

## SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33-9370, 34-68309, 39-2487, IA-3506, IC-30282; File No. S7-12-12]

### 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 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 S7-12-12 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 in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File No. S7-12-12. 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. The rules and forms listed below are scheduled for review by staff of the Commission during the next twelve months. The list includes rules from 2001. 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**

|                            |  |
|----------------------------|--|
| <b><u>Title:</u></b>       | Role of Independent Directors of Investment Companies  |
| <b><u>Citation:</u></b>    | 17 CFR 270.2a19-3; 17 CFR 270.10e-1; 17 CFR 270.32a-4  |
| <b><u>Authority:</u></b>   | 15 U.S.C. 80a-6(c), 80a-10(e), 80a-29(e), 80a-30, 80a-37(a)  |
| <b><u>Description:</u></b> | Rule 2a19-3 under the Investment Company Act (“Act”) exempts an individual from being disqualified as an independent director of a registered investment company (“Fund”) solely because he or she owns shares of an index fund that |

invests in the investment adviser or underwriter of the Fund, or their controlling persons. The exemption permits a director of a Fund to own shares of a registered investment company (including the Fund on which it serves) whose investment objective is to replicate the performance of one or more broad-based securities indices.

Rule 10e-1 under the Act suspends temporarily the board composition requirements of the Act and rules thereunder, if a Fund fails to meet those requirements by reason of the death, disqualification, or bona fide resignation of a director. Rule 10e-1 suspends the board composition requirements for 90 days if the board can fill the director vacancy, or 150 days if a shareholder vote is required to fill the vacancy.

Rule 32a-4 under the Act exempts Funds from the Act's requirement that shareholders vote on the selection of the Fund's independent public accountant if the Fund (i) establishes an audit committee composed solely of independent directors that oversees the fund's accounting and auditing processes; (ii) adopts an audit committee charter setting forth the committee's structure, duties, powers, and methods of operation, or sets out similar provisions in the Fund's charter or bylaws; and (iii) maintains a copy of such audit committee charter.

Prior Commission

Determination

Under

5 U.S.C. 604: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC-24816, which was approved by the Commission on January 2, 2001. Comments on the proposing release and any comments on the Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title: Rule 35d-1

Citation: 17 CFR 270.35d-1

Authority: 15 U.S.C. 80a-8, 80a-29, 80a-33, 80a-34, and 80a-37

Description: Rule 35d-1 under the Act requires that an investment company with a name that suggests that the company focuses its investments in a particular type of investment (e.g., the ABC Stock Fund or XYZ Bond Fund), country or geographic region (e.g., The ABC Japan Fund or The XYZ Latin America Fund), or a particular industry (e.g., the ABC Utilities Fund or the XYZ Health Care Fund) invest at least 80% of its assets in the type of investment suggested by the name. Rule 35d-1 also addresses names that indicate that a Fund's distributions

are exempt from income tax or that its shares are guaranteed or approved by the United States government.

Prior Commission

Determination

Under

5 U.S.C. 604: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC-24828, which was approved by the Commission on January 17, 2001. Comments on the proposing release and any comments on the Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title: Integration of Abandoned Offerings.

Citation: 17 CFR 230.155, 17 CFR 230.429, 17 CFR 230.457, 17 CFR 230.477.

Authority: 15 U.S.C. 77b, 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, and 15 U.S.C. 77z-3.

Description: Rule 155 provides safe harbors for a registered offering following an abandoned private offering, or a private offering following an abandoned registered offering, without integrating the registered and private offerings in either case. The rule amendments facilitate reliance on the public-to-private safe harbor by providing automatic effectiveness for any application to withdraw an entire registration statement before it becomes effective, permitting filing fees to be offset from withdrawn registration statements and providing other technical changes to the calculation of filing fees in order to reduce the financial risk of a registered offering that is withdrawn.

Prior Commission

Determination

Under

5 U.S.C. 604: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with Release No. 33-7943, approved by the Commission on January 26, 2001, which adopted the rule and rule amendments. Comments on the proposing release were considered at that time. The Commission solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

\* \* \* \* \*

Title: Electronic Submission of Securities Transaction Information by Exchange Members, Brokers, and Dealers

Citation: 17 CFR 240.17a-25

Authority: 15 U.S.C. 78a et seq.

Description: Rule 17a-25 requires brokers and dealers to submit electronically to the Commission, upon request, information on customer and firm securities trading. Rule 17a-25 is designed to improve the Commission's capacity to analyze electronic submissions of transaction information, thereby facilitating Commission enforcement investigations and other trading reconstructions.

Prior Commission

Determination

Under

5 U.S.C. 604: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-44494, which was issued by the Commission on June 29, 2001. Comments on the proposing release and any comments on the Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title: Rule 5b-3

Citation: 17 CFR 270.5b-3

Authority: 15 U.S.C. 80a-1 et seq., 80a-34(d), 80a-37, 80a-39, unless otherwise noted.

Description: Rule 5b-3 under the Investment Company Act permits investment companies to treat a repurchase agreement as an acquisition of the underlying collateral, subject to certain conditions, in determining whether it is in compliance with the investment criteria for diversified funds set forth in section 5(b)(1) of the Act and the prohibition on fund acquisition of an interest in a broker-dealer in section 12(d)(3) of the Act. Rule 5b-3 also permits an investment company to treat the acquisition of a refunded security (which is a debt security whose principal and interest payments are to be paid by U.S. government securities that have been placed in an escrow account and are pledged only to the payment of the debt security) as an acquisition of the escrowed government securities, subject to certain conditions, for purposes of the diversification requirements of section 5(b)(1) of the Act.

Prior Commission

Determination

Under

5 U.S.C. 604: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of rule 5b-3 in Release No. IC-25058, which was approved by the Commission on July 5, 2001. Comments on the proposing

release and any comments on the Initial Regulatory Flexibility Analyses were considered at that time.

