

**EQUI-VEST® FAIR FUND**  
**STATEMENT TO AFFECTED INVESTORS**

**INTRODUCTION**

You are eligible to receive a distribution payment from EQUI-VEST® Fair Fund (“Fair Fund”). The Fair Fund was established as a result of the settlement of proceedings brought by the United States Securities and Exchange Commission (“SEC”) in *In the Matter of Equitable Financial Life Insurance Company* (“Equitable” or “Respondent”), SEC Administrative Proceeding File No. 3-20931. In resolution of this matter, Equitable agreed to undertake a distribution to current and former affected customers (“Affected Investors”) in connection with its presentation of account statements for certain investors’ variable annuity (“VA”) products.

On July 18, 2022, the SEC issued an order instituting and simultaneously settling public administrative and cease-and-desist proceedings (the “Order”), which you were notified of previously. Your payment has been calculated based on information contained in the records of Equitable. Pursuant to the Order, Equitable agreed to distribute from the Fair Fund to its Affected Investors who invested in EQUI-VEST® VAs between January 1, 2016 and July 18, 2022 (the “Relevant Period”), an amount representing the Affected Investor’s pro rata share of the Fair Fund based on the duration of the Affected Investor’s investment in EQUI-VEST® VAs during the Relevant Period and the periodic dollar value of the Affected Investor’s investment in EQUI-VEST® VAs during the Relevant Period. The disbursement calculation (the “Calculation”) was submitted to, reviewed, and approved by the staff of the SEC.

This Statement to Affected Investors (“SAI”) provides information to help you and your tax advisor determine the U.S. federal, state, local, non-US or other tax consequences of the distribution payment if you are a citizen or resident of the U.S. for U.S. federal income tax purposes.

The EQUI-VEST® Fair Fund is a Qualified Settlement Fund (“QSF”) under the Internal Revenue Code (“IRC”). Equitable retained Miller Kaplan Arase LLP (“MKA”) as a tax advisor to the QSF.

**MKA and Equitable have participated in the preparation of this Statement to Affected Investors (“SAI”) but are not providing tax services or tax advice to you or any other Affected Investor receiving a distribution payment.**

Some Affected Investors may be subject to special tax rules, including, without limitation, if you are a non-U.S. investor or if you hold your shares in a tax-qualified retirement plan or an individual retirement account (“IRA”) (except as specifically discussed below). Additionally, some tax-qualified retirement plans may

be subject to special tax rules. Note that this statement does not address the tax consequences to you; or the tax reporting or paying obligations you may have under any state, local or non-U.S. tax laws, or the alternative minimum tax provisions of the Internal Revenue Code.

## **THE DISTRIBUTION PAYMENT**

**CAUTION: YOU SHOULD NOT RELY ON THIS STATEMENT AS TAX ADVICE RELATED TO YOUR PERSONAL CIRCUMSTANCES.**

**CONSULT WITH YOUR TAX ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES OF THE DISTRIBUTION PAYMENT, INCLUDING THE EFFECTS OF U.S. FEDERAL, STATE, LOCAL AND NON-U.S. TAX RULES AND THE EFFECT OF POSSIBLE CHANGES IN LAWS.**

Many Affected Investors held their investment(s) in a Qualified Plan (e.g., a 403(b), 457(b), 401(k), IRA or similar plan).

***Caution: Consult with your tax advisor because the rules related to Qualified Plan transfers and rollovers are complicated and technical.***

### **ACTIVE EQUI-VEST® ACCOUNTS HELD THROUGH QUALIFIED PLANS**

***If you held your VA investment(s) through a Qualified Plan, ownership of the Qualified Plan has not changed during the Relevant Period or ownership of the Qualified Plan account has transferred to a beneficiary or beneficiaries during the Relevant Period, and your investment(s) is/are still active, no additional action is necessary on your part. Your distribution has been credited to your Qualified Plan account(s).***

### **INACTIVE EQUI-VEST® ACCOUNTS HELD THROUGH QUALIFIED PLANS**

If you held your investment in a Qualified Plan and received a distribution check made *payable to you* (as opposed to the trustee/administrator of your successor qualified plan or the custodian of your IRA), please contact the QSF Administrator before cashing or otherwise negotiating the check if you wish to rollover the funds to another provider.

If you held your investment in a Qualified Plan and received a distribution check made payable to the trustee/administrator of your successor qualified plan or the custodian of your IRA, contact the trustee/administrator of your plan to

coordinate the deposit of the check into your retirement plan account.

Note: There may be some circumstances in which the EQUI-VEST® Fair Fund will issue information returns and will report payments to the IRS where you held your investment in a Qualified Plan and your distribution check is made payable to you.

**Note: Please consult your tax advisor if you held your investment in a Qualified Plan.**

Additional information on this topic is available on the Internal Revenue Service Web Site [www.irs.gov](http://www.irs.gov), Tax Topic 558.

