

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 applicable 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 invest-

ment 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]

**§§ 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, 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.

(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 (e) 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:

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(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]

### **§ 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 var-

iation 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 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