

## SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33-9516, 34-71370, 39-2494, IC-30890; File No. S7-02-14]

### List of Rules to be Reviewed Pursuant to the Regulatory Flexibility Act

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Publication of list of rules scheduled for review.

**SUMMARY:** The Securities and Exchange Commission is today publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on them.

**DATES:** Comments should be submitted by [insert date 30 days after publication in the Federal Register].

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-02-14 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

#### Paper comments:

- Send paper comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File No. S7-02-14. This file number should be included on the subject line if e-mail is used. To

help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/other.shtml>). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Anne Sullivan, Office of the General Counsel, 202-551-5019.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act ("RFA"), codified at 5 U.S.C. 600-611, requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is "to determine whether such rules should be continued without change, or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities." 5 U.S.C. 610(a). The RFA sets forth specific considerations that must be addressed in the review of each rule:

- the continued need for the rule;
- the nature of complaints or comments received concerning the rule from the public;
- the complexity of the rule;
- the extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and

- the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. 5 U.S.C. 610(c).

The Securities and Exchange Commission, as a matter of policy, reviews all final rules that it published for notice and comment to assess not only their continued compliance with the RFA, but also to assess generally their continued utility. The list below is therefore broader than that required by the RFA, and may include rules that do not have a significant economic impact on a substantial number of small entities. Where the Commission has previously made a determination of a rule's impact on small businesses, the determination is noted on the list.

The Commission particularly solicits public comment on whether the rules listed below affect small businesses in new or different ways than when they were first adopted.<sup>1</sup> The rules and forms listed below are scheduled for review by staff of the Commission during the next 12 months. The list includes rules from 2002. When the Commission implemented the Act in 1980, it stated that it “intend[ed] to conduct a broader review [than that required by the RFA], with a view to identifying those rules in need of modification or even rescission.” Securities Act Release No. 6302 (Mar. 20, 1981), 46 FR 19251 (Mar. 30, 1981).

**List of Rules to be Reviewed**

<u>Title:</u>	<b>Requirements for Arthur Andersen LLP Auditing Clients.</b>
<u>Citation:</u>	17 CFR 210.2-02, 17 CFR 230.401a, 17 CFR 230.437a, 17 CFR 240.12b-37, and 17 CFR 260.19a-1.
<u>Authority:</u>	15 U.S.C. 77b, 15 U.S.C. 77d, 15 U.S.C. 77g, 15 U.S.C. 77h, 15 U.S.C. 77j, 15 U.S.C. 77s, 15 U.S.C. 77z-3, 15 U.S.C. 78c, 15

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<sup>1</sup> Several of the rulemakings identified below included non-substantive rule amendments, such as conforming cross references. The Commission requests that commenters focus on the substantive aspects of the rulemakings indicated in the list.

U.S.C. 78d, 15 U.S.C. 78j, 15 U.S.C. 78l, 15 U.S.C. 78m, 15 U.S.C. 78n, 15 U.S.C. 78o, 15 U.S.C. 78w, 15 U.S.C. 78mm, 15 U.S.C. 77ddd, 15 U.S.C. 77eee, 15 U.S.C. 77ggg, 15 U.S.C. 77hhh, 15 U.S.C. 77jjj, 15 U.S.C. 77nnn and 15 U.S.C. 77sss.

Description:

The rules were adopted to minimize any disruptions that may have occurred as a result of the indictment of Arthur Andersen LLP by modifying, in a manner appropriate to the protection of investors, the requirements for including audited financial statements in registration statements under the Securities Act of 1933 (“Securities Act”) and filings required by the Trust Indenture Act of 1939 by registrants that are unable to or elect not to have Andersen issue a manually signed audit report, if the audit report was not issued on or before March 14, 2002.

Prior Commission  
Determination Under  
5 U.S.C. 610:

Pursuant to Section 553(b) of the Administrative Procedure Act (5 U.S.C. § 553(b)(B)) (“APA”), the Commission for good cause found that prior notice and public comment was unnecessary. Because the Commission found good cause that notice and comment were unnecessary, no regulatory flexibility analysis was required. The rules were adopted in Release No. 33-8070 (March 18, 2002).

Title:

**Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies**

Citation:

17 CFR 239.17c (Securities Act)

17 CFR 274.11d (Investment Company Act)

Authority:

15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77sss, 77z-3, 78c, 78d, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 79t, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, 80a-37

Description:

Form N-6 is a registration form used by separate accounts that are unit investment trusts that offer variable life insurance contracts to register under Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933.

