

## § 270.6a-5

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

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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.

(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;

(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;

(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

(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

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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(c)(1), and 27(d) of the Act (15 U.S.C. 80a-22(e), 80a-27(c)(1), 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 para-

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graphs (a) through (d) of this section have been complied with.

(Secs. 6(c) and 38(a) of the Act (15 U.S.C. 80a-6(c) and 80a-37(a), respectively))

[49 FR 1479, Jan. 12, 1984]

### **§ 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 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), and 27(d) of the Act (15 U.S.C. 80a-2(a)(32), 80a-2(a)(35), 80a-22(c), 80a-26(a)(2)(C), 80a-27(c)(1), 80a-27(c)(2), and 80a-27(d), respectively) and rule 22c-1 under the Act (17 CFR 270.22c-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:

(1) The amount of any such sales load imposed, when added to any sales load previously paid on such contract, shall not exceed 9 percent of purchase payments made to date for such contract; and

(2) The terms of any offer to exchange another contract for the contract are in compliance with the requirements of paragraph (d) or (e) of rule 11a-2 under the Act (17 CFR 270.11a-2).

(c) A registered separate account, and any depositor of or principal underwriter for such account, shall be exempt from sections 2(a)(32), 22(c), 27(c)(1), and 27(d) of the Act (15 U.S.C. 80a-2(a)(32), 80a-22(c), 80a-27(c)(1), and 80a-27(d), respectively) and rule 22c-1 under the Act (17 CFR 270.22c-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