effect of taxes (not including a quotation of tax equivalent yield or other similar quotation purporting to demonstrate the tax equivalent yield earned or distributions made by the company) with

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the quotations of total return specified by paragraph (d)(4) of § 230.482 of this chapter;

(C) If the sales literature (other than sales literature for a company that is permitted under § 270.35d–1(a)(4) to use a name suggesting that the company's distributions are exempt from federal income tax or from both federal and state income tax) represents or implies that the company is managed to limit or control the effect of taxes on company performance, include the quotations of total return specified by paragraph (d)(4) of § 230.482 of this chapter;

(D) Accompany any quotation of yield or similar quotation purporting to demonstrate the income earned or distributions made by the company with a quotation of current yield specified by paragraph (d)(1) of § 230.482 of this chapter; and

(E) Accompany any quotation of tax equivalent yield or other similar quotation purporting to demonstrate the tax equivalent yield earned or distributions made by the company with a quotation of tax equivalent yield specified in paragraph (d)(2) and current yield specified by paragraph (d)(1) of § 230.482 of this chapter.

(2) Any performance data included in sales literature under paragraphs (b)(1)(ii) or (iii) of this section must meet the currentness requirements of paragraph (g) of § 230.482 of this chapter.

(3) The requirements specified in paragraph (b)(1) of this section do not apply to any quarterly, semi-annual, or annual report to shareholders under Section 30 of the Act [15 U.S.C. 80a–29] containing performance data for a period commencing no earlier than the first day of the period covered by the report; nor do the requirements of paragraphs (d)(3)(ii), (d)(4)(ii), and (g) of § 230.482 of this chapter apply to any such periodic report containing any other performance data.

(c)(1) Except as provided in paragraph (c)(2) of this section:

(i) In any sales literature that contains fee and expense figures for a registered investment company or business development company, include the disclosure required by paragraph (i) of § 230.482 of this chapter.

(ii) Any fee and expense information included in sales literature must meet the timeliness requirements of paragraph (j) of § 230.482 of this chapter.

(2) The requirements specified in paragraph (c)(1) of this section do not apply to any quarterly, semi-annual, or annual report to shareholders under Section 30 of the Act [15 U.S.C. 80a–29] or to other reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 79m or 78o(d)) containing fee and expense information; nor do the requirements of paragraphs (i) and (j) of § 230.482 of this chapter or paragraph (c)(3) of § 230.433 of this chapter apply to any such report containing fee and expense information.

NOTE: Sales literature (except that of a money market fund) containing a quotation of yield or tax equivalent yield must also contain the total return information. In the case of sales literature, the currentness provisions apply from the date of distribution and not the date of submission for publication.

[58 FR 19055, Apr. 12, 1993; 58 FR 21927, Apr. 26, 1993, as amended at 62 FR 64986, Dec. 9, 1997; 63 FR 13987, Mar. 23, 1998; 66 FR 9018, Feb. 5, 2001; 68 FR 57779, Oct. 6, 2003; 87 FR 72850, Nov. 25, 2022]

§ 270.35d–1 Investment company names.

(a) For purposes of section 35(d) of the Act (15 U.S.C. 80a–34(d)), a materially deceptive and misleading name of a Fund includes:

(1) *Names suggesting guarantee or approval by the United States government.* A name suggesting that the Fund or the securities issued by it are guaranteed, sponsored, recommended, or approved by the United States government or any United States government agency or instrumentality, including any name that uses the words ''guaranteed'' or ''insured'' or similar terms in conjunction with the words ''United States'' or ''U.S. government.''

(2) *Names suggesting investment in certain investments or industries.* A name suggesting that the Fund focuses its investments in a particular type of investment or investments, or in investments in a particular industry or group of industries, unless:

(i) The Fund has adopted a policy to invest, under normal circumstances, at

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least 80% of the value of its Assets in the particular type of investments, or in investments in the particular industry or industries, suggested by the Fund's name; and

(ii) Either the policy described in paragraph (a)(2)(i) of this section is a fundamental policy under section 8(b)(3) of the Act (15 U.S.C. 80a–8(b)(3)), or the Fund has adopted a policy to provide the Fund's shareholders with at least 60 days prior notice of any change in the policy described in paragraph (a)(2)(i) of this section that meets the requirements of paragraph (c) of this section.