Prior Commission  
Determination  
Under  
5 U.S.C. 605

A Regulatory Flexibility Act Certification was prepared in accordance with 5 U.S.C. 605(b) in conjunction with the adoption of Release No. 33-8088 (IC-25522), which was approved by the

Commission on April 12, 2002. At that time it was noted that the Commission had requested comments on the initial certification, which had been attached to the proposing release, but had received none.

Title: **Amendment to Definition of “Equity Security.”**

Citation: 17 CFR 230.405 and 17 CFR 240.3a11-1.

Authority: 15 U.S.C. 77f, 15 U.S.C. 77g, 15 U.S.C. 77j, 15 U.S.C. 77s(a), 15 U.S.C. 78c(b), and 15 U.S.C. 78w(a).

Description: The rule amendments conform the definition of “equity security” in the rules under the Securities Act and the Securities Exchange Act of 1934 (“Exchange Act”) to the statutory definitions with respect to security futures established in the Commodity Futures Modernization Act of 2000 (“CFMA”).

Prior Commission good Determination Under 5 U.S.C. 610: Pursuant to Section 553(b) of the APA, the Commission for cause found that prior notice and public comment was unnecessary. Because the Commission found good cause that notice and comment were unnecessary, no RFA analysis was required. The rules were adopted in Release No. 33-8091 (April 17, 2002).

Title: **Mandated EDGAR Filing for Foreign Issuers.**

Citation: 17 CFR 230.493, 17 CFR 239.800, 17 CFR 249.250, 17 CFR 249.480, and 17 CFR 249.306.

Authority: 15 U.S.C. 77f, 15 U.S.C. 77g, 15 U.S.C. 77h, 15 U.S.C. 77j, 15 U.S.C. 77s(a), 15 U.S.C. 78c, 15 U.S.C. 78j, 15 U.S.C. 78m, 15 U.S.C. 78n, 15 U.S.C. 78o(d), 15 U.S.C. 78w, 15 U.S.C. 78ll, 15 U.S.C. 77ddd, 15 U.S.C. 77eee, 15 U.S.C. 77ggg, 15 U.S.C. 77jjj, and 15 U.S.C. 77sss.

Description: The amendments require foreign private issuers and foreign governments to file electronically through the EDGAR system most of their securities documents, including registration statements under the Securities Act and registration statements, reports and other documents under the Exchange Act. The rule amendments also clarify when an issuer may submit an English summary instead of an English translation of a foreign language document; eliminate the requirement that any first-time EDGAR

filer, domestic or foreign, submit a paper copy of its electronic filing to the Commission; and permit a national securities exchange to file voluntarily on EDGAR a Form 25, which reports the delisting of a class of a company's securities.

Prior Commission  
Determination Under  
5 U.S.C. 610:

Pursuant to Section 605(b) of the RFA, the Chairman of the Commission certified at the proposal stage on September 25, 2001 in Release No. 33-8016 that the rule revisions would not have a significant economic impact on a substantial number of small entities. The SEC solicited comments concerning the impact on small entities and the RFA certification, but received no comments. The rules were adopted in Release No. 33-8099 (May 14, 2002).

Title:

**Cash Settlement and Regulatory Halt Requirements for Security Futures Products.**

Citation:

17 CFR 240.6h-1

Authority:

15 U.S.C. 78f, 78i, 78o-3, 78s, 78w(a), and 78mm.

Description:

The Commodity Futures Trading Commission (“CFTC”) and SEC adopted this rule generally to require that the final settlement price for each cash-settled security futures product fairly reflect the opening price of the underlying security or securities, and that trading in any security futures product halt when a regulatory halt is instituted with respect to a security or securities underlying the security futures product by the national securities exchange or national securities association listing the security. The rule sets forth more specifically how the exchange's or association's rules can satisfy provisions added to the Commodity Exchange Act (“CEA”) and the Exchange Act by the CFMA.

Prior Commission  
Determination Under  
5 U.S.C. 610:

Pursuant to Section 605(b) of the RFA, the Chairman of the Commission certified that the adopted rule would not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, was attached to Proposing Release No. 34-44743 (August 24, 2001) as Appendix A. The SEC solicited comments concerning the impact on small entities and the RFA certification, but received no comments. The final rule was adopted in Release No. 34-45956 (May 17, 2002).

