

ship, in lieu of mailing a copy of such advisory report, such registered company shall publish promptly a statement of the existence of such advisory report in a newspaper of general circulation in its principal place of business and shall make available copies of such advisory report upon request. Notwithstanding the provision of this section the Commission shall not render such advisory report although so requested by any such investment company or such security holders if the fairness or feasibility of said plan is in issue in any proceeding pending in any court of competent jurisdiction unless such plan is submitted to the Commission for that purpose by such court.

(c) Enjoinder of plan of reorganization

Any district court of the United States in the State of incorporation of a registered investment company, or any such court for the district in which such company maintains its principal place of business, is authorized to enjoin the consummation of any plan of reorganization of such registered investment company upon proceedings instituted by the Commission (which is authorized so to proceed upon behalf of security holders of such registered company, or any class thereof), if such court shall determine that any such plan is not fair and equitable to all security holders.

(d) Application of section to reorganizations under title 11

Nothing contained in this section shall in any way affect or derogate from the powers of the courts of the United States and the Commission with reference to reorganizations contained in title 11.

(Aug. 22, 1940, ch. 686, title I, §25, 54 Stat. 826; Pub. L. 91-547, §14, Dec. 14, 1970, 84 Stat. 1424; Pub. L. 95-598, title III, §310(c), Nov. 6, 1978, 92 Stat. 2676.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-598 substituted "title 11" for "the Bankruptcy Act of 1898, as amended".

1970—Subsec. (c). Pub. L. 91-547 substituted "that any such plan is not fair and equitable to all security holders" for "any such plan to be grossly unfair or to constitute gross misconduct or gross abuse of trust on the part of the officers, directors, or investment advisers of such registered company or other sponsors of such plan".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80a-26. Unit investment trusts

(a) Custody and sale of securities

No principal underwriter for or depositor of a registered unit investment trust shall sell, ex-

cept by surrender to the trustee for redemption, any security of which such trust is the issuer (other than short-term paper), unless the trust indenture, agreement of custodianship, or other instrument pursuant to which such security is issued—

(1) designates one or more trustees or custodians, each of which is a bank, and provides that each such trustee or custodian shall have at all times an aggregate capital, surplus, and undivided profits of a specified minimum amount, which shall not be less than \$500,000 (but may also provide, if such trustee or custodian publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, that for the purposes of this paragraph the aggregate capital, surplus, and undivided profits of such trustee or custodian shall be deemed to be its aggregate capital, surplus, and undivided profits as set forth in its most recent report of condition so published);

(2) provides, in substance, (A) that during the life of the trust the trustee or custodian, if not otherwise remunerated, may charge against and collect from the income of the trust, and from the corpus thereof if no income is available, such fees for its services and such reimbursement for its expenses as are provided for in such instrument; (B) that no such charge or collection shall be made except for services theretofore performed or expenses theretofore incurred; (C) that no payment to the depositor or of a principal underwriter for such trust, or to any affiliated person or agent of such depositor or underwriter, shall be allowed the trustee or custodian as an expense (except that provision may be made for the payment to any such person of a fee, not exceeding such reasonable amount as the Commission may prescribe as compensation for performing bookkeeping and other administrative services, of a character normally performed by the trustee or custodian itself); and (D) that the trustee or custodian shall have possession of all securities and other property in which the funds of the trust are invested, all funds held for such investment, all equalization, redemption, and other special funds of the trust, and all income upon, accretions to, and proceeds of such property and funds, and shall segregate and hold the same in trust (subject only to the charges and collections allowed under clauses (A), (B), and (C) of this paragraph) until distribution thereof to the security holders of the trust;

(3) provides, in substance, that the trustee or custodian shall not resign until either (A) the trust has been completely liquidated and the proceeds of the liquidation distributed to the security holders of the trust, or (B) a successor trustee or custodian, having the qualifications prescribed in paragraph (1) of this subsection, has been designated and has accepted such trusteeship or custodianship; and

(4) provides, in substance, (A) that a record will be kept by the depositor or an agent of the depositor of the name and address of, and the shares issued by the trust and held by, every holder of any security issued pursuant to such instrument, insofar as such informa-

tion is known to the depositor or agent; and (B) that whenever a security is deposited with the trustee in substitution for any security in which such security holder has an undivided interest, the depositor or the agent of the depositor will, within five days after such substitution, either deliver or mail to such security holder a notice of substitution, including an identification of the securities eliminated and the securities substituted, and a specification of the shares of such security holder affected by the substitution.

(b) Bank or affiliated person of bank as trustee or custodian

The Commission may, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 1813 of title 12), adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person of a principal underwriter for, or depositor of, a registered unit investment trust, may serve as trustee or custodian under subsection (a)(1) of this section.

(c) Substitution of securities

It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter.

(d) Binding contract or agreement embodying applicable provisions deemed to qualify non-complying instrument by which securities were issued

In the event that a trust indenture, agreement of custodianship, or other instrument pursuant to which securities of a registered unit investment trust are issued does not comply with the requirements of subsection (a) of this section, such instrument will be deemed to meet such requirements if a written contract or agreement binding on the parties and embodying such requirements has been executed by the depositor on the one part and the trustee or custodian on the other part, and three copies of such contract or agreement have been filed with the Commission.

