

## Securities and Exchange Commission

## § 270.22e-3

sale of such contracts, units or participations by such persons at prices which reflect variations in the sales load or in any administrative charge or other deductions from the purchase payments; *Provided, however,* That (a) the prospectus discloses as precisely as possible the amount of the variations and the circumstances, if any, in which such variations shall be available or describes the basis for such variations and the manner in which entitlement shall be determined, and (b) any such variations reflect differences in costs or services and are not unfairly discriminatory against any person.

(Secs. 6(c) (15 U.S.C. 80a-6(c)) and 38(a) (15 U.S.C. 80a-37(a)))

[40 FR 33970, Aug. 13, 1975. Redesignated at 50 FR 7911, Feb. 27, 1985]

### **§ 270.22e-1 Exemption from section 22(e) of the Act during annuity payment period of variable annuity contracts participating in certain registered separate accounts.**

(a) A registered separate account, shall during the annuity payment period of variable annuity contracts participating in such account, be exempt from the provisions of section 22(e) of the Act prohibiting the suspension of the right of redemption or postponement of the date of payment or satisfaction upon redemption of any redeemable security, with respect to such contracts under which payments are being made based upon life contingencies.

(Sec. 6, 54 Stat. 800; 15 U.S.C. 80a-6)

[34 FR 12696, Aug. 5, 1969]

### **§ 270.22e-2 Pricing of redemption requests in accordance with Rule 22c-1.**

An investment company shall not be deemed to have suspended the right of redemption if it prices a redemption request by computing the net asset value of the investment company's redeemable securities in accordance with the provisions of Rule 22c-1.

[50 FR 24764, June 13, 1985]

### **§ 270.22e-3 Exemption for liquidation of money market funds.**

(a) *Exemption.* A registered open-end management investment company or

series thereof ("fund") that is regulated as a money market fund under § 270.2a-7 is exempt from the requirements of section 22(e) of the Act (15 U.S.C. 80a-22(e)) if:

(1) The fund's board of directors, including a majority of directors who are not interested persons of the fund, determines pursuant to § 270.2a-7(c)(8)(ii)(C) that the extent of the deviation between the fund's amortized cost price per share and its current net asset value per share calculated using available market quotations (or an appropriate substitute that reflects current market conditions) may result in material dilution or other unfair results to investors or existing shareholders;

(2) The fund's board of directors, including a majority of directors who are not interested persons of the fund, irrevocably has approved the liquidation of the fund; and

(3) The fund, prior to suspending redemptions, notifies the Commission of its decision to liquidate and suspend redemptions by electronic mail directed to the attention of the Director of the Division of Investment Management or the Director's designee.

(b) *Conduits.* Any registered investment company, or series thereof, that owns, pursuant to section 12(d)(1)(E) of the Act (15 U.S.C. 80a-12(d)(1)(E)), shares of a money market fund that has suspended redemptions of shares pursuant to paragraph (a) of this section also is exempt from the requirements of section 22(e) of the Act (15 U.S.C. 80a-22(e)). A registered investment company relying on the exemption provided in this paragraph must promptly notify the Commission that it has suspended redemptions in reliance on this section. Notification under this paragraph shall be made by electronic mail directed to the attention of the Director of the Division of Investment Management or the Director's designee.

(c) *Commission Orders.* For the protection of shareholders, the Commission may issue an order to rescind or modify the exemption provided by this section, after appropriate notice and opportunity for hearing in accordance

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with section 40 of the Act (15 U.S.C. 80a-39).

[75 FR 10117, Mar. 4, 2010]

**§ 270.23c-1 Repurchase of securities by closed-end companies.**

(a) A registered closed-end company may purchase for cash a security of which it is the issuer, subject to the following conditions:

(1) If the security is a stock entitled to cumulative dividends, such dividends are not in arrears.

(2) If the security is a stock not entitled to cumulative dividends, at least 90 percent of the net income of the issuer for the last preceding fiscal year, determined in accordance with good accounting practice and not including profits or losses realized from the sale of securities or other properties, was distributed to its shareholders during such fiscal year or within 60 days after the close of such fiscal year.

(3) If the security to be purchased is junior to any class of outstanding security of the issuer representing indebtedness (except notes or other evidences of indebtedness held by a bank or other person, the issuance of which did not involve a public offering) all securities of such class shall have an asset coverage of at least 300 percent immediately after such purchase; and if the security to be purchased is junior to any class of outstanding senior security of the issuer which is a stock, all securities of such class shall have an asset coverage of at least 200 percent immediately after such purchase, and shall not be in arrears as to dividends.

(4) The seller of the security is not to the knowledge of the issuer an affiliated person of the issuer.

(5) Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase.

(6) The purchase is made at a price not above the market value, if any, or the asset value of such security, whichever is lower, at the time of such purchase.

(7) The issuer discloses to the seller or, if the seller is acting through a broker, to the seller's broker, either prior to or at the time of purchase the approximate or estimated asset coverage per unit of the security to be purchased.

(8) No brokerage commission is paid by the issuer to any affiliated person of the issuer in connection with the purchase.

(9) The purchase is not made in a manner or on a basis which discriminates unfairly against any holders of the class of securities purchased.

(10) If the security is a stock, the issuer has, within the preceding six months, informed stockholders of its intention to purchase stock of such class by letter or report addressed to all the stockholders of such class.

(11) The issuer files with the Commission, as an exhibit to Form N-CSR (§249.331 and §274.128), a copy of any written solicitation to purchase securities under this section sent or given during the period covered by the report by or on behalf of the issuer to 10 or more persons.

(b) Notwithstanding the conditions of paragraph (a) of this section, a closed-end company may purchase fractional interests in, or fractional rights to receive, any security of which it is the issuer.

(c) This rule does not apply to purchase of securities made pursuant to section 23(c)(1) or (2) of the Act (54 Stat. 825; 15 U.S.C. 80a-23). A registered closed-end company may file an application with the Commission for an order under section 23(c)(3) of the Act permitting the purchase of any security of which it is the issuer which does not meet the conditions of this rule and which is not to be made pursuant to section 23(c)(1) or (2) of the Act.

(d) This rule relates exclusively to the requirements of section 23(c) of the Act, and the provisions hereof shall not be construed to authorize any action which contravenes any other applicable law, statutory or otherwise, or the provision of any indenture or other instrument pursuant to which securities of the issuer were issued.

[Rule N-23C-1, 7 FR 10424, Dec. 15, 1942, as amended at 68 FR 64975, Nov. 17, 2003]

CROSS REFERENCE: For interpretative release applicable to §270.23c-1, see No. 78 in tabulation, part 271 of this chapter.