

§ 270.27d-2

17 CFR Ch. II (4-1-07 Edition)

(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 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 of 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]