

**(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), 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 determines 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) 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 domi-

iliary 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 securities 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) 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.

**(e) Refund privileges; notice; rules**

With respect to any periodic payment plan certificate sold subject to the provisions of subsection (d) of this section, the registered investment company issuing such periodic payment plan certificate, or any depositor of or underwriter for such company, shall in writing (1) inform each certificate holder who has missed three payments or more, within thirty days following the expiration of fifteen months after the issuance of the certificate, or, if any such holder has missed one payment or more after such period of fifteen months but prior to the expiration of eighteen months after the issuance of the certificate, at any time prior to the expiration of such eighteen-month period, of his right to surrender his certificate as specified in subsection (d) of this section, and (2) inform the certificate holder of (A) the value of the holder's account as of the time the written notice was given to such holder, and (B) the amount to which he is entitled as specified in subsection (d) of this section. The Commission may make rules specifying the method, form, and contents of the notice required by this subsection.

**(f) Charges, statement; rules; surrender of certificates; regulations**

With respect to any periodic payment plan (other than a plan under which the amount of sales load deducted from any payment thereon does not exceed 9 per centum of such payment), the custodian bank for such plan shall mail to each certificate holder, within sixty days after the issuance of the certificate, a statement of charges to be deducted from the projected payments on the certificate and a notice of his right of withdrawal as specified in this section. The Commission may make rules specifying the method, form, and contents of the notice re-

quired by this subsection. The certificate holder may within forty-five days of the mailing of the notice specified in this subsection surrender his certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from the underwriter or depositor, equal to the difference between the gross payments made and the net amount invested. The Commission may make rules and regulations applicable to underwriters and depositors of companies issuing any such certificate 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.

**(g) Governing provisions; election**

Notwithstanding the provisions of subsections (a) and (d), a registered investment company issuing periodic payment plan certificates may elect, by written notice to the Commission, to be governed by the provisions of subsection (h) rather than the provisions of subsections (a) and (d) of this section.

**(h) Sale of certificates; restrictions**

Upon making the election specified in subsection (g), it shall be unlawful for any such electing 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 20 per centum of any payment thereon is deducted for sales load, or an average of more than 16 per centum is deducted for sales load from the first forty-eight monthly payments thereon, or their equivalent;

(3) the amount of sales load deducted from any one of the first twelve monthly payments, the thirteenth through twenty-fourth monthly payments, the twenty-fifth through thirty-sixth monthly payments, or the thirty-seventh through forty-eighth monthly payments, or their equivalents, respectively, 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 deduction for sales load on the excess of the payment or payments in any month over the minimum monthly payment, or its equivalent, to be made on the certificate exceeds the sales load applicable to payments subsequent to the first forty-eight monthly payments or their equivalent;

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

(6) 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) of 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

(7) if such registered company is a unit investment trust the assets of which are securities 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.

**(i) Applicability to registered separate account funding variable insurance contracts**

(1) 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, except as provided in paragraph (2).

(2) 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 unless—

(A) such contract is a redeemable security; and

(B) the insurance company complies with section 80a-26(f) of this title and any rules or regulations issued by the Commission under section 80a-26(f) of this title.

**(j) Termination of sales**

**(1) Termination**

Effective 30 days after September 29, 2006, it shall be unlawful, subject to subsection (i)—

(A) for any registered investment company to issue any periodic payment plan certificate; or

(B) for such company, or any depositor of or underwriter for any such company, or any other person, to sell such a certificate.

**(2) No invalidation of existing certificates**

Paragraph (1) shall not be construed to alter, invalidate, or otherwise affect any rights or obligations, including rights of redemption, under any periodic payment plan certificate issued and sold before 30 days after September 29, 2006.

(Aug. 22, 1940, ch. 686, title I, §27, 54 Stat. 829; Pub. L. 91-547, §16, Dec. 14, 1970, 84 Stat. 1424; Pub. L. 92-165, Nov. 23, 1971, 85 Stat. 487; Pub. L. 104-290, title II, §205(b), Oct. 11, 1996, 110 Stat. 3429; Pub. L. 109-290, §4(a), (b), Sept. 29, 2006, 120 Stat. 1318, 1319.)

AMENDMENTS

2006—Subsec. (i)(2)(B). Pub. L. 109-290, §4(b), substituted “section 80a-26(f)” for “section 80a-26(e)” in two places.

Subsec. (j). Pub. L. 109-290, §4(a), added subsec. (j).

