

Securities and Exchange Commission

§ 270.22e-4

§ 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, at the end of a business day, has invested less than ten percent of its total assets in weekly liquid assets or, in the case of a fund that is a government money market fund, as defined in § 270.2a-7(a)(16) or a retail money market fund, as defined in § 270.2a-7(a)(25), the fund's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one percent, has deviated from the stable price established by the board of directors or the fund's board of directors, including a majority of directors who are not interested persons of the fund, determines that such a deviation is likely to occur;

(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 require-

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

(d) *Definitions.* Each of the terms *business day*, *total assets*, and *weekly liquid assets* has the same meaning as defined in § 270.2a-7.

[75 FR 10117, Mar. 4, 2010, as amended at 79 FR 47967, Aug. 14, 2014]

§ 270.22e-4 Liquidity risk management programs.

(a) *Definitions.* For purposes of this section:

(1) *Acquisition (or acquire)* means any purchase or subsequent rollover.

(2) *Business day* means any day, other than Saturday, Sunday, or any customary business holiday.

(3) *Convertible to cash* means the ability to be sold, with the sale settled.

(4) *Exchange-traded fund* or *ETF* means an open-end management investment company (or series or class thereof), the shares of which are listed and traded on a national securities exchange, and that has formed and operates under an exemptive order under the Act granted by the Commission or in reliance on an exemptive rule adopted by the Commission.

(5) *Fund* means an open-end management investment company that is registered or required to register under section 8 of the Act (15 U.S.C. 80a-8) and includes a separate series of such an investment company, but does not include a registered open-end management investment company that is regulated as a money market fund under § 270.2a-7 or an In-Kind ETF.

(6) *Highly liquid investment* means any cash held by a fund and any investment that the fund reasonably expects to be convertible into cash in current market conditions in three business days or less without the conversion to cash significantly changing the market value of the investment, as determined pursuant to the provisions of paragraph (b)(1)(ii) of this section.

(7) *Highly liquid investment minimum* means the percentage of the fund's net assets that the fund invests in highly liquid investments that are assets pursuant to paragraph (b)(1)(iii) of this section.

(8) *Illiquid investment* means any investment that the fund reasonably expects cannot be sold or disposed of in current market conditions in seven calendar days or less without the sale or disposition significantly changing the market value of the investment, as determined pursuant to the provisions of paragraph (b)(1)(ii) of this section.

(9) *In-Kind Exchange Traded Fund or In-Kind ETF* means an ETF that meets redemptions through in-kind transfers of securities, positions, and assets other than a *de minimis* amount of cash and that publishes its portfolio holdings daily.

(10) *Less liquid investment* means any investment that the fund reasonably expects to be able to sell or dispose of in current market conditions in seven calendar days or less without the sale or disposition significantly changing the market value of the investment, as determined pursuant to the provisions of paragraph (b)(1)(ii) of this section, but where the sale or disposition is reasonably expected to settle in more than seven calendar days.

(11) *Liquidity risk* means the risk that the fund could not meet requests to redeem shares issued by the fund without significant dilution of remaining investors' interests in the fund.

(12) *Moderately liquid investment* means any investment that the fund reasonably expects to be convertible into cash in current market conditions in more than three calendar days but in seven calendar days or less, without the conversion to cash significantly changing the market value of the investment, as determined pursuant to

the provisions of paragraph (b)(1)(ii) of this section.

(13) *Person(s) designated to administer the program* means the fund or In-Kind ETF's investment adviser, officer, or officers (which may not be solely portfolio managers of the fund or In-Kind ETF) responsible for administering the program and its policies and procedures pursuant to paragraph (b)(2)(ii) of this section.

(14) *Unit Investment Trust or UIT* means a unit investment trust as defined in section 4(2) of the Act (15 U.S.C. 80a-4).

(b) *Liquidity Risk Management Program*. Each fund and In-Kind ETF must adopt and implement a written liquidity risk management program ("program") that is reasonably designed to assess and manage its liquidity risk.