Title: **Assessments on Security Futures Transactions and Fees on Sales of Securities Resulting from Physical Settlement of Security Futures Pursuant to Section 31 of the Exchange Act.**

Citation: 17 CFR 240.31

Authority: 15 USC 78c(A), 78w(a), and 78ee

Description: The amendment clarifies how to calculate assessments required to be paid by national securities exchanges and national securities associations pursuant to Section 31(d) of the Exchange Act for security futures transactions. In addition, the amendment provides guidance on how to calculate fees required to be paid by national securities exchanges and national securities associations pursuant to Sections 31(b) and (c) of the Exchange Act, respectively, for sales of securities that result from the physical settlement of security futures.

Prior Commission Determination Under 5 U.S.C. 610:

Pursuant to Section 605(b) of the RFA, the Chairman of the Commission certified that the amendment to the rule would not have a significant economic impact on a substantial number of small entities. This certification was attached to Proposing Release No. 45854 (May 1, 2002) as Appendix A. The SEC solicited comments concerning the impact on small entities and the RFA certification, but received no comments. The final rule was adopted in Release No. 34-46169. (July 8, 2002).

Title: **Customer Margin Rules Relating to Security Futures.**

Citation: 17 CFR 242.400 through 242.406

Authority: 15 USC 78c(A), 78f, 78g(c), 78o-3, and 78w(a)

Description: The CFTC and SEC adopted rules to establish margin requirements for security futures to preserve the financial integrity of markets trading security futures, prevent systemic risk, and require that the margin requirements for security futures be consistent with the margin requirements for comparable exchange-traded option contracts.

Prior Commission

Determination  
Under  
5 U.S.C. 610:

Pursuant to Section 605(b) of the RFA, the Chairman of the Commission certified that the adopted rule would not have a significant economic impact on a substantial number of small entities. This certification was attached to Proposing Release No. 34-50720 (October 4, 2001) as Appendix A. The SEC solicited comments concerning the impact on small entities and the RFA certification, but received no comments. The final rules were adopted in Release No. 34-46292 (August 1, 2002).

Title:

**Certification of Disclosure in Companies' Quarterly and Annual Reports.**

Citation:

17 CFR 229.307, 17 CFR 240.13a-10, 17 CFR 240.13a-14, 17 CFR 240.13a-15, 17 CFR 240.15d-10, 17 CFR 240.15d-14, 17 CFR 240.15d-15, 17 CFR 240.12b-15, 17 CFR 249.308a, 17 CFR 249.310, 17 CFR 249.220f, 17 CFR 249.240f, 17 CFR 232.302.

Authority:

15 U.S.C. 78j(b), 15 U.S.C. 78m, 15 U.S.C. 78o(d), and 15 U.S.C. 78w(a), 15 U.S.C. 7202, 15 U.S.C. 7241.

Description:

The Commission adopted rules and amendments in light of Congress' directive in Section 302 of the Sarbanes-Oxley Act of 2002. The rules require an issuer's principal executive and financial officers each to certify the financial and other information contained in the issuer's quarterly and annual reports. The rules also require these officers to certify that: they are responsible for establishing, maintaining and regularly evaluating the effectiveness of the issuer's internal controls; they have made certain disclosures to the issuer's auditors and the audit committee of the board of directors about the issuer's internal controls; and they have included information in the issuer's quarterly and annual reports about their evaluation and whether there have been significant changes in the issuer's internal controls or in other factors that could significantly affect internal controls subsequent to the evaluation. In addition, the rules require issuers to maintain, and regularly evaluate the effectiveness of, disclosure controls and procedures designed to ensure that the information required in reports filed under the Exchange Act is recorded, processed, summarized and reported on a timely basis.



Prior Commission  
Determination Under  
5 U.S.C. 610:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with Release No. 33-8124, approved by the Commission on August 28, 2002, which adopted the rules and amendments. The Commission considered comments received on the Initial Regulatory Flexibility Analysis in the analysis at that time.

Title:

**Rule 30a-2.**

Citation:

17 CFR 270.30a-2

Authority:

15 U.S.C. 78m, 78o(d), 80a-1 et seq., 80a-8, 80a-29, 80a-37; 7202 and 7241; and 18 U.S.C. 1350.

Description:

Rule 30a-2 under the Investment Company Act of 1940 generally requires that (a) each report filed on Form N-CSR (§§249.331 and 274.128) and Form N-Q (§§249.332 and 274.130) by a registered management investment company (“fund”) must include the certifications in the form specified in Item 12(a)(2) of Form N-CSR or Item 3 of Form N-Q, as applicable, and (b) each report on Form N-CSR filed by a fund under Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) and that contains financial statements must be accompanied by the certifications required by Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

Prior Commission  
Determination Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC-25722; the release was approved by the Commission on August 28, 2002. Comments to the respective proposing release and any comments to the respective Initial Regulatory Flexibility Analysis were considered in connection with those rulemakings.

