

§ 270.13a-1

(iv) Conversion of convertible securities acquired in compliance with this section; and

(v) Acquisition of Demand Features or Guarantees, as these terms are defined in §§ 270.2a-7(a)(8) and 270.2a-7(a)(15) respectively, provided that, immediately after the acquisition of any Demand Feature or Guarantee, the company will not, with respect to 75 percent of the total value of its assets, have invested more than ten percent of the total value of its assets in securities underlying Demand Features or Guarantees from the same institution. For the purposes of this section, a Demand Feature or Guarantee will be considered to be from the party to whom the company will look for a payment of the exercise price.

(8) Any class or series of an investment company that issues two or more classes or series of preferred or special stock, each of which is preferred over all other classes or series with respect to assets specifically allocated to that class or series, shall be treated as if it is a registered investment company.

NOTE: It is not intended that this rule should supersede the requirements prescribed in Investment Company Act Release No. 13005 (Feb. 2, 1983) with respect to repurchase agreements with brokers or dealers.

[58 FR 49427, Sept. 23, 1993, as amended at 61 FR 13982, Mar. 28, 1996; 62 FR 64986, Dec. 9, 1997]

§ 270.13a-1 Exemption for change of status by temporarily diversified company.

A change of its subclassification by a registered management company from that of a diversified company to that of a nondiversified company shall be exempt from the provisions of section 13(a)(1) of the Act (54 Stat. 811; 15 U.S.C. 80a-13), if such change occurs under the following circumstances:

(a) Such company was a non-diversified company at the time of its registration pursuant to section 8(a) (54 Stat. 803; 15 U.S.C. 80a-8), or thereafter legally became a nondiversified company.

(b) After its registration and within 3 years prior to such change, such company became a diversified company.

(c) At the time such company became a diversified company, its registration statement filed pursuant to section 8(b)

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(54 Stat. 803; 15 U.S.C. 80a-8), as supplemented and modified by any amendments and reports theretofore filed, did not state that the registrant proposed to become a diversified company.

[Rule N-13A-1, 6 FR 3967, Aug. 8, 1941]

§ 270.14a-1 Use of notification pursuant to regulation E under the Securities Act of 1933.

For the purposes of section 14(a)(3) of the Act, registration of securities under the Securities Act of 1933 by a small business investment company operating under the Small Business Investment Act of 1958 shall be deemed to include the filing of a notification under Rule 604 of Regulation E promulgated under said Act if provision is made in connection with such notification which in the opinion of the Commission adequately insures (a) that after the effective date of such notification such company will not issue any security or receive any proceeds of any subscription for any security until firm agreements have been made with such company by not more than twenty-five responsible persons to purchase from it securities to be issued by it for an aggregate net amount which plus the then net worth of the company, if any, will equal at least \$100,000; (b) that said aggregate net amount will be paid into such company before any subscriptions for such securities will be accepted from any persons in excess of twenty-five; (c) that arrangements will be made whereby any proceeds so paid in, as well as any sales load, will be refunded to any subscriber on demand without any deduction, in the event that the net proceeds so received by the company do not result in the company having a net worth of at least \$100,000 within ninety days after such notification becomes effective.

[25 FR 3512, Apr. 22, 1960]

§ 270.14a-2 Exemption from section 14(a) of the Act for certain registered separate accounts and their principal underwriters.

(a) A registered separate account, and any principal underwriter for such account, shall be exempt from section 14(a) of the Act (15 U.S.C. 80a-14(a)) with respect to a public offering of

variable annuity contracts participating in such account if, at the commencement of such offering, the insurance company establishing and maintaining such separate account shall have (1) a combined capital and surplus, if a stock company, or (2) an unassigned surplus, if a mutual company, of not less than \$1,000,000 as set forth in the balance sheet of such insurance company contained in the registration statement or any amendment thereto relating to such contracts filed pursuant to the Securities Act of 1933.

(b) Any registered management investment company which has as a promoter an insurance company meeting the requirements of paragraph (a) of this section and which offers its securities to separate accounts of such insurance company registered under the Act as unit investment trusts ("trust accounts"), and any principal underwriter for such investment company, shall be exempt from section 14(a) with respect to such offering and to the offering of such securities to trust accounts of other insurance companies meeting the requirements of paragraph (a) of this section.

(c) Any registered management investment company exempt from section 14(a) of the Act pursuant to paragraph (b) of this section shall be exempt from sections 15(a), 16(a), and 32(a)(2) of the Act (15 U.S.C. 80a-15(a), 80a-16(a), and 80a-31(a)(2)), to the extent prescribed in rules 15a-3, 16a-1, and 32a-2 under the Act (17 CFR 270.15a-3, 270.16a-1, and 270.32a-2), provided that such investment company complies with the conditions set forth in those rules as if it were a separate account.

(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]

§ 270.14a-3 Exemption from section 14(a) of the Act for certain registered unit investment trusts and their principal underwriters.

(a) A registered unit investment trust (hereinafter referred to as the "Trust") engaged exclusively in the business of investing in eligible trust securities, and any principal underwriter for the Trust, shall be exempt from section 14(a) of the Act with re-

spect to a public offering of Trust units: *Provided, That:*

(1) At the commencement of such offering the Trust holds at least \$100,000 principal amount of eligible trust securities (or delivery statements relating to contracts for the purchase of any such securities which, together with cash or an irrevocable letter of credit issued by a bank in the amount required for their purchase, are held by the Trust for purchase of the securities);

(2) If, within ninety days from the time that the Trust's registration statement has become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.) the net worth of the Trust declines to less than \$100,000 or the Trust is terminated, the sponsor for the Trust shall—

(i) Refund, on demand and without deduction, all sales charges to any unitholders who purchased Trust units from the sponsor (or from any underwriter or dealer participating in the distribution), and

(ii) Liquidate the eligible trust securities held by the Trust and distribute the proceeds thereof to the unitholders of the Trust;

(3) The sponsor instructs the trustee when the eligible trust securities are deposited in the Trust that, in the event that redemptions by the sponsor or any underwriter of units constituting a part of the unsold units results in the Trust having a net worth of less than 40 percent of the principal amount of the eligible trust securities (or delivery statements relating to contracts for the purchase of any such securities which, together with cash or an irrevocable letter of credit issued by a bank in the amount required for their purchase, are held by the Trust for purchase of the securities) initially deposited in the Trust—

(i) The trustee shall terminate the Trust and distribute the assets thereof to the unitholders of the Trust, and

(ii) The sponsor for the Trust shall refund, on demand and without deduction, all sales charges to any unitholder who purchased Trust units from the sponsor or from any underwriter or dealer participating in the distribution.