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total payments to be made thereon as of a date not later than the end of the 12th year of such payments: *Provided*, That if a contract be issued for any stipulated shorter payment period the sales load under such contract shall not exceed 9 per centum of the total payments thereunder for such period.

[36 FR 11645, June 17, 1971]

§ 270.27a-2 Exemption from section 27(a)(3) and section 27(h)(3) of the Act for certain registered separate accounts.

(a) A registered separate account, and any depositor of or underwriter for such account, shall be exempt from paragraph (3) of section 27(a) and paragraph (3) of section 27(h) of the Act: *Provided*, That with respect to any variable annuity contract participating in such account the proportionate amount of sales load deducted from any payment during the contract period shall not exceed the proportionate amount deducted from any prior payment during the contract period.

[36 FR 11645, June 17, 1971]

§ 270.27a-3 Exemption from section 27(a)(4) and section 27(h)(5) of the Act for certain registered separate accounts.

(a) A registered separate account, and any depositor of or underwriter for such account, shall be exempt from paragraph (4) of section 27(a) of the Act and paragraph (5) of section 27(h) of the Act as to payments under any variable annuity contract participating in such account which (1) is purchased in connection with a plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, as amended (Code), or the requirements for deduction of the employer's contributions under section 404(a)(2) of the Code, or (2) meets the requirements of section 403(b) of the Code, but such exemptions shall apply only to contributions or payments within the exclusion allowance for any employee under section 403(b) except as clause (3) hereof applies, or (3) permits no sales load deduction from any pay-

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ment in excess of 9 per centum of such payment.

[36 FR 11645, June 17, 1971, as amended at 36 FR 23624, Dec. 11, 1971]

§ 270.27c-1 Exemption from section 27(c)(1) and section 27(d) of the Act during annuity payment period of variable annuity contracts participating in certain registered separate accounts.

(a) 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(c) of the Act that a periodic payment plan certificate be a redeemable security and from section 27(d) of the Act with respect to such contracts under which payments are being made based upon life contingencies.

(Sec. 6(c), 54 Stat. 800, 841; sec. 16, 84 Stat. 1424, 15 U.S.C. 80a-27(h))

[36 FR 11645, June 17, 1971]

§ 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 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

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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 Insurance company undertaking in lieu of segregated trust account.

(a) Any depositor or principal underwriter for the issuer of a periodic payment plan certificate sold subject to section 27(d) or 27(f) of the Act, or both, shall be exempt from the requirements of §270.27d-1 if an insurance

company (as defined in section 2(a)(17) of the Act) undertakes in writing to guarantee the performance of all obligations of such depositor or principal underwriter to refund charges under sections 27(d) and 27(f) of the Act and paragraph (b) of this section: *Provided, however,* That:

(1) Such insurance company at all times shall have (i) combined capital paid-up, gross paid in and contributed surplus and unassigned surplus, if a stock company, or (ii) unassigned surplus, if a mutual company, at least equal to the larger of (a) \$1 million or (b) 200 percent of the amount of the total refund obligation of the depositor or underwriter pursuant to sections 27(d) and 27(f) (of the Act) less any liability reserve established by such insurance company to meet such obligations; and

(2) Such depositor or underwriter shall file or cause to be filed with the Commission as an exhibit to the registration statement or any amendment thereto pursuant to the Securities Act of 1933 of the registered investment company issuing periodic payment plan certificates (i) a copy of such written undertaking, and any amendment thereto, (ii) an annual statement certified by a responsible officer of the insurance company indicating that at least on a monthly basis throughout its fiscal year the insurance company has met the requirements of the proviso in paragraph (a)(1) of this section, and (iii) a Statement of Financial Condition (Balance Sheet) of the insurance company certified by an independent public accountant. Such balance sheet shall be filed at least annually, within 90 days after the close of the insurance company's fiscal year.

(b) 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.

[36 FR 13137, July 15, 1971]