

Securities and Exchange Commission

§ 270.6c-10

the restrictions on redemption imposed by the Program to the attention of potential Program participants;

(d) Obtains from each Program participant who purchases an annuity contract in connection with the Program, prior to or at the time of such purchase, a signed statement acknowledging the restrictions on redemption imposed by the Program; and

(e) Includes in Part II of the separate account's registration statement under the Securities Act of 1933 a representation that this section is being relied upon and that the provisions of paragraphs (a) through (d) of this section have been complied with.

(Secs. 6(c) and 38(a) of the Act (15 U.S.C. 80a-6(c) and 80a-37(a), respectively))

[49 FR 1479, Jan. 12, 1984]

§ 270.6c-8 Exemptions for registered separate accounts to impose a deferred sales load and to deduct certain administrative charges.

(a) As used in this section *Deferred sales load* shall mean any sales load, including a contingent deferred sales load, that is deducted upon redemption or annuitization of amounts representing all or a portion of a securityholder's interest in a registered separate account.

(b) A registered separate account, and any depositor of or principal underwriter for such account, shall be exempt from the provisions of sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), and 27(d) of the Act (15 U.S.C. 80a-2(a)(32), 80a-2(a)(35), 80a-22(c), 80a-26(a)(2)(C), 80a-27(c)(1), 80a-27(c)(2), and 80a-27(d), respectively) and rule 22c-1 under the Act (17 CFR 270.22c-1) to the extent necessary to permit them to impose a deferred sales load on any variable annuity contract participating in such account, *Provided*, That:

(1) The amount of any such sales load imposed, when added to any sales load previously paid on such contract, shall not exceed 9 percent of purchase payments made to date for such contract; and

(2) The terms of any offer to exchange another contract for the contract are in compliance with the requirements of paragraph (d) or (e) of

rule 11a-2 under the Act (17 CFR 270.11a-2).

(c) A registered separate account, and any depositor of or principal underwriter for such account, shall be exempt from sections 2(a)(32), 22(c), 27(c)(1), and 27(d) of the Act (15 U.S.C. 80a-2(a)(32), 80a-22(c), 80a-27(c)(1), and 80a-27(d), respectively) and rule 22c-1 under the Act (17 CFR 270.22c-1) to the extent necessary to permit them to deduct from the value of any variable annuity contract participating in such account, upon total redemption of the contract prior to the last day of the year, the full annual fee for administrative services that otherwise would have been deducted on that date.

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

[48 FR 36098, Aug. 9, 1983]

§ 270.6c-10 Exemption for certain open-end management investment companies to impose deferred sales loads.

(a) A company and any exempted person shall be exempt from the provisions of sections 2(a)(32), 2(a)(35), and 22(d) of the Act [15 U.S.C. 80a-2(a)(32), 80a-2(a)(35), and 80a-22(d), respectively] and § 270.22c-1 to the extent necessary to permit a deferred sales load to be imposed on shares issued by the company, *Provided*, that:

(1) The amount of the deferred sales load does not exceed a specified percentage of the net asset value or the offering price at the time of purchase;

(2) The terms of the deferred sales load are covered by the provisions of Rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc.; and

(3) The same deferred sales load is imposed on all shareholders, except that scheduled variations in or elimination of a deferred sales load may be offered to a particular class of shareholders or transactions, *Provided*, that the conditions in § 270.22d-1 are satisfied. Nothing in this paragraph (a) shall prevent a company from offering to existing shareholders a new scheduled variation that would waive or reduce the amount of a deferred sales load not yet paid.

(b) For purposes of this section:

(1) *Company* means a registered open-end management investment company, other than a registered separate account, and includes a separate series of the company;

(2) *Exempted person* means any principal underwriter of, dealer in, and any other person authorized to consummate transactions in, securities issued by a company; and

(3) *Deferred sales load* means any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption.

[61 FR 49016, Sept. 17, 1996]

§ 270.6c-11 Exchange-traded funds.

(a) *Definitions.* (1) For purposes of this section:

Authorized participant means a member or participant of a clearing agency registered with the Commission, which has a written agreement with the exchange-traded fund or one of its service providers that allows the authorized participant to place orders for the purchase and redemption of creation units.

Basket means the securities, assets or other positions in exchange for which an exchange-traded fund issues (or in return for which it redeems) creation units.

Business day means any day the exchange-traded fund is open for business, including any day when it satisfies redemption requests as required by section 22(e) of the Act (15 U.S.C. 80a-22(e)).

Cash balancing amount means an amount of cash to account for any difference between the value of the basket and the net asset value of a creation unit.

Creation unit means a specified number of exchange-traded fund shares that the exchange-traded fund will issue to (or redeem from) an authorized participant in exchange for the deposit (or delivery) of a basket and a cash balancing amount if any.

Custom basket means:

(A) A basket that is composed of a non-representative selection of the exchange-traded fund's portfolio holdings; or

(B) A representative basket that is different from the initial basket used

in transactions on the same business day.

Exchange-traded fund means a registered open-end management company:

(A) That issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any; and

(B) Whose shares are listed on a national securities exchange and traded at market-determined prices.

Exchange-traded fund share means a share of stock issued by an exchange-traded fund.

Foreign investment means any security, asset or other position of the ETF issued by a foreign issuer as that term is defined in §240.3b-4 of this title, and that is traded on a trading market outside of the United States.

Market price means:

(A) The official closing price of an exchange-traded fund share; or

(B) If it more accurately reflects the market value of an exchange-traded fund share at the time as of which the exchange-traded fund calculates current net asset value per share, the price that is the midpoint between the national best bid and national best offer as of that time.

National securities exchange means an exchange that is registered with the Commission under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

Portfolio holdings means the securities, assets or other positions held by the exchange-traded fund.

Premium or discount means the positive or negative difference between the market price of an exchange-traded fund share at the time as of which the current net asset value is calculated and the exchange-traded fund's current net asset value per share, expressed as a percentage of the exchange-traded fund share's current net asset value per share.

(2) Notwithstanding the definition of exchange-traded fund in paragraph (a)(1) of this section, an exchange-traded fund is not prohibited from selling (or redeeming) individual shares on the day of consummation of a reorganization, merger, conversion or liquidation, and is not limited to transactions with