(1) *Required program elements*. The program must include policies and procedures reasonably designed to incorporate the following elements:

(i) *Assessment, management, and periodic review of liquidity risk*. Each fund and In-Kind ETF must assess, manage, and periodically review (with such review occurring no less frequently than annually) its liquidity risk, which must include consideration of the following factors, as applicable:

(A) The fund or In-Kind ETF's investment strategy and liquidity of portfolio investments during both normal and reasonably foreseeable stressed conditions, including whether the investment strategy is appropriate for an open-end fund, the extent to which the strategy involves a relatively concentrated portfolio or large positions in particular issuers, and the use of borrowings for investment purposes and derivatives;

(B) Short-term and long-term cash flow projections during both normal and reasonably foreseeable stressed conditions;

(C) Holdings of cash and cash equivalents, as well as borrowing arrangements and other funding sources; and

(D) For an ETF:

(1) The relationship between the ETF's portfolio liquidity and the way in which, and the prices and spreads at which, ETF shares trade, including, the efficiency of the arbitrage function and the level of active participation by

market participants (including authorized participants); and

(2) The effect of the composition of baskets on the overall liquidity of the ETF's portfolio.

(ii) *Classification.* Each fund must, using information obtained after reasonable inquiry and taking into account relevant market, trading, and investment-specific considerations, classify each of the fund's portfolio investments (including each of the fund's derivatives transactions) as a highly liquid investment, moderately liquid investment, less liquid investment, or illiquid investment. A fund must review its portfolio investments' classifications, at least monthly in connection with reporting the liquidity classification for each portfolio investment on Form N-PORT in accordance with § 270.30b1-9, and more frequently if changes in relevant market, trading, and investment-specific considerations are reasonably expected to materially affect one or more of its investments' classifications.

NOTE TO PARAGRAPH (B)(1)(II)INTRODUCTORY TEXT: If an investment could be viewed as either a highly liquid investment or a moderately liquid investment, because the period to convert the investment to cash depends on the calendar or business day convention used, a fund should classify the investment as a highly liquid investment. For a discussion of considerations that may be relevant in classifying the liquidity of the fund's portfolio investments, see Investment Company Act Release No. IC-32315 (Oct. 13, 2016).

(A) The fund may generally classify and review its portfolio investments (including the fund's derivatives transactions) according to their asset class, provided, however, that the fund must separately classify and review any investment within an asset class if the fund or its adviser has information about any market, trading, or investment-specific considerations that are reasonably expected to significantly affect the liquidity characteristics of that investment as compared to the fund's other portfolio holdings within that asset class.

(B) In classifying and reviewing its portfolio investments or asset classes (as applicable), the fund must determine whether trading varying portions of a position in a particular portfolio investment or asset class, in sizes that

the fund would reasonably anticipate trading, is reasonably expected to significantly affect its liquidity, and if so, the fund must take this determination into account when classifying the liquidity of that investment or asset class.

(C) For derivatives transactions that the fund has classified as moderately liquid investments, less liquid investments, and illiquid investments, identify the percentage of the fund's highly liquid investments that it has segregated to cover, or pledged to satisfy margin requirements in connection with, derivatives transactions in each of these classification categories.

NOTE TO PARAGRAPH (B)(1)(II)(C): For purposes of calculating these percentages, a fund that has segregated or pledged highly liquid investments and non-highly liquid investments to cover derivatives transactions classified as moderately liquid, less liquid, or illiquid investments first should apply segregated or pledged assets that are highly liquid investments to cover these transactions, unless it has specifically identified segregated non-highly liquid investments as covering such derivatives transactions.

(iii) *Highly liquid investment minimum.* (A) Any fund that does not primarily hold assets that are highly liquid investments must:

(1) Determine a highly liquid investment minimum, considering the factors specified in paragraphs (b)(1)(i)(A) through (D) of this section, as applicable (but considering those factors specified in paragraphs (b)(1)(i)(A) and (B) only as they apply during normal conditions, and during stressed conditions only to the extent they are reasonably foreseeable during the period until the next review of the highly liquid investment minimum). The highly liquid investment minimum determined pursuant to this paragraph may not be changed during any period of time that a fund's assets that are highly liquid investments are below the determined minimum without approval from the fund's board of directors, including a majority of directors who are not interested persons of the fund;

(2) Periodically review, no less frequently than annually, the highly liquid investment minimum; and

(3) Adopt and implement policies and procedures for responding to a shortfall of the fund's highly liquid investments

below its highly liquid investment minimum, which must include requiring the person(s) designated to administer the program to report to the fund's board of directors no later than its next regularly scheduled meeting with a brief explanation of the causes of the shortfall, the extent of the shortfall, and any actions taken in response, and if the shortfall lasts more than 7 consecutive calendar days, must include requiring the person(s) designated to administer the program to report to the board within one business day thereafter with an explanation of how the fund plans to restore its minimum within a reasonable period of time.

