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and such division of brokerage commissions or other compensation. The record shall also include the identities of the persons responsible for the determination of such allocation and such division of brokerage commissions or other compensation.

(10) A record in the form of an appropriate memorandum identifying the person or persons, committees, or groups authorizing the purchase or sale of portfolio securities. Where an authorization is made by a committee or group, a record shall be kept of the names of its members who participated in the authorization. There shall be retained as part of the record required by this paragraph any memorandum, recommendation, or instruction supporting or authorizing the purchase or sale of portfolio securities. The requirements of this paragraph are applicable to the extent they are not met by compliance with the requirements of paragraph (b)(4) of this section.

(11) Files of all advisory material received from the investment adviser, any advisory board or advisory committee, or any other persons from whom the investment company accepts investment advice, other than material which is furnished solely through uniform publications distributed generally.

(12) The term "other records" as used in the expressions "journals (or other records of original entry)" and "ledger accounts (or other records)" shall be construed to include, where appropriate, copies of voucher checks, confirmations, or similar documents which reflect the information required by the applicable rule or rules in appropriate sequence and in permanent form, including similar records developed by the use of automatic data processing systems.

(c) Every underwriter, broker, or dealer which is a majority-owned subsidiary of a registered investment company shall maintain in the form prescribed therein such accounts, books and other documents as are required to be maintained by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934.

(d) Every depositor of any registered investment company, and every principal underwriter for any registered in-

vestment company other than a closed-end investment company, shall maintain such accounts, books and other documents as are required to be maintained by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934, to the extent such records are necessary or appropriate to record such person's transactions with such registered investment company.

(e) Every investment advisor which is a majority-owned subsidiary of a registered investment company shall maintain in the form prescribed therein such accounts, books and other documents as are required to be maintained by registered investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940.

(f) Every investment adviser not a majority-owned subsidiary of a registered investment company shall maintain such accounts, books and other documents as are required to be maintained by registered investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940, to the extent such records are necessary or appropriate to record such person's transactions with such registered investment company.

(Sec. 31, 54 Stat. 838; 15 U.S.C. 80a-30)

[27 FR 11993, Dec. 5, 1962, as amended at 61 FR 13983, Mar. 28, 1996; 62 FR 64986, Dec. 9, 1997]

§ 270.31a-2 Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

(a) Every registered investment company shall:

(1) Preserve permanently, the first two years in an easily accessible place, all books and records required to be made pursuant to paragraphs (1) through (4) of § 270.31a-1(b);

(2) Preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, all books and records required to be made pursuant to paragraphs (5) through (12) or § 270.31a-1(b)

and all vouchers, memoranda, correspondence, checkbooks, bank statements, cancelled checks, cash reconciliations, cancelled stock certificates, and all schedules evidencing and supporting each computation of net asset value of the investment company shares, and other documents required to be maintained by § 270.31a-1(a) and not enumerated in § 270.31a-1(b);

(3) Preserve for a period not less than 6 years from the end of the fiscal year last used, the first 2 years in an easily accessible place, any advertisement, pamphlet, circular, form letter or other sales literature addressed to or intended for distribution to prospective investors;

(4) Preserve for a period not less than six years, the first two years in an easily accessible place, any record of the initial determination that a director is not an interested person of the investment company, and each subsequent determination that the director is not an interested person of the investment company. These records must include any questionnaire and any other document used to determine that a director is not an interested person of the company; and

(5) Preserve for a period not less than six years, the first two years in an easily accessible place, any materials used by the disinterested directors of an investment company to determine that a person who is acting as legal counsel to those directors is an independent legal counsel.

(b) Every underwriter, broker, or dealer which is a majority-owned subsidiary of a registered investment company shall preserve for the periods prescribed therein such accounts, books and other documents as are required to be preserved by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934.

(c) Every depositor of any registered investment company, and every principal underwriter for any registered investment company other than a closed-end company, shall preserve for a period of not less than six years such accounts, books and other documents as are required to be maintained by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934, to the extent such records

are necessary or appropriate to record such person's transactions with such registered investment company.