(3) *Names suggesting investment in certain countries or geographic regions.* A name suggesting that the Fund focuses its investments in a particular country or geographic region, unless:

(i) The Fund has adopted a policy to invest, under normal circumstances, at least 80% of the value of its Assets in investments that are tied economically to the particular country or geographic region suggested by its name;

(ii) The Fund discloses in its prospectus the specific criteria used by the Fund to select these investments; and

(iii) Either the policy described in paragraph (a)(3)(i) of this section is a fundamental policy under section 8(b)(3) of the Act (15 U.S.C. 80a–8(b)(3)), or the Fund has adopted a policy to provide the Fund's shareholders with at least 60 days prior notice of any change in the policy described in paragraph (a)(3)(i) of this section that meets the requirements of paragraph (c) of this section.

(4) *Tax-exempt Funds.* A name suggesting that the Fund's distributions are exempt from federal income tax or from both federal and state income tax, unless the Fund has adopted a fundamental policy under section 8(b)(3) of the Act (15 U.S.C. 80a–8(b)(3)):

(i) To invest, under normal circumstances, at least 80% of the value of its Assets in investments the income from which is exempt, as applicable, from federal income tax or from both federal and state income tax; or

(ii) To invest, under normal circumstances, its Assets so that at least 80% of the income that it distributes will be exempt, as applicable, from federal income tax or from both federal and state income tax.

(b) The requirements of paragraphs (a)(2) through (a)(4) of this section apply at the time a Fund invests its Assets, except that these requirements shall not apply to any unit investment trust (as defined in section 4(2) of the Act (15 U.S.C. 80a–4(2))) that has made an initial deposit of securities prior to July 31, 2002. If, subsequent to an investment, these requirements are no longer met, the Fund's future investments must be made in a manner that will bring the Fund into compliance with those paragraphs.

(c) A policy to provide a Fund's shareholders with notice of a change in a Fund's investment policy as described in paragraphs (a)(2)(ii) and (a)(3)(iii) of this section must provide that:

(1) The notice will be provided in plain English in a separate written document;

(2) The notice will contain the following prominent statement, or similar clear and understandable statement, in bold-face type: ''Important Notice Regarding Change in Investment Policy''; and

(3) The statement contained in paragraph (c)(2) of this section also will appear on the envelope in which the notice is delivered or, if the notice is delivered separately from other communications to investors, that the statement will appear either on the notice or on the envelope in which the notice is delivered.

(d) For purposes of this section:

(1) *Fund* means a registered investment company and any series of the investment company.

(2) *Assets* means net assets, plus the amount of any borrowings for investment purposes.

[66 FR 8518, Feb. 1, 2001; 66 FR 14828, Mar. 14, 2001]

§ 270.38a–1 Compliance procedures and practices of certain investment companies.

(a) Each registered investment company and business development company (''fund'') must:

(1) *Policies and procedures.* Adopt and implement written policies and procedures reasonably designed to prevent

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violation of the Federal Securities Laws by the fund, including policies and procedures that provide for the oversight of compliance by each investment adviser, principal underwriter, administrator, and transfer agent of the fund;

(2) *Board approval.* Obtain the approval of the fund's board of directors, including a majority of directors who are not interested persons of the fund, of the fund's policies and procedures and those of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, which approval must be based on a finding by the board that the policies and procedures are reasonably designed to prevent violation of the Federal Securities Laws by the fund, and by each investment adviser, principal underwriter, administrator, and transfer agent of the fund;

(3) *Annual review.* Review, no less frequently than annually, the adequacy of the policies and procedures of the fund and of each investment adviser, principal underwriter, administrator, and transfer agent and the effectiveness of their implementation;

(4) *Chief compliance officer.* Designate one individual responsible for administering the fund's policies and procedures adopted under paragraph (a)(1) of this section:

(i) Whose designation and compensation must be approved by the fund's board of directors, including a majority of the directors who are not interested persons of the fund;

(ii) Who may be removed from his or her responsibilities by action of (and only with the approval of) the fund's board of directors, including a majority of the directors who are not interested persons of the fund;

(iii) Who must, no less frequently than annually, provide a written report to the board that, at a minimum, addresses:

(A) The operation of the policies and procedures of the fund and each investment adviser, principal underwriter, administrator, and transfer agent of the fund, any material changes made to those policies and procedures since the date of the last report, and any material changes to the policies and procedures recommended as a result of the annual review conducted pursuant to paragraph (a)(3) of this section; and

(B) Each Material Compliance Matter that occurred since the date of the last report; and

(iv) Who must, no less frequently than annually, meet separately with the fund's independent directors.

(b) *Unit investment trusts.* If the fund is a unit investment trust, the fund's principal underwriter or depositor must approve the fund's policies and procedures and chief compliance officer, must receive all annual reports, and must approve the removal of the chief compliance officer from his or her responsibilities.

