

## Securities and Exchange Commission

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issuer to continue payment of principal or interest on its eligible trust securities; or

(3) A change in market, revenue or credit factors which adversely affects the ability of such issuer to continue payment of principal or interest on its eligible trust securities.

(e) If a registered investment company because of unforeseen circumstances in a particular taxable year proposes to make a distribution which would be prohibited by the provisions of this section, it may file a request with the Commission for authorization to make such a distribution. Such request shall comply with the requirements of § 270.0-2 of this chapter and shall set forth the pertinent facts and explain the circumstances which the company believes justify such distribution. The request shall be deemed granted unless the Commission within 15 days after receipt thereof shall deny such request as not being necessary or appropriate in the public interest or for the protection of investors and notify the company in writing of such denial.

(f) A registered investment company may make one additional distribution of long-term capital gains, as defined in the Code, with respect to any one taxable year of the company, which distribution is made, in whole or in part, for the purpose of not incurring any tax under section 4982 of the Code. Such additional distribution may be made prior or subsequent to any distribution otherwise permitted by paragraph (a) of this section.

(Secs. 6(c), 19(b) (15 U.S.C. 80a-19(b), and sec. 38(a)))

[36 FR 22901, Dec. 2, 1971, as amended at 44 FR 29647, May 22, 1979; 44 FR 40064, July 9, 1979; 52 FR 42428, Nov. 5, 1987]

### § 270.20a-1 Solicitation of proxies, consents and authorizations.

(a) No person shall solicit or permit the use of his or her name to solicit any proxy, consent, or authorization with respect to any security issued by a registered fund, except upon compliance with Regulation 14A (§ 240.14a-1 of this chapter), Schedule 14A (§ 240.14a-101 of this chapter), and all other rules and regulations adopted pursuant to section 14(a) of the Securities Exchange Act of 1934 that would be appli-

cable to such solicitation if it were made in respect of a security registered pursuant to section 12 of the Securities Exchange Act of 1934. Unless the solicitation is made in respect of a security registered on a national securities exchange, none of the soliciting material need be filed with such exchange.

(b) If the solicitation is made by or on behalf of the management of the investment company, then the investment adviser or any prospective investment adviser and any affiliated person thereof as to whom information is required in the solicitation shall upon request of the investment company promptly transmit to the investment company all information necessary to enable the management of such company to comply with the rules and regulations applicable to such solicitation. If the solicitation is made by any person other than the management of the investment company, on behalf of and with the consent of the investment adviser or prospective investment adviser, then the investment adviser or prospective investment adviser and any affiliated person thereof as to whom information is required in the solicitation shall upon request of the person making the solicitation promptly transmit to such person all information necessary to enable such person to comply with the rules and regulations applicable to the solicitation.

*Instruction.* Registrants that have made a public offering of securities and that hold security holder votes for which proxies, consents, or authorizations are not being solicited pursuant to the requirements of this section should refer to section 14(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(c)) and the information statement requirements set forth in the rules thereunder.

[25 FR 1865, Mar. 3, 1960, as amended at 37 FR 1472, Jan. 29, 1972; 52 FR 48985, Dec. 29, 1987; 57 FR 1102, Jan. 10, 1992; 59 FR 52700, Oct. 19, 1994; 87 FR 22446, Apr. 15, 2022]

### §§ 270.20a-2—270.20a-4 [Reserved]

### § 270.22c-1 Pricing of redeemable securities for distribution, redemption and repurchase.

(a) No registered investment company issuing any redeemable security,

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no person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and no principal underwriter of, or dealer in, any such security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security: *Provided, That:*

(1) This paragraph shall not prevent a sponsor of a unit investment trust (hereinafter referred to as the "Trust") engaged exclusively in the business of investing in eligible trust securities (as defined in Rule 14a-3(b) (17 CFR 270.14a-3(b))) from selling or repurchasing Trust units in a secondary market at a price based on the offering side evaluation of the eligible trust securities in the Trust's portfolio, determined at any time on the last business day of each week, effective for all sales made during the following week, if on the days that such sales or repurchases are made the sponsor receives a letter from a qualified evaluator stating, in its opinion, that:

(i) In the case of repurchases, the current bid price is not higher than the offering side evaluation, computed on the last business day of the previous week; and

(ii) In the case of resales, the offering side evaluation, computed as of the last business day of the previous week, is not 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.

(2) This paragraph shall not prevent any registered investment company from adjusting the price of its redeemable securities sold pursuant to a merger, consolidation or purchase of substantially all of the assets of a company which meets the conditions specified in § 270.17a-8.

