

§ 270.6a-5

17 CFR Ch. II (4-1-20 Edition)

(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)(I) 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 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,

Securities and Exchange Commission

§ 270.6c-6

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.

(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