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

1971—Subsec. (f). Pub. L. 92-165 inserted “(other than a plan under which the amount of sales load deducted from any payment thereon does not exceed 9 per centum of such payment)”.

1970—Subsecs. (d) to (h). Pub. L. 91-547 added subsecs. (d) to (h).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective on expiration of six months after Dec. 14, 1970, see section 30(3) 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-28. Face-amount certificate companies

#### (a) Issuance or sale of certificates

It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, unless—

- (1) such company, if organized before March 15, 1940, was actively and continuously engaged in selling face-amount certificates on and before that date, and has outstanding capital stock worth upon a fair valuation of assets not less than \$50,000; or if organized on or after March 15, 1940, has capital stock in an amount not less than \$250,000 which has been bona fide subscribed and paid for in cash; and
- (2) such company maintains at all times minimum certificate reserves on all its outstanding face-amount certificates in an aggregate amount calculated and adjusted as follows:

(A) the reserves for each certificate of the installment type shall be based on assumed annual, semi-annual, quarterly, or monthly reserve payments according to the manner in which gross payments for any certificate year are made by the holder, which reserve payments shall be sufficient in amount, as and when accumulated at a rate not to exceed  $3\frac{1}{2}$  per centum per annum compounded annually, to provide the minimum maturity or face amount of the certificate when due. Such reserve payments may be graduated according to certificate years so that the reserve payment or payments for the first certificate year shall amount to at least 50 per centum of the required gross annual payment for such year and the reserve payment or payments for each of the second to fifth certificate years inclusive shall amount to at least 93 per centum of each such year's required gross annual payment and for the sixth and each subsequent certificate year the reserve payment or payments shall amount to at least 96 per centum of each such year's required gross annual payment: *Provided*, That such aggregate reserve payments shall amount to at least 93 per centum of the aggregate gross annual payments required to be made by the holder to obtain the maturity of the certificate. The company may at its option take as loading from the gross payment or payments for a certificate year, as and when made by the certificate holder, an amount or amounts equal in the aggregate for such year to not more than the excess, if any, of the gross payment or payments required to be made by the holder for such year, over and above the percentage of the gross annual payment required herein

for such year for reserve purposes. Such loading may be taken by the company prior to or after the setting up of the reserve payment or payments for such year and the reserve payment or payments for such year may be graduated and adjusted to correspond with the amount of the gross payment or payments made by the certificate holder for such year less the loading so taken;

(B) if the foregoing minimum percentages of the gross annual payments required under the provisions of such certificate should produce reserve payments larger than are necessary at  $3\frac{1}{2}$  per centum per annum compounded annually to provide the minimum maturity or face amount of the certificate when due, the reserve shall be based upon reserve payments accumulated as provided under preceding subparagraph (A) of this paragraph except that in lieu of the  $3\frac{1}{2}$  per centum rate specified therein, such rate shall be lowered to the minimum rate, expressed in multiples of one-eighth of 1 per centum, which will accumulate such reserve payments to the maturity value when due;

(C) if the actual annual gross payment to be made by the certificate holder on any certificate issued prior to or after the effective date of this chapter is less than the amount of any assumed reserve payment or payments for a certificate year, such company shall maintain as a part of such minimum certificate reserves a deficiency reserve equal to the total present value of future deficiencies in the gross payments, calculated at a rate not to exceed  $3\frac{1}{2}$  per centum per annum compounded annually;

(D) for each certificate of the installment type the amount of the reserve shall at any time be at least equal to (1) the then amount of the reserve payments set up under subparagraphs (A) or (B) of this paragraph; (2) the accumulations on such reserve payments as computed under subparagraphs (A) or (B) of this paragraph; (3) the amount of any deficiency reserve required under subparagraph (C) of this paragraph; and (4) such amount as shall have been credited to the account of each certificate holder in the form of any credit, or any dividend, or any interest in addition to the minimum maturity amount specified in such certificate, plus any accumulations on any amount or amounts so credited, at a rate not exceeding  $3\frac{1}{2}$  per centum per annum compounded annually;

(E) for each certificate which is fully paid, including any fully paid obligations resulting from or effected upon the maturity of the previously issued certificate, and for each paid-up certificate issued as provided in subsection (f) of this section prior to maturity, the amount of the reserve shall at any time be at least equal to (1) such amount as and when accumulated at a rate not to exceed  $3\frac{1}{2}$  per centum per annum compounded annually, will provide the amount or amounts payable when due and (2) such amount as shall have been credited to the account of each such certificate holder in the form of any credit, or any dividend, or