

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 239, 270, 274, 275, and 279

[Release No. 33-11047; IA-5985; IC-34547]

Technical Amendments to Commission Rules and Forms

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Securities and Exchange Commission (“Commission”) is adopting technical amendments to various rules and forms under the Securities Act of 1933 (the “Securities Act”), the Investment Company Act of 1940 (the “Investment Company Act”), and the Investment Advisers Act of 1940 (the “Investment Advisers Act”). These revisions make technical changes to correct typographical errors and erroneous cross-references, as well as to clarify instructions.

EFFECTIVE DATE: [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For the rules and forms under the Investment Advisers Act, Christopher Staley, Branch Chief, at (202) 551-6999, Investment Adviser Regulation Office, Division of Investment Management; and for the rules and forms under the Investment Company Act, Mykaila DeLesDernier or James Maclean, Senior Counsel, at (202) 551-6792, Investment Company Regulation Office, Division of Investment Management, at the Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is amending the following rules and forms:

Commission Reference		CFR Citation (17 CFR)
Regulation S-T	Rule 405	§ 232.405
Securities Act and Investment Company Act ¹	Form N-2	§§ 239.14 and 274.11a-1
	Form N-1A	§§ 239.15A and 274.11A
	Form N-3	§§ 239.17a and 274.11b
	Form N-5	§§ 239.24 and 274.5
Investment Company Act	Rule 18f-4	§ 270.18f-4
	Rule 20a-1	§ 270.20a-1
	Rule 22c-1	§ 270.22c-1
	Rule 22e-3	§ 270.22e-3
	Rule 32a-1	§ 270.32a-1
	Form N-CEN	§ 274.101
	Form N-PX	§ 274.129
	Form N-MFP	§ 274.201
Investment Advisers Act ²	Form ADV	§ 279.1
	Rule 204-2	§ 275.204-2
	Rule 204-3	§ 275.204-3
	Rule 204-5	§ 275.204-5
	Rule 206(4)-1	§ 275.206(4)-1

The amendments make a number of technical changes to Commission rules and forms. Several of the amendments update or correct cross-references to rules or provisions. For example, the Commission is amending rule 22c-1 to clarify an internal cross-reference in the rule. Likewise, the Commission is amending rule 18f-4, which it adopted in late 2020, to clarify

¹ 15 U.S.C. 77a *et seq.*; 15 U.S.C. 80a *et seq.*

² 15 U.S.C. 80b *et seq.*

an internal cross-reference in the rule.³ Similarly, the amendment to rule 22e-3 clarifies cross-references to certain definitions in 17 CFR 270.2a-7 (Investment Company Act rule 2a-7). In addition, we are amending rule 405 to correct an error in provision (b)(3)(iii), which was adopted by the Commission in 2020.⁴ This amendment would add a cross-reference to the statutory provisions cited in corresponding Form N-2 instructions that specify structured data tagging requirements. Finally, we are also amending Form N-5 to clarify cross-references to Regulation S-X and to update the reference to Commission fees under section 6(b) of the Securities Act and 17 CFR 230.457 (rule 457 thereunder).

In addition, the Commission is updating forms to clarify instructions and to make typographical and other corrections, including removing outdated information.⁵ For example, when the Commission previously amended Form N-CEN to add additional reporting items, the form did not accurately reflect the reporting entities that must respond to the additional items adopted by the Commission.⁶ Similarly, when the Commission previously amended Form N-3, it inadvertently omitted the paragraph on the cover page of this form specifying that a registrant is required to disclose the information that the form specifies, that the Commission will make this

³ See *Use of Derivatives by Registered Investment Companies and Business Development Companies*, Release No. IC-34084 (Nov. 2, 2020) [85 FR 83162 (Dec. 21, 2020)] (“2020 Derivatives Release”). The definition of “designated reference portfolio” in rule 18f-4 includes an erroneous reference to “paragraph (2) of the definition of *designated index* of this section.” Because the rule’s definition of “designated index” includes no paragraph (2), we are adopting an amendment that will update the definition of “designated reference portfolio” to instead reference the first sentence of “designated index.” The 2020 Derivatives Release reflects the Commission’s intent to cross-reference in the definition of “designated reference portfolio” this part of the definition of “designated index.” See 2020 Derivatives Release at paragraph accompanying nn.339-340.

⁴ See *Securities Offering Reform for Closed-End Investment Companies*, Release No. IC-33836 (Apr. 8, 2020) [85 FR 28853 (May 5, 2020)].

⁵ See amendments to §270.20a-1(a); §270.32a-1; Form N-5; Form ADV; Form N-1A; Form N-PX; Form N-MFP; Form N-CEN; and Form N-2.

⁶ See *Fund of Funds Arrangements*, Release No. IC-34045 (Oct. 7, 2020) [85 FR 73924 (Nov. 19, 2020)].

information public, and that a registrant is not required to respond to the collection of information that the form contains unless the form displays a currently valid Office of Management and Budget control number.⁷ This release also makes a technical correction to clarify that the scope of the amendments to the General Instructions to Item 25.2 of Form N-2 described in the Filing Fee Disclosure and Payment Methods Modernization Adopting Release did not remove existing Instructions 6 and 7.⁸ Additionally, the Commission is amending the general instructions to Form ADV with respect to when an adviser is required to file an updating amendment to accurately reflect that advisers are required to file an other than annual updating amendment in the event any information reported with respect to relying advisers in Section 4 of Schedule R of Form ADV becomes materially inaccurate. The current instructions incorrectly reference Section 10 of Schedule R, which does not exist.⁹

With respect to the amendments to Forms N-2, N-1A, N-3, N-5, N-CEN, N-PX, N-MFP, and ADV, the text of these forms do not, and these amendments will not, appear in the Code of Federal Regulations.

List of Subjects

17 CFR Part 232

Electronic Filings; Interactive Data; Securities

⁷ See *Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts*, Release No. IC-33814 (Mar. 11, 2020) [85 FR 25964 (May 1, 2020)] (“Variable Annuity Summary Prospectus Adopting Release”). The Commission proposed to include this paragraph in Form N-3, however, it was inadvertently omitted in the final rule. See *Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts*, Release, No. 33-10569 (Feb. 15, 2019) [83 FR 61730 (Nov. 30, 2018)]. The Commission also included a substantively similar paragraph in the amended versions of Form N-4 and Form N-6 that it adopted. See *Variable Annuity Summary Prospectus Adopting