<https://www.irs.gov/taxtopics/tc558>

### **ACTIVE EQUI-VEST® ACCOUNTS NOT HELD IN A QUALIFIED PLAN**

***If you did not hold your VA investment(s) through a Qualified Plan, ownership of your account has not changed during the Relevant Period or ownership of the Non-Qualified Plan account has transferred to a beneficiary or beneficiaries during the Relevant Period, and your investment(s) is/are still active, no additional action is necessary on your part. Your distribution has been credited to your investment account(s).***

### **INACTIVE EQUI-VEST® ACCOUNTS NOT HELD IN A QUALIFIED PLAN**

*If your investment is no longer active (closed account) and was not originally held in a Qualified Plan, your distribution check has been made payable to you. Please contact the QSF Administrator, SS&C GIDS, Inc., by using the toll-free number on the statement accompanying your payment if you have any questions related to this distribution.*

The EQUI-VEST® Fair Fund may issue a Form 1099 to you for your distribution payment depending on the amount of the payment. Nevertheless, you should consult with your tax advisor as to how to report any portion of the distribution that may be taxable to you. Whether you receive a Form 1099 or not is not dispositive of the tax consequences of the distribution payment.

IRC § 72(e) governs the treatment of payments received under annuity contracts that are “not received as an annuity.”<sup>1</sup> Whether such amounts are

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<sup>1</sup> Treas. Reg. 1.72-1(b) provides: “[T]he provisions of section 72 distinguish between ‘amounts received as an annuity’ and ‘amounts not received as an annuity.’ In general, ‘amounts received as

included in gross income depends on when they are received and whether they are allocable to income on the contract or investment in the contract. This information provided to you regarding IRC § 72(e) is not intended as personal tax advice to you. Please discuss your individual tax issues with your tax advisor.

#### A. Amount Received On or After the Annuity Starting Date

If IRC § 72(e) applies to a payment and the amount is received *on or after* the annuity starting date,<sup>2</sup> then that amount is automatically included in your gross income.

#### B. Amount Received Before the Annuity Starting Date

If IRC § 72(e) applies to a payment and the amount is received *before* the annuity starting date, it will be included in gross income to the extent allocable to income on the contract and excluded from gross income to the extent allocable to the investment in the contract.

##### 1. Allocable to Income

An amount not received as an annuity is considered allocable *to the accumulated income* on the contract (and thus includible in gross income), but only to the extent that the amount does not exceed the excess (if any) of the cash value of the contract (immediately before your distribution is received) over the investment in the contract at the time.

##### 2. Allocable to Investment

To the extent that a payment is not allocable to income on the contract, it is deemed *allocable to investment* in the contract and may be recovered tax free.<sup>3</sup>

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an annuity' are amounts which are payable at regular intervals over a period of more than one full year from the date on which they are deemed to begin, provided the total of the amounts so payable or the period for which they are to be paid can be determined as of that date . . . Any other amounts to which the provisions of section 72 apply are considered to be 'amounts not received as an annuity.'" This Statement assumes that your distribution constitutes an amount "not received as an annuity." However, you should consult your tax advisor to determine how to characterize your payment.

<sup>2</sup> The "annuity starting date" is the first day of the first period for which an amount is received as an annuity under the contract.

<sup>3</sup> However, for contracts entered into before August 14, 1982, with investment allocable to the contract before that date, you may recover any amounts not received as an annuity tax-free until you have recovered your pre-August 14, 1982, investment in the contract.

## **FORMER CLIENTS WHO RECEIVED A SOLICITATION FOR COMPLETION OF AN IRS FORM**

Former clients may find themselves in various factual circumstances with respect to the distribution check. Some of these factual circumstances have made it necessary for Equitable to ask you to complete an IRS Form. We refer to this process as solicitation.

In some cases, it has been or will be necessary to solicit W-4R forms. These forms include a request for withholding election, date of birth and possible tax consequences cautions. In some cases, a former client may elect to receive the former client's distribution payment payable to the current custodian of the client's account as an alternative to receiving a reportable distribution.

If you received a request to provide an IRS Form W-4R and did not respond, your distribution payment may be subject to withholding at 20% for a tax-qualified plan. Similarly, your distribution payment may be subject to withholding 10% for an IRA or a non-qualified annuity contract. Your solicitation included a notice about the possible withholding. If withholding has been applied to your distribution payment, it is not possible to refund withholding to you once the withholding has been deposited with the IRS.

In some cases, it has been or will be necessary to solicit a W-9 or a Form W-8 series Form from former clients. If you received a solicitation for a W-9 or W-8 series Form and did not return it, your distribution payment may be subject to mandatory IRS withholding at a rate determined by your US tax status. If withholding has been applied to your distribution payment, it is not possible to refund withholding to you once the withholding has been deposited with the IRS.