(c) *Undue influence prohibited.* No officer, director, or employee of the fund, its investment adviser, or principal underwriter, or any person acting under such person's direction may directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence the fund's chief compliance officer in the performance of his or her duties under this section.

(d) *Recordkeeping.* The fund must maintain:

(1) A copy of the policies and procedures adopted by the fund under paragraph (a)(1) that are in effect, or at any time within the past five years were in effect, in an easily accessible place; and

(2) Copies of materials provided to the board of directors in connection with their approval under paragraph (a)(2) of this section, and written reports provided to the board of directors pursuant to paragraph (a)(4)(iii) of this section (or, if the fund is a unit investment trust, to the fund's principal underwriter or depositor, pursuant to paragraph (b) of this section) for at least five years after the end of the fiscal year in which the documents were provided, the first two years in an easily accessible place; and

(3) Any records documenting the fund's annual review pursuant to paragraph (a)(3) of this section for at least five years after the end of the fiscal year in which the annual review was conducted, the first two years in an easily accessible place.

(e) *Definitions.* For purposes of this section:

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(1) *Federal Securities Laws* means the Securities Act of 1933 (15 U.S.C. 77a-aa), the Securities Exchange Act of 1934 (15 U.S.C. 78a-mm), the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 116 Stat. 745 (2002)), the Investment Company Act of 1940 (15 U.S.C. 80a), the Investment Advisers Act of 1940 (15 U.S.C. 80b), Title V of the Gramm-Leach-Bliley Act (Pub. L. No. 106–102, 113 Stat. 1338 (1999), any rules adopted by the Commission under any of these statutes, the Bank Secrecy Act (31 U.S.C. 5311–5314; 5316–5332) as it applies to funds, and any rules adopted thereunder by the Commission or the Department of the Treasury.

(2) A *Material Compliance Matter* means any compliance matter about which the fund's board of directors would reasonably need to know to oversee fund compliance, and that involves, without limitation:

(i) A violation of the Federal securities laws by the fund, its investment adviser, principal underwriter, administrator or transfer agent (or officers, directors, employees or agents thereof),

(ii) A violation of the policies and procedures of the fund, its investment adviser, principal underwriter, administrator or transfer agent, or

(iii) A weakness in the design or implementation of the policies and procedures of the fund, its investment adviser, principal underwriter, administrator or transfer agent.

[68 FR 74729, Dec. 24, 2003]

§ 270.45a–1 Confidential treatment of names and addresses of dealers of registered investment company securities.

(a) Exhibits calling for the names and addresses of dealers to or through whom principal underwriters of registered investment companies are currently offering securities and which are required to be furnished with registration statements filed pursuant to section 8(b) of the Act (54 Stat. 804; 15 U.S.C. 80a–8), or periodic reports filed pursuant to section 30(a) or section 30(b)(1) of the Act (54 Stat. 836; 15 U.S.C. 80a–30), shall be the subject of confidential treatment and shall not be made available to the public, except that the Commission may by order make such exhibits available to the public if, after appropriate notice and opportunity for hearing, it finds that public disclosure of such material is necessary or appropriate in the public interest or for the protection of investors.

(b) The exhibits referred to in paragraph (a) of this section shall be filed in quadruplicate with the Commission at the time the registration statement or periodic report is filed. Such exhibits shall be enclosed in a separate envelope marked ''Confidential Treatment'' and addressed to the Chairman, Securities and Executive Commission, Washington, DC. Confidential treatment requests shall be submitted in paper only, whether or not the registrant is required to file in electronic format.

[Rule N–45A–1, 7 FR 197, Jan. 10, 1942, as amended at 20 FR 7036, Sept. 20, 1955; 58 FR 14860, Mar. 18, 1993]

§ 270.55a–1 Investment activities of business development companies.

Notwithstanding section 55(a) of the Act (15 U.S.C. 80a–54(a)), a business development company may acquire securities purchased in transactions not involving any public offering from an issuer, or from any person who is an officer or employee of the issuer, if the issuer meets the requirements of sections 2(a)(46)(A) and (B) of the Act (15 U.S.C. 80a–2(a)(46)(A) and (B)), but the issuer is not an eligible portfolio company because it does not meet the requirements of § 270.2a–46, and the business development company meets the requirements of paragraphs (i) and (ii) of section 55(a)(1)(B) of the Act (15 U.S.C. 80a–54(a)(1)(B)(i) and (ii)).

[71 FR 64092, Oct. 31, 2006]

§ 270.57b–1 Exemption for downstream affiliates of business development companies.