(d) Every investment adviser which is a majority-owned subsidiary of a registered investment company shall preserve for the periods prescribed therein such accounts, books and other documents as are required to be preserved by investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940.

(e) Every investment adviser not a majority-owned subsidiary of a registered investment company shall preserve for a period of not less than six years such accounts, books and other documents as are required to be maintained by registered investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940, to the extent such records are necessary or appropriate to record such person's transactions with such registered investment company.

(f) *Micrographic and electronic storage permitted.*—(1) *General.* The records required to be maintained and preserved under this part may be maintained and preserved for the required time by, or on behalf of, an investment company on:

(i) Micrographic media, including microfilm, microfiche, or any similar medium; or

(ii) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) *General requirements.* The investment company, or person that maintains and preserves records on its behalf, must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the Commission (by its examiners or other representatives) or the directors of the company may request:

(A) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, view, and print the records; and

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(iii) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) *Special requirements for electronic storage media.* In the case of records on electronic storage media, the investment company, or person that maintains and preserves records on its behalf, must establish and maintain procedures:

(i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel, the directors of the investment company, and the Commission (including its examiners and other representatives); and

(iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(4) Notwithstanding the provisions of paragraphs (a) through (e) of this section, any record, book or other document may be destroyed in accordance with a plan previously submitted to and approved by the Commission. A plan shall be deemed to have been approved by the Commission if notice to the contrary has not been received within 90 days after submission of the plan to the Commission.

[27 FR 11994, Dec. 5, 1962, as amended at 38 FR 7797, Mar. 26, 1973; 51 FR 42209, Nov. 24, 1986; 53 FR 3880, Feb. 10, 1988; 66 FR 3759, Jan. 16, 2001; 66 FR 29228, May 30, 2001]

§270.31a-3 Records prepared or maintained by other than person required to maintain and preserve them.

(a) If the records required to be maintained and preserved pursuant to the provisions of §§270.31a-1 and 270.31a-2 are prepared or maintained by others on behalf of the person required to maintain and preserve such records, the person required to maintain and preserve such records shall obtain from such other person an agreement in writing to the effect that such records are the property of the person required to maintain and preserve such records

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and will be surrendered promptly on request.

(b) In cases where a bank or member of a national securities exchange acts as custodian, transfer agent, or dividend disbursing agent, compliance with this section shall be considered to have been met if such bank or exchange member agrees in writing to make any records relating to such service available upon request and to preserve for the periods prescribed in §270.31a-2 any such records as are required to be maintained by §270.31a-1.

(Sec. 31, 54 Stat. 838; 15 U.S.C. 80a-30)

[27 FR 11994, Dec. 5, 1962]

§270.32a-1 Exemption of certain companies from affiliation provisions of section 32(a).

A registered investment company shall be exempt from the provisions of paragraph (1) of section 32(a) of the Act (54 Stat. 838; 15 U.S.C. 80a-31), insofar as said paragraph requires that independent public accounts for such company be selected by a majority of certain members of the board of directors, if:

(a) Such company meets the conditions of paragraphs (1) to (8), inclusive, of section 10(d) of the Act (54 Stat. 807; 15 U.S.C. 80a-10); and

(b) Such accountants are selected by a majority of all the members of the board of directors.

[Rule N-32A-1, 6 FR 6631, Dec. 23, 1941]

§270.32a-2 Exemption for initial period from vote of security holders on independent public accountant for certain registered separate accounts.

(a) A registered separate account shall be exempt from the requirement under paragraph (2) of section 32(a) of the Act that selection of an independent public accountant shall have been submitted for ratification or rejection at the next succeeding annual meeting of security owners, subject to the following conditions:

(1) Such registered separate account qualifies for exemption from section 14(a) of the Act pursuant to §270.14a-2, or is exempt therefrom by order of the Commission upon application; and