(e) Liquidation of unit investment trust

Whenever the Commission has reason to believe that a unit investment trust is inactive and that its liquidation is in the interest of the security holders of such trust, the Commission may file a complaint seeking the liquidation of such trust in the district court of the United States in any district wherein any trustee of such trust resides or has its principal place of business. A copy of such complaint shall be served on every trustee of such trust, and notice of the proceeding shall be given such other interested persons in such manner and at such times as the court may direct. If the court de-

termines that such liquidation is in the interest of the security holders of such trust, the court shall order such liquidation and, after payment of necessary expenses, the distribution of the proceeds to the security holders of the trust in such manner and on such terms as may to the court appear equitable.

(f) Exemption

(1) In general

Subsection (a) of this section does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account.

(2) Limitation on sales

It shall be unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract—

(A) unless the fees and charges deducted under the contract, in the aggregate, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company, and, beginning on the earlier of August 1, 1997, or the earliest effective date of any registration statement or amendment thereto for such contract following October 11, 1996, the insurance company so represents in the registration statement for the contract; and

(B) unless the insurance company—

(i) complies with all other applicable provisions of this section, as if it were a trustee or custodian of the registered separate account;

(ii) files with the insurance regulatory authority of the State which is the domiciliary State of the insurance company, an annual statement of its financial condition, which most recent statement indicates that the insurance company has a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than \$1,000,000, or such other amount as the Commission may from time to time prescribe by rule, as necessary or appropriate in the public interest or for the protection of investors; and

(iii) together with its registered separate accounts, is supervised and examined periodically by the insurance authority of such State.

(3) Fees and charges

For purposes of paragraph (2), the fees and charges deducted under the contract shall include all fees and charges imposed for any purpose and in any manner.

(4) Regulatory authority

The Commission may issue such rules and regulations to carry out paragraph (2)(A) as it determines are necessary or appropriate in the public interest or for the protection of investors.

(Aug. 22, 1940, ch. 686, title I, §26, 54 Stat. 827; Pub. L. 91-547, §15, Dec. 14, 1970, 84 Stat. 1424;

Pub. L. 100-181, title VI, §§ 618, 619, Dec. 4, 1987, 101 Stat. 1262; Pub. L. 104-290, title II, § 205(a), Oct. 11, 1996, 110 Stat. 3429; Pub. L. 106-102, title II, § 211(b), Nov. 12, 1999, 113 Stat. 1396.)

AMENDMENTS

1999—Subsecs. (b) to (f). Pub. L. 106-102 added subsec. (b) and redesignated former subsecs. (b) to (e) as (c) to (f), respectively.

1996—Subsec. (e). Pub. L. 104-290 added subsec. (e).

1987—Subsec. (b). Pub. L. 100-181, § 618, substituted “intended” for “intend”.

Subsec. (c). Pub. L. 100-181, § 619, substituted “contract or agreement” for “contract of agreement”.

1970—Subsecs. (b) to (d). Pub. L. 91-547 added subsec. (b), redesignated former subsec. (b) as (c), struck out “at the effective date of this subchapter” before “comply”, substituted “contract of agreement” for “contract or agreement”, and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106-102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80a-27. Periodic payment plans

(a) Sale of certificates; restrictions

It shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate, if—

(1) the sales load on such certificate exceeds 9 per centum of the total payments to be made thereon;

(2) more than one-half of any of the first twelve monthly payments thereon, or their equivalent, is deducted for sales load;

(3) the amount of sales load deducted from any one of such first payments exceeds proportionately the amount deducted from any other such payment, or the amount deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment;

(4) the first payment on such certificate is less than \$20, or any subsequent payment is less than \$10;

(5) if such registered company is a management company, the proceeds of such certificate or the securities in which such proceeds are invested are subject to management fees (other than fees for administrative services of the character described in clause (C), paragraph (2), of section 80a-26(a) of this title) exceeding such reasonable amount as the Commission may prescribe, whether such fees are payable to such company or to investment advisers thereof; or

(6) if such registered company is a unit investment trust the assets of which are securi-

ties issued by a management company, the depositor of or principal underwriter for such trust, or any affiliated person of such depositor or underwriter, is to receive from such management company or any affiliated person thereof any fee or payment on account of payments on such certificate exceeding such reasonable amount as the Commission may prescribe.

(b) Exemptions

If it appears to the Commission, upon application or otherwise, that smaller companies are subjected to relatively higher operating costs and that in order to make due allowance therefor it is necessary or appropriate in the public interest and consistent with the protection of investors that a provision or provisions of paragraph (1), (2), or (3) of subsection (a) of this section relative to sales load be relaxed in the case of certain registered investment companies issuing periodic payment plan certificates, or certain specified classes of such companies, the Commission is authorized by rules and regulations or order to grant any such company or class of companies appropriate qualified exemptions from the provisions of said paragraphs.

(c) Sale of certificates; requirements

It shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate, unless—

(1) such certificate is a redeemable security; and

(2) the proceeds of all payments on such certificate (except such amounts as are deducted for sales load) are deposited with a trustee or custodian having the qualifications prescribed in paragraph (1) of section 80a-26(a) of this title for the trustees of unit investment trusts, and are held by such trustee or custodian under an indenture or agreement containing, in substance, the provisions required by paragraphs (2) and (3) of section 80a-26(a) of this title for the trust indentures of unit investment trusts.

(d) Surrender of certificates; regulations

Notwithstanding subsection (a) of this section, it shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the certificate provide that the holder thereof may surrender the certificate at any time within the first eighteen months after the issuance of the certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from such underwriter or depositor, equal to that part of the excess paid for sales loading which is over 15 per centum of the gross payments made by the certificate holder. The Commission may make rules and regulations applicable to such underwriters and depositors specifying such reserve requirements as it deems necessary or appropriate in order for such underwriters and depositors to carry out the obligations to refund sales charges required by this subsection.