\* \* \* \* \*

Title: Registration of National Securities Exchanges Pursuant to Section 6(g) of the Securities Exchange Act of 1934 and Proposed Rule Changes of Certain National Securities Exchanges and Limited Purpose National Securities Associations

Citation: 17 CFR 240.6a-2, 17 CFR 240.6a-3, 17 CFR 240.6a-4, 17 CFR 240.19b-4, 17 CFR 240.19b-7, 17 CFR 249.10, 17 CFR 249.819; 17 CFR 249.822

Authority: 15 U.S.C. 78a et seq.

Description: The Commission adopted Rule 6a-4 under the Exchange Act and registration Form 1-N prescribing the requirements for designated contract markets and derivative transaction execution facilities to register as national securities exchanges pursuant to Section 6(g)(1) of the Exchange Act to trade security futures products. The Commission also adopted conforming amendments to Rules 6a-2 and 6a-3 under the Exchange Act and Rule 202.3 of the Commission's procedural rules. In addition, the Commission adopted Rule 19b-7, Form 19b-7, and amendments to Rule 19b-4 and Form 19b-4 to accommodate proposed rule changes submitted by national securities exchanges registered pursuant to Section 6(g) of the Exchange Act and limited purpose national securities associations registered pursuant to Section 15A(k) of the Exchange Act. These rules and forms, and amendments to existing rules and forms, were necessary to implement the Commodity Futures Modernization Act of 2000.

Prior Commission  
Determination  
Under

5 U.S.C. 605: Pursuant to 15 U.S.C. 605(b), the Chairman of the Commission certified that the adopted rules, forms, and conforming amendments would not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, was attached to Proposing Release No. 34-44279 (May 8, 2001) as Appendix A. The Commission solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

\* \* \* \* \*

Title: Registration of Broker-Dealers Pursuant to Section 15(b)(11) of the Securities Exchange Act of 1934

Citation: 17 CFR 240.15a-10, 17 CFR 240.15b2-2, 17 CFR 15b11-1, 17 CFR Part 248, 17 CFR Part 249

Authority: 15 U.S.C. 78a et seq.; 15 U.S.C. 6801 et seq.

Description: The Commission adopted the following rules to implement provisions of the Commodity Futures Modernization Act of 2000 (“CFMA”). First, the Commission amended its broker-dealer registration requirements and adopted a new form to implement Section 203 of the CFMA to allow futures commission merchants and introducing brokers registered with the CFTC to register as broker-dealers by filing a notice with the Commission for the limited purpose of effecting transactions in security futures products. Second, the Commission adopted an exemption from registration under Section 15(a) of the Exchange Act to permit, subject to certain conditions, a broker-dealer registered by notice to trade security futures products regardless of the market on which the product was listed or traded. Third, the Commission adopted amendments to Regulation S-P to revise certain provisions of Regulation S-P in light of Section 124 of the CFMA, which made the privacy provisions of the Gramm-Leach-Bliley Act applicable to activity regulated by the CFTC. These amendments also permitted futures commission merchants and introducing brokers registered by notice as broker-dealers to comply with Regulation S-P by complying with the CFTC's financial privacy rules.

Prior Commission

Determination

Under

5 U.S.C. 605: Pursuant to 15 U.S.C. 605(b), the Chairman of the Commission certified that the proposed rules, forms, and conforming amendments 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. 34-44455 (June 20, 2001) as Appendix A. The Commission solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

\* \* \* \* \*

Title: Method for Determining Market Capitalization and Dollar Value of Average Daily Trading Volume; Application of the Definition of Narrow-Based Security Index

Citation: 17 CFR 240.3a55-1, 17 CFR 240.3a55-2, 17 CFR 240.3a55-3

Authority: 15 U.S.C. 78a et seq.

Description: The CFTC and the SEC (collectively, "Commissions") adopted joint final rules to implement new statutory provisions enacted by the Commodity Futures Modernization Act of 2000. Specifically, the CFMA directed the Commissions to jointly specify by rule or regulation the method to be used to determine "market

capitalization" and "dollar value of average daily trading volume" for purposes of the new definition of "narrow-based security index," including exclusions from that definition, in the Commodity Exchange Act and the Exchange Act. The CFMA also directed the Commissions to jointly adopt rules or regulations that set forth the requirements for an index underlying a contract of sale for future delivery traded on or subject to the rules of a foreign board of trade to be excluded from the definition of "narrow-based security index."

Prior Commission

Determination

Under

5 U.S.C. 605: Pursuant to 15 U.S.C. 605(b), 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. 34-44288 (May 9, 2001) as an Appendix. The Commission solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

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Title: Options Disclosure Document.

Citation: 17 CFR 230.135b.

Authority: 15 U.S.C. 77b, 15 U.S.C. 77g, 15 U.S.C. 77j, 15 U.S.C. 77s, and 15 U.S.C. 77z-3.

Description: This rule clarifies that an options disclosure document prepared in accordance with Commission rules under the Securities Exchange Act of 1934 is not a prospectus and is not subject to civil liability under Section 12(a)(2) of the Securities Act. This amendment reduces legal uncertainty regarding whether such liability applies to these documents by codifying a long-standing interpretive position taken by the Division of Corporation Finance.

Prior Commission  
Determination  
Under

5 U.S.C. 605: Pursuant to the Regulatory Flexibility Act (5 U.S.C. § 605(b)), the Chairman of the Commission certified at the proposal stage on July 1, 1998 in Release No. 33-7550 that the rule revisions would not have a significant economic impact on a substantial number of small entities. The Commission solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

By the Commission.

Elizabeth M. Murphy  
Secretary

November 28, 2012