Notwithstanding subsection (b)(2) of section 57 of the Act, the provisions of subsection (a) of that section shall not apply to any person (a) solely because that person is directly or indirectly controlled by a business development company or (b) solely because that person is, within the meaning of section 2(a)(3) (C) or (D) of the Act [15 U.S.C.

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80a–2(a)(3) (C) or (D)], an affiliated person of a person described in (a) of this section.

[46 FR 16674, Mar. 13, 1981]

§ 270.60a–1 Exemption for certain business development companies.

Section 12(d)(1) (A) and (C) of the Act shall not apply to the acquisition by a business development company of the securities of a small business investment company licensed to do business under the Small Business Investment Act of 1958 which is operated as a wholly-owned subsidiary of the business development company.

[46 FR 16674, Mar. 13, 1981]

PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

AUTHORITY: 15 U.S.C. 80a *et seq.*

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Statement of the Commission respecting distinctions between the reporting requirements of section 16(a) of the Securities Exchange Act of 1934 and section 30(f) of the Investment Company Act of 1940.	12	Nov. 16, 1940	11 FR 10991.
Letter of General Counsel relating to sections(b) and 26(c)	69	Feb. 19, 1941	Do.
Letter of the Director of the Investment Company Division relating to section 19 and Rule N–19–1 (17 CFR, 270.19a–1).	71	Feb. 21, 1941	Do.
Statement by the Commission relating to section 23(c)(3) and Rule N–23C–1 (17 CFR, 270.23c–1).	78	Mar. 4, 1941	Do.
Letter of General Counsel relating to section 22(d)	87	Mar. 14, 1941	11 FR 10992.
Letter of General Counsel relating to section 22(d)	89	Mar. 13, 1941	Do.
Letter of General Counsel relating to section 24(b)	150	June 20, 1941	Do.
Opinion of General Counsel relating to sections 8(b)(1) and 13(a)	167	July 23, 1941	11 FR 10993.
Letter of General Counsel relating to section 10(a)	214	Sept. 15, 1941	11 FR 10994.
Extract from letter of the Director of the Corporation Finance Division relating to sections 20 and 34(b).	446	Feb. 5, 1943	Do.
Excerpts from letters of the Director of the Corporation Finance Division relating to section 14 and Schedule 14A under Regulation X–14.	448	Feb. 17, 1943	Do.
Letter of the Director of the Corporation Finance Division relating to section 20 of the Investment Company Act of 1940 and to Rule X–14A–7 under the Securities Exchange Act of 1934 (17 CFR, 240.14a–7).	735	Jan. 3, 1945	11 FR 10995.
Statement of the Commission on the offering of common stock to the public at a per share price substantially in excess of the net asset value of the stock.	3187	Feb. 6, 1961	26 FR 1275.
Opinion of the Commission that ''Equity Funding,'' ''Secured Funding,'' or ''Life Funding'' constitutes an investment contract and when publicly offered is required to be registered under the Securities Act of 1933.	3480	May 22, 1962	27 FR 5190.
Statement of the Commission advising all registered investment companies to divest themselves of interest and securities acquired in contravention of the provisions of section 12(d)(3) of the Investment Company Act of 1940 within a reasonable period of time.	3542	Sept. 21, 1962	27 FR 9652.
Statement of the Commission advising any closed-end investment company contemplating repurchase of its own shares to consult with the Division of Corporate re nature of disclosure to be made to security holders.	3548	Oct. 3, 1962	27 FR 9987.
Opinion and statement of the Commission in regard to proper reporting of deferred income taxes arising from installment sales.	4426	Dec. 7, 1965	30 FR 15420.
Statement of the Commission to clarify the meaning of ''beneficial ownership of securities'' as relates to beneficial ownership of securities held by family members.	4483	Jan. 19, 1966	31 FR 1005.
Statement of the Commission setting the date of May 1, 1966 after which filings must reflect beneficial ownership of securities held by family members.	4516	Feb. 14, 1966	31 FR 3175.
Staff interpretative and no-action positions relating to property rights of an investment company and its investment adviser in the company's name and to the status of arrangement funding qualified Self-Employed Individual's Retirement Plans with life insurance contracts and investment company securities. The staff's comments do not purport to be an official expression of the Commission.	5510	Oct. 8, 1968	33 FR 15650.
Statement of the Director of the Commission's Division of Corporate Regulation re the filing of supplements to investment company prospectuses under the Securities Act of 1933 as a result of changes in stock exchange rules effective December 5, 1968 relating to ''customer-directed give ups''.	5554	Dec. 3, 1968	33 FR 18576.

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