

§ 270.22c-2

17 CFR Ch. II (4-1-23 Edition)

(E) *Transaction fees and charges* means brokerage commissions, custody fees, and any other charges, fees, and taxes associated with portfolio asset purchases and sales.

(b) For the purposes of this section,

(1) The current net asset value of any such security shall be computed no less frequently than once daily, Monday through Friday, at the specific time or times during the day that the board of directors of the investment company sets, in accordance with paragraph (d) of this section, except on:

(i) Days on which changes in the value of the investment company's portfolio securities will not materially affect the current net asset value of the investment company's redeemable securities;

(ii) Days during which no security is tendered for redemption and no order to purchase or sell such security is received by the investment company; or

(iii) Customary national business holidays described or listed in the prospectus and local and regional business holidays listed in the prospectus; and

(2) A "qualified evaluator" shall mean any evaluator which represents it is in a position to determine, on the basis of an informal evaluation of the eligible trust securities held in the Trust's portfolio, whether—

(i) The current bid price is higher than the offering side evaluation, computed on the last business day of the previous week, and

(ii) The offering side evaluation, computed as of the last business day of the previous week, is more than one-half of one percent (\$5.00 on a unit representing \$1,000 principal amount of eligible trust securities) greater than the current offering price.

(c) Notwithstanding the provisions above, any registered separate account offering variable annuity contracts, any person designated in such account's prospectus as authorized to consummate transactions in such contracts, and any principal underwriter of or dealer in such contracts shall be permitted to apply the initial purchase payment for any such contract at a price based on the current net asset value of such contract which is next computed:

(1) Not later than two business days after receipt of the order to purchase by the insurance company sponsoring the separate account ("insurer"), if the contract application and other information necessary for processing the order to purchase (collectively, "application") are complete upon receipt; or

(2) Not later than two business days after an application which is incomplete upon receipt by the insurer is made complete, *Provided*, That, if an incomplete application is not made complete within five business days after receipt,

(i) The prospective purchaser shall be informed of the reasons for the delay, and

(ii) The initial purchase payment shall be returned immediately and in full, unless the prospective purchaser specifically consents to the insurer retaining the purchase payment until the application is made complete.

(3) As used in this section:

(i) *Prospective Purchaser* shall mean either an individual contractowner or an individual participant in a group contract.

(ii) *Initial Purchase Payment* shall refer to the first purchase payment submitted to the insurer by, or on behalf of, a prospective purchaser.

(d) The board of directors shall initially set the time or times during the day that the current net asset value shall be computed, and shall make and approve such changes as the board deems necessary.

(Secs. 6(c), 22(c) and 38(a), 15 U.S.C. 80a-6(c), 80a-22(c) and 80a-37(a))

[44 FR 29647, May 22, 1979, as amended at 44 FR 48660, Aug. 20, 1979; 45 FR 12409, Feb. 26, 1980; 50 FR 7911, Feb. 27, 1985; 50 FR 24763, June 13, 1985; 50 FR 42682, Oct. 22, 1985; 58 FR 49922, Sept. 24, 1993; 81 FR 82137, Nov. 18, 2016; 87 FR 22446, Apr. 15, 2022]

§ 270.22c-2 Redemption fees for redeemable securities.

(a) *Redemption fee*. It is unlawful for any fund issuing redeemable securities, its principal underwriter, or any dealer in such securities, to redeem a redeemable security issued by the fund within seven calendar days after the security was purchased, unless it complies with the following requirements:

(1) *Board determination.* The fund's board of directors, including a majority of directors who are not interested persons of the fund, must either:

(i) Approve a redemption fee, in an amount (but no more than two percent of the value of shares redeemed) and on shares redeemed within a time period (but no less than seven calendar days), that in its judgment is necessary or appropriate to recoup for the fund the costs it may incur as a result of those redemptions or to otherwise eliminate or reduce so far as practicable any dilution of the value of the outstanding securities issued by the fund, the proceeds of which fee will be retained by the fund; or

(ii) Determine that imposition of a redemption fee is either not necessary or not appropriate.

(2) *Shareholder information.* With respect to each financial intermediary that submits orders, itself or through its agent, to purchase or redeem shares directly to the fund, its principal underwriter or transfer agent, or to a registered clearing agency, the fund (or on the fund's behalf, the principal underwriter or transfer agent) must either:

(i) Enter into a shareholder information agreement with the financial intermediary (or its agent); or

(ii) Prohibit the financial intermediary from purchasing in nominee name on behalf of other persons, securities issued by the fund. For purposes of this paragraph, "purchasing" does not include the automatic reinvestment of dividends.

(3) *Recordkeeping.* The fund must maintain a copy of the written agreement under paragraph (a)(2)(i) of this section that is in effect, or at any time within the past six years was in effect, in an easily accessible place.

(b) *Excepted funds.* The requirements of paragraph (a) of this section do not apply to the following funds, unless they elect to impose a redemption fee pursuant to paragraph (a)(1) of this section:

(1) Money market funds;

(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]

§ 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 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