(B) For purposes of determining whether a fund primarily holds assets that are highly liquid investments, a fund must exclude from its calculations the percentage of the fund's assets that are highly liquid investments that it has segregated to cover all derivatives transactions that the fund has classified as moderately liquid investments, less liquid investments, and illiquid investments, or pledged to satisfy margin requirements in connection with those derivatives transactions, as determined pursuant to paragraph (b)(1)(ii)(C) of this section.

(iv) *Illiquid investments.* No fund or In-Kind ETF may acquire any illiquid investment if, immediately after the acquisition, the fund or In-Kind ETF would have invested more than 15% of its net assets in illiquid investments that are assets. If a fund or In-Kind ETF holds more than 15% of its net assets in illiquid investments that are assets:

(A) It must cause the person(s) designated to administer the program to report such an occurrence to the fund's or In-Kind ETF's board of directors within one business day of the occurrence, with an explanation of the extent and causes of the occurrence, and how the fund or In-Kind ETF plans to bring its illiquid investments that are assets to or below 15% of its net assets within a reasonable period of time; and

(B) If the amount of the fund's or In-Kind ETF's illiquid investments that are assets is still above 15% of its net assets 30 days from the occurrence (and at each consecutive 30 day period

thereafter), the fund or In-Kind ETF's board of directors, including a majority of directors who are not interested persons of the fund or In-Kind ETF, must assess whether the plan presented to it pursuant to paragraph (b)(1)(iv)(A) continues to be in the best interest of the fund or In-Kind ETF.

(v) *Redemptions in Kind.* A fund that engages in, or reserves the right to engage in, redemptions in kind and any In-Kind ETF must establish policies and procedures regarding how and when it will engage in such redemptions in kind.

(2) *Board oversight.* A fund or In-Kind ETF's board of directors, including a majority of directors who are not interested persons of the fund or In-Kind ETF, must:

(i) Initially approve the liquidity risk management program;

(ii) Approve the designation of the person(s) designated to administer the program; and

(iii) Review, no less frequently than annually, a written report prepared by the person(s) designated to administer the program that addresses the operation of the program and assesses its adequacy and effectiveness of implementation, including, if applicable, the operation of the highly liquid investment minimum, and any material changes to the program.

(3) *Recordkeeping.* The fund or In-Kind ETF must maintain:

(i) A written copy of the program and any associated policies and procedures adopted pursuant to paragraphs (b)(1) through (b)(2) of this section that are in effect, or at any time within the past five years were in effect, in an easily accessible place;

(ii) Copies of any materials provided to the board of directors in connection with its approval under paragraph (b)(2)(i) of this section, and materials provided to the board of directors under paragraph (b)(2)(iii) of this section, for at least five years after the end of the fiscal year in which the documents were provided, the first two years in an easily accessible place; and

(iii) If applicable, a written record of the policies and procedures related to how the highly liquid investment minimum, and any adjustments thereto, were determined, including assessment

of the factors incorporated in paragraphs (b)(1)(iii)(A) through (B) of this section and any materials provided to the board pursuant to paragraph (b)(1)(iii)(A)(3) of this section, for a period of not less than five years (the first two years in an easily accessible place) following the determination of, and each change to, the highly liquid investment minimum.

(c) *UIT liquidity.* On or before the date of initial deposit of portfolio securities into a registered UIT, the UIT's principal underwriter or depositor must determine that the portion of the illiquid investments that the UIT holds or will hold at the date of deposit that are assets is consistent with the redeemable nature of the securities it issues, and must maintain a record of that determination for the life of the UIT and for five years thereafter.

[81 FR 82264, Nov. 18, 2016]

§ 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