Title:

**Confirmation Requirements for Transactions of Security Futures Products Effected in Futures Accounts.**

Citation:

17 CFR 240.10b-10; 17 CFR 249.11d2-1

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11

Description: The rule amendments and new rule were designed to clarify the disclosures broker-dealers effecting transactions in security futures products in futures accounts must make in the confirmations sent to customers regarding those transactions. The amendments provide that broker-dealers effecting transactions in security futures products in futures accounts do not have to disclose all of the information required by the SEC's confirmation disclosure rule, but rather require that the transaction confirmations for these accounts disclose specific information and notify customers that certain additional information will be available upon written request. One rule also exempts broker-dealers effecting transactions for customers in security futures products in a futures account from the disclosure requirements of Section 11(d)(2) of the Exchange Act.

Prior Commission Determination Under 5 U.S.C. 610:

Pursuant to Section 605(b) of the RFA, the Chairman of the Commission certified that the proposed amendments to Rule 10b-10 and new Rule 11d2-1 would not have a significant economic impact on a substantial number of small entities. This certification was attached to Proposing Release No. 34-46014 (May 31, 2001) as Appendix A. The SEC solicited comments concerning the impact on small entities and the RFA certification, but received no comments. The rule and rule amendment were adopted in Release No. 34-46471 (September 6, 2002).

Title: **Applicability of CFTC and SEC Customer Protection, Recordkeeping, Reporting, and Bankruptcy Rules and the Securities Investor Protection Act of 1970 to Accounts Holding Security Futures Products.**

Citation: 17 CFR 240.15c3-3, 17 CFR 240.17a-3, 17 CFR 240.17a-4, 17 CFR 240.17a-5, 17 CFR 240.17a-7, 17 CFR 240.17a-11, 17 CFR 240.17a-13, and 17 CFR 240.17a-25

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78fff, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x,

78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11

Description:

The CFTC and SEC adopted rules under the CEA and the Securities Exchange Act as part of the joint regulatory framework under which futures commission merchants ("FCMs") and brokers or dealers ("broker-dealers" or "BDs") may effect transactions in security futures products for customers. The rules require all firms conducting business in security futures products to make disclosures to customers that transact business in security futures products concerning the protections provided by both the CEA and Exchange Act regulatory schemes, the regulatory scheme applicable to their accounts, and the alternative regulatory scheme not applicable to their accounts. In addition, the rules require that every firm engaged in this business that is fully-registered both as an FCM and as a broker-dealer establish written procedures regarding how customer security futures products are held. The rules also specify how CEA and Exchange Act recordkeeping, reporting, and certain other rules apply to security futures product transactions and accounts in which security futures products are held.

Prior Commission  
Determination  
Under  
5 U.S.C. 610:

Pursuant to Section 605(b) of the RFA, the Chairman of the Commission certified that the rules would not have a significant economic impact on a substantial number of small entities. This certification was attached to Proposing Release No. 44854 (Sept. 26, 2001) as Appendix A. The SEC solicited comments concerning the impact on small entities and the RFA certification, but received no comments. The rules were adopted in Release No. 34-46473 (September 9, 2002).

Title:

**Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934.**

Citation:

17 CFR 230.238, 17 CFR 240.9b-1, 17 CFR 240.12a-9, and 17 CFR 240.12h-1.

Authority:

15 U.S.C. 77s, 15 U.S.C. 77z-3, 15 U.S.C. 78l(h), 15 U.S.C. 78w(a), and 15 U.S.C. 78mm.

Description:

The rules exempt standardized options issued by registered clearing agencies and traded on a national securities exchange

from all the provisions of the Securities Act (other than the antifraud provisions) and the Exchange Act registration requirements. The rules also clarify that a security futures product is similarly exempted from the Exchange Act Section 12(g) registration requirements.

Prior Commission  
Determination Under  
5 U.S.C. 610:

Pursuant to Section 605(b) of the RFA, the Chairman of the Commission certified at the proposal stage on July 25, 2002 in Release No. 33-8114 that the rule revisions would not have a significant economic impact on a substantial number of small entities. The SEC solicited comments concerning the impact on small entities and the RFA certification, but received no comments. The rules and rule amendments were adopted in Release No. 33-8171 (December 23, 2002).

By the Commission.

Elizabeth M. Murphy  
Secretary

Dated: January 23, 2014