(3) Notwithstanding this paragraph (a), a registered open-end management investment company (but not a registered open-end management investment company that is regulated as a money market fund under § 270.2a-7 or an exchange-traded fund as defined in paragraph (a)(3)(v)(A) of this section)

(a "fund") may use swing pricing to adjust its current net asset value per share to mitigate dilution of the value of its outstanding redeemable securities as a result of shareholder purchase or redemption activity, provided that it has established and implemented swing pricing policies and procedures in compliance with the paragraphs (a)(3)(i) through (v) of this section.

(i) The fund's swing pricing policies and procedures must:

(A) Provide that the fund must adjust its net asset value per share by a single swing factor or multiple factors that may vary based on the swing threshold(s) crossed once the level of net purchases into or net redemptions from such fund has exceeded the applicable swing threshold for the fund. In determining whether the fund's level of net purchases or net redemptions has exceeded the applicable swing threshold(s), the person(s) responsible for administering swing pricing shall be permitted to make such determination based on receipt of sufficient information about the fund investors' daily purchase and redemption activity ("investor flow") to allow the fund to reasonably estimate whether it has crossed the swing threshold(s) with high confidence, and shall exclude any purchases or redemptions that are made in kind and not in cash. This investor flow information may consist of individual, aggregated, or netted orders, and may include reasonable estimates where necessary.

(B) Specify the process for how the fund's swing threshold(s) shall be determined, considering:

(1) The size, frequency, and volatility of historical net purchases or net redemptions of fund shares during normal and stressed periods;

(2) The fund's investment strategy and the liquidity of the fund's portfolio investments;

(3) The fund's holdings of cash and cash equivalents, and borrowing arrangements and other funding sources; and

(4) The costs associated with transactions in the markets in which the fund invests.

(C) Specify the process for how the swing factor(s) shall be determined, which must include: The establishment

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of an upper limit on the swing factor(s) used, which may not exceed two percent of net asset value per share; and the determination that the factor(s) used are reasonable in relationship to the costs discussed in this paragraph. In determining the swing factor(s) and the upper limit, the person(s) responsible for administering swing pricing may take into account only the near-term costs expected to be incurred by the fund as a result of net purchases or net redemptions that occur on the day the swing factor(s) is used, including spread costs, transaction fees and charges arising from asset purchases or asset sales resulting from those purchases or redemptions, and borrowing-related costs associated with satisfying redemptions.

(ii) The fund's board of directors, including a majority of directors who are not interested persons of the fund must:

(A) Approve the fund's swing pricing policies and procedures;

(B) Approve the fund's swing threshold(s) and the upper limit on the swing factor(s) used, and any changes to the swing threshold(s) or the upper limit on the swing factor(s) used;

(C) Designate the fund's investment adviser, officer, or officers responsible for administering the swing pricing policies and procedures ("person(s) responsible for administering swing pricing"). The administration of swing pricing must be reasonably segregated from portfolio management of the fund and may not include portfolio managers; and

(D) Review, no less frequently than annually, a written report prepared by the person(s) responsible for administering swing pricing that describes:

(1) Its review of the adequacy of the fund's swing pricing policies and procedures and the effectiveness of their implementation, including the impact on mitigating dilution;

(2) Any material changes to the fund's swing pricing policies and procedures since the date of the last report; and

(3) Its review and assessment of the fund's swing threshold(s), swing factor(s), and swing factor upper limit considering the requirements of paragraphs (a)(3)(i)(B) and (C) of this sec-

tion, including the information and data supporting the determination of the swing threshold(s), swing factor(s), and swing factor upper limit.

(iii) The fund shall maintain the policies and procedures adopted by the fund under this paragraph (a)(3) that are in effect, or at any time within the past six years were in effect, in an easily accessible place, and shall maintain a written copy of the report provided to the board under paragraph (a)(3)(ii)(C) of this section for six years, the first two in an easily accessible place.

(iv) Any fund (a "feeder fund") that invests, pursuant to section 12(d)(1)(E) of the Act (15 U.S.C. 80a-12(d)(1)(E)), in another fund (a "master fund") may not use swing pricing to adjust the feeder fund's net asset value per share; however, a master fund may use swing pricing to adjust the master fund's net asset value per share, pursuant to the requirements set forth in this paragraph (a)(3).

(v) For purposes of this paragraph (a)(3):

(A) *Exchange-traded fund* 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.

(B) *Swing factor* means the amount, expressed as a percentage of the fund's net asset value and determined pursuant to the fund's swing pricing policies and procedures, by which a fund adjusts its net asset value per share once a fund's applicable swing threshold has been exceeded.

(C) *Swing pricing* means the process of adjusting a fund's current net asset value per share to mitigate dilution of the value of its outstanding redeemable securities as a result of shareholder purchase and redemption activity, pursuant to the requirements set forth in this paragraph (a)(3).

(D) *Swing threshold* means an amount of net purchases or net redemptions, expressed as a percentage of the fund's net asset value, that triggers the application of swing pricing.

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(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 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: