

Securities and Exchange Commission

§ 270.26a-2

(2) Acquired substantially all of the assets and assumed substantially all of the liabilities and obligations of the Predecessor Issuer; and

(3) The merger is not designed to result in the Predecessor Issuer merging with, or substantially all of its assets being acquired by, an issuer (or a series of an issuer) that would not meet the conditions of paragraph (b)(1) of this section.

(c) *Counting days.* To determine the date on which Form 24F-2 must be filed with the Commission under paragraph (a) of this section, the first day of the 90-day period is the first calendar day of the fiscal year following the fiscal year for which the Form is to be filed. If the last day of the 90-day period falls on a Saturday, Sunday, or federal holiday, the period ends on the first business day thereafter.

NOTE TO PARAGRAPH (C): For example, a Form 24F-2 for a fiscal year ending on June 30 must be filed no later than September 28. If September 28 falls on a Saturday, Sunday, the Form must be filed on the following Monday.

[62 FR 47938, Sept. 12, 1997]

§ 270.26a-1 Payment of administrative fees to the depositor or principal underwriter of a unit investment trust; exemptive relief for separate accounts.

(a) For purposes of section 26(a)(2)(C) of the Act, payment of a fee to the depositor of or a principal underwriter for a registered unit investment trust, or to any affiliated person or agent of such depositor or underwriter (collectively, "depositor"), for bookkeeping or other administrative services provided to the trust shall be allowed the custodian or trustee ("trustee") as an expense, *Provided*, That such fee is an amount not greater than the expenses, without profit: (1) Actually paid by such depositor directly attributable to the services provided and (2) increased by the services provided directly by such depositor, as determined in accordance with generally accepted accounting principles consistently applied.

(b) A registered separate account, and any depositor of or principal underwriter for such account, shall be exempt from the provisions of sections

26(a) and 27(c)(2) of the Act [15 U.S.C. 80a-26(a) and 80a-27(c)(2)] with respect to any variable annuity contract participating in such account to the extent necessary to permit the deduction of any fee that would be allowed a trustee as an expense as provided in paragraph (a) of this section, *Provided*, That the standard used in paragraph (a) of this section shall be applied as follows: if the separate account reserves the right to increase the fee, the fee shall not be greater than the cost of the services to be provided for one year; if the fee is guaranteed not to increase for a specified period of time, the fee shall not be greater than the average expected cost of the services to be provided during the period of the guarantee.

(Sec. 6(c), 26(a), and 38(a) (15 U.S.C. 80a-6(c), 80a-26(a), and 80a-37(a)))

[49 FR 31063, Aug. 3, 1984]

§ 270.26a-2 Exemptions from certain provisions of sections 26 and 27 for registered separate accounts and others regarding custodianship of and deduction of certain fees and charges from the assets of such accounts.

A registered separate account, and any depositor of or principal underwriter for such account, shall be exempt from the provisions of Sections 26(a) and 27(c)(2) of the Act [15 U.S.C. 80a-26(a) and 80a-27(c)(2)] with respect to any variable annuity contract participating in such account to the extent necessary:

(a) To permit the insurance company that sponsors such account to hold the assets of the separate account and to hold such assets not pursuant to a trust indenture or other such instrument;

(b) To permit any separate account registered under the Act as a unit investment trust to hold the securities of any underlying portfolio companies in uncertificated form;

(c) To permit any separate account registered under the Act as a management investment company to hold its assets in any manner permitted by section 17(f) of the Act [15 U.S.C. 80a-17(f)] or any rules thereunder; and

(d) To permit the deduction from the assets of the separate account of