

(2) Any fund that issues securities that are listed on a national securities exchange; and

(3) Any fund that affirmatively permits short-term trading of its securities, if its prospectus clearly and prominently discloses that the fund permits short-term trading of its securities and that such trading may result in additional costs for the fund.

(c) *Definitions.* For the purposes of this section:

(1) *Financial intermediary* means:

(i) Any broker, dealer, bank, or other person that holds securities issued by the fund, in nominee name;

(ii) A unit investment trust or fund that invests in the fund in reliance on section 12(d)(1)(E) of the Act (15 U.S.C. 80a-12(d)(1)(E)); and

(iii) In the case of a participant-directed employee benefit plan that owns the securities issued by the fund, a retirement plan's administrator under section 3(16)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(16)(A)) or any person that maintains the plan's participant records.

(iv) *Financial intermediary* does not include any person that the fund treats as an individual investor with respect to the fund's policies established for the purpose of eliminating or reducing any dilution of the value of the outstanding securities issued by the fund.

(2) *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.

(3) *Money market fund* means an open-end management investment company that is registered under the Act and is regulated as a money market fund under § 270.2a-7.

(4) *Shareholder* includes a beneficial owner of securities held in nominee name, a participant in a participant-directed employee benefit plan, and a holder of interests in a fund or unit investment trust that has invested in the fund in reliance on section 12(d)(1)(E) of the Act. A shareholder does not include a fund investing pursuant to section 12(d)(1)(G) of the Act (15 U.S.C. 80a-12(d)(1)(G)), a trust established pursuant to section 529 of the Internal

Revenue Code (26 U.S.C. 529), or a holder of an interest in such a trust.

(5) *Shareholder information agreement* means a written agreement under which a financial intermediary agrees to:

(i) Provide, promptly upon request by a fund, the Taxpayer Identification Number (or in the case of non U.S. shareholders, if the Taxpayer Identification Number is unavailable, the International Taxpayer Identification Number or other government issued identifier) of all shareholders who have purchased, redeemed, transferred, or exchanged fund shares held through an account with the financial intermediary, and the amount and dates of such shareholder purchases, redemptions, transfers, and exchanges;

(ii) Execute any instructions from the fund to restrict or prohibit further purchases or exchanges of fund shares by a shareholder who has been identified by the fund as having engaged in transactions of fund shares (directly or indirectly through the intermediary's account) that violate policies established by the fund for the purpose of eliminating or reducing any dilution of the value of the outstanding securities issued by the fund; and

(iii) Use best efforts to determine, promptly upon request of the fund, whether any specific person about whom it has received the identification and transaction information set forth in paragraph (c)(5)(i) of this section, is itself a financial intermediary ("indirect intermediary") and, upon further request by the fund:

(A) Provide (or arrange to have provided) the identification and transaction information set forth in paragraph (c)(5)(i) of this section regarding shareholders who hold an account with an indirect intermediary; or

(B) Restrict or prohibit the indirect intermediary from purchasing, in nominee name on behalf of other persons, securities issued by the fund.

[71 FR 58272, Oct. 3, 2006]

Securities and Exchange Commission

§ 270.22e-3

§ 270.22d-1 Exemption from section 22(d) to permit sales of redeemable securities at prices which reflect sales loads set pursuant to a schedule.

A registered investment company that is the issuer of redeemable securities, a principal underwriter of such securities or a dealer therein shall be exempt from the provisions of section 22(d) to the extent necessary to permit the sale of such securities at prices that reflect scheduled variations in, or elimination of, the sales load. These price schedules may offer such variations in or elimination of the sales load to particular classes of investors or transactions, *Provided, That*:

(a) The company, the principal underwriter and dealers in the company's shares apply any scheduled variation uniformly to all offerees in the class specified;

(b) The company furnishes to existing shareholders and prospective investors adequate information concerning any scheduled variation, as prescribed in applicable registration statement form requirements;

(c) Before making any new sales load variation available to purchasers of the company's shares, the company revises its prospectus and statement of additional information to describe that new variation; and

(d) The company advises existing shareholders of any new sales load variation within one year of the date when that variation is first made available to purchasers of the company's shares.

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

[50 FR 7911, Feb. 27, 1985]

§ 270.22d-2 Exemption from section 22(d) for certain registered separate accounts.

A registered separate account, any principal underwriter for such account, any dealer in contracts or units of interest or participations in such contracts issued by such account and any insurance company maintaining such account shall, with respect to any variable annuity contracts, units, or participations therein issued by such account, be exempted from section 22(d) to the extent necessary to permit the sale of such contracts, units or partici-

pations 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

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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 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 sec-

tion, 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 pledged as margin or collateral 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 pledged highly liquid investments and non-highly liquid investments as margin or collateral in connection with derivatives transactions classified as moderately liquid, less liquid, or illiquid investments first should apply pledged assets that are highly liquid investments in connection with these transactions, unless it has specifically identified non-highly liquid investments as margin or collateral in connection with 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