

§ 270.11a-1

17 CFR Ch. II (4-1-22 Edition)

the determination described in paragraph (c)(10)(iii) of this section was made.

[62 FR 42408, Aug. 7, 1997, as amended at 66 FR 3758, Jan. 16, 2001; 67 FR 31079, May 8, 2002; 68 FR 3152, Jan. 22, 2003; 69 FR 46389, Aug. 7, 2004; 74 FR 52373, Oct. 9, 2009; 81 FR 82020, Nov. 18, 2016]

§ 270.11a-1 Definition of “exchange” for purposes of section 11 of the Act.

(a) For the purposes of section 11 of the Act, the term *exchange* as used therein shall include the issuance of any security by a registered investment company in an amount equal to the proceeds, or any portion of the proceeds, paid or payable—

(1) Upon the repurchase, by or at the instance of such issuer, of an outstanding security the terms of which provide for its termination, retirement or cancellation, or

(2) Upon the termination, retirement or cancellation of an outstanding security of such issuer in accordance with the terms thereof.

(b) A security shall not be deemed to have been repurchased by or at the instance of the issuer, or terminated, retired or canceled in accordance with the terms of the security if—

(1) The security was redeemed or repurchased at the instance of the holder; or

(2) A security holder’s account was closed for failure to make payments as prescribed in the security or instruments pursuant to which the security was issued, and notice of intention to close the account was mailed to the security holder, and he had a reasonable time in which to meet the deficiency; or

(3) Sale of the security was restricted to a specified, limited group of persons and, in accordance with the terms of the security or the instruments pursuant to which the security was issued, upon its being transferred by the holder to a person not a member of the group eligible to purchase the security, the issuer required the surrender of the security and paid the redemption price thereof.

(c) The provisions of paragraph (a) of this section shall not apply if, following the repurchase of an out-

standing security by or at the instance of the issuer or the termination, retirement or cancellation of an outstanding security in accordance with the terms thereof—

(1) The proceeds are actually paid to the security holder by or on behalf of the issuer within 7 days, and

(2) No sale and no offer (other than by way of exchange) of any security of the issuer is made by or on behalf of the issuer to the person to whom such proceeds were paid, within 60 days after such payment.

(d) The provisions of paragraph (a) of this section shall not apply to the repurchase, termination, retirement, or cancellation of a security outstanding on the effective date of this section or issued pursuant to a subscription agreement or other plan of acquisition in effect on such date.

(Sec. 11, 54 Stat. 808; 15 U.S.C. 80a-11)

[32 FR 10728, July 21, 1967]

§ 270.11a-2 Offers of exchange by certain registered separate accounts or others the terms of which do not require prior Commission approval.

(a) As used in this section:

(1) *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 separate account;

(2) *Exchanged security* shall include not only the security or securities (or portion[s] thereof) of a securityholder actually exchanged pursuant to an exchange offer but also any security or securities (or portion[s] thereof) of the securityholder previously exchanged for the exchanged security or its predecessors;

(3) *Front-end sales load* shall mean any sales load that is deducted from one or more purchase payments made by a securityholder before they are invested in a separate account; and

(4) *Purchase payments made for the acquired security*, as used in paragraphs (c)(2) and (d)(2) of this section, shall not include any purchase payments made for the exchanged security or any appreciation attributable to those purchase payments that are transferred to