



## **CONTRACTUAL PERIODIC PAYMENT PLAN STANDARDS GUIDELINES**

Notwithstanding Rules 260.140.80 and 260.140.83, the offer and sale of shares in a contractual periodic payment plan (the “plan”) whereby more than a pro rata portion of the load or commission is deducted from any installment payment may be qualified, provided that the offer and sale of the shares and the plan conform to the following guidelines.

### **(a) Determination of Suitability of Purchasing Investor.**

No shares in a plan may be offered for sale in this state unless a principal of the selling broker-dealer has determined that the plan is suitable for the purchasing investor. This determination shall be based upon, but not be limited to, consideration of the following facts:

- (1) The investor’s age, marital status, and number of dependents.
- (2) The investor’s major investment goals and the time frame for achieving these goals.
- (3) The investor’s current and anticipated future financial status, including income, and reasonably anticipated short- and long-term liabilities or other obligations.
- (4) The reasonable likelihood of the investor’s continued income.
- (5) The investor’s ability to address potentially burdensome financial situations, (e.g. the death of a family member) through the use of insurance, savings, or other assets; and
- (6) The investor’s understanding of the risks inherent in investing in securities and the usefulness of savings instruments or accounts for short-term needs.

The selling broker-dealer shall retain for at least five (5) years the documents disclosing the basis upon which the determination of suitability was made as to each purchasing investor.

### **(b) Limitation on Commissions**

- (1) In addition to the refund rights available to an investor pursuant to Sections 27(d) and 27(f) of the Investment Company Act of 1940, as amended, [15 U.S.C. Sec. 80a-1, *et seq.*] an investor may withdraw from the plan within twenty-eight (28) months of the investor’s initial payment and shall receive the sum of (i) the value of his or her account, and (ii) the amount by which all sales charges, commissions or other selling or redemption fees deducted from the investor’s account exceed fifteen percent (15%) of the gross payments made by the investor.
- (2) For the purpose of paragraph (1) of the subsection (b), above, each investor shall be provided a notice setting forth his or her cancellation rights. This notice shall be in the form set forth, below, and shall be sent to the investor not less than thirty (30) days and not more than sixty (60) days prior to the expiration of the investor’s cancellation rights. Neither the sponsor of the plan nor its agent(s) shall advise the investors against exercising his or her right to cancel the plan without first determining that this advice is suitable for the particular investor. This determination shall be based upon, but not be limited to, consideration of the facts set forth in subsection (a) of this Rule, as well as consideration of the other facts indicating the likelihood that the investors will complete the plan.

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**IMPORTANT MESSAGE REGARDING YOUR (NAME OF PLAN)**

Dear Investor:

You have the right within twenty-eight (28) months of the commencement of plan to cancel your plan and receive a refund of all sales charges, commissions and other selling or redemption fees paid or deducted from your account which are in excess of fifteen percent (15%) of the total payments made. In determining whether or not to exercise your cancellation right, you should consider, among other things, the projected cost of your investment, your ability to make the scheduled payments over the life of your investment, and your ability to make the scheduled payments over the life of your plan as they become due.

If you wish to exercise your cancellation rights, you must send notice to that effect to:

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\_\_\_\_\_ by (date of expiration of cancellation rights).

(c) Disclosure.

Each investor in a plan shall be provided with such additional disclosure in the form set forth, below. This disclosure shall be executed at the time of sale by the investor and by the selling broker-dealer. The investor shall be provided with an executed copy. The broker-dealer shall retain the executed original for a period of at least five (5) years.

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**IMPORTANT MESSAGE TO PURCHASER OF  
A PERIODIC PAYMENT PLAN**

Regarding your application for ( \_\_\_\_\_ )  
(Name of Plan)

at \_\_\_\_\_  
(The Monthly Investment Amount and Total Number of Years of Program).

\_\_\_\_\_  
Date (of Application)

You are applying for an investment account which features a brokerage commission structure concentrating the sales charges in the first twelve installment payments. In establishing this investment account, you should carefully consider your financial ability and personal intention to complete all of the scheduled [120 (10 years) or 180 (15 years)] payments. If you do not complete the full schedule of [120 or 180] payments, you may incur very high effective sales charges. These sales charges could cost you up to 50 percent (50%) of the amount invested during the first 12 months. Moreover, it will take \_\_\_\_\_ payments before the effective sales load charged to you will not exceed 9 percent (9%), which is the maximum sales load allowed in California. For your information, the 9 percent (9%) sales load rate is higher than the rate charged by all other mutual funds. You should be aware that there are many mutual funds available with brokerage commission structures that do not concentrate the sales charge in the early installment payments.

There are two points at which you may withdraw from the plan and receive a full or partial refund of the sales charges: (1) within forty-five (45) days after receiving notice of your cancellation rights, you may cancel the plan and receive a full refund of all sales charges paid; or (2) within twenty-eight (28) months of commencement of the plan, you may cancel the plan and receive a refund of all sales charges, commissions or other selling or redemption fees paid or deducted from your account which are in excess of fifteen percent (15%) of the total payments made.

In evaluating your ability to invest regularly for a number of years, you should consider your income pattern, contingencies which may arise, and your willingness to invest in securities which fluctuate in value. If you have reason to doubt your ability and likelihood to complete this plan, you are urged to seek another investment program, such as a voluntary periodic payment plan which does not penalize you for early withdrawals.

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**Purchaser's Statement:**

I have received the above statement.

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Signature of Applicant

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Printed Name

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Account Number

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Date of Signature

**Broker's Statement:**

I have discussed the above statement with the applicant and believe that applicant understands it.

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Signature of Sales Representative

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Printed Name

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Date of Signature

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(d) Reports and Persistency Rate.

- (1) For all fiscal-year quarters beginning after the offer and sales of shares under the plan has become qualified, the issuer of shares under the plan shall file within thirty (30) days from the end of the plan's quarter a report disclosing the number of accounts opened and the number of accounts cancelled in accordance with the cancellation right contained in Section 27(f) of the Investment Company Act of 1940, as amended.
- (2) For all fiscal years beginning after the offer and sale of shares under the plan has become qualified, the issuer of shares under the plan shall file within sixty (60) days of the end of the plan's fiscal year a report disclosing the plan's persistency rate for all accounts opened in this state for the period of not less than one year but not more than five (5) years, before the last day of the fiscal year.
- (3) An issuer who fails to maintain a persistency rate of seventy percent (70%) or higher in California shall file an additional report setting forth an explanation for such failure. Failure to file the additional report or failure to provide an explanation satisfactory to the Commissioner in the additional report shall be grounds to deny, suspend, or revoke the qualification of the offer and sale of shares under the plan. In making a determination to deny, suspend or revoke the qualification, the Commissioner may consider all relevant factors, including but not limited to, California and national persistency rates, market conditions, the number of investors in this state, the period of time the plan has been selling in this state, legislative and regulatory developments, and any other unusual or unique circumstances.
- (4) The Commissioner may deny the qualification of a plan based upon a persistency rate of less than seventy percent (70%) in one or more other jurisdictions.
- (5) For purposes of the persistency rate and reports:
  - (A) "Current account" means an investors' account in a plan:
    - (i) which has not been "liquidated" and
      - (I) which is no more than six (6) installment payments in arrears, or
      - (II) in which an installment payment has been made in the last six (6) months; or
    - (ii) where the total amount deducted from all payments for sales charges, commissions or other selling or redemption fees in nine percent (9%) or less of the total amount of payments made.
  - (B) "Liquidated" means ascertaining the value of an investor's account and paying that value to an investor in cash and in settlement of the account upon an investor's withdrawal from the plan.
  - (C) "Persistency rate" means the percentage of the total number of investors' accounts in a plan that are current accounts. The computation of the persistency rate shall not include any account which has been cancelled in accordance with the cancellation rights contained in Section 27(f) of the Investment Company Act of 1940, as amended.

Investment Objective.

The stated investment objective of a plan shall be a fundamental policy of the plan as set forth in Section 8(b) of the Investment Company Act of 1940 and shall be consistent with the goal of providing long-term investment opportunities suitable for persons of relatively modest means. If a plan's investment objective is not currently a fundamental policy of the mutual fund, it shall be made a fundamental policy at the next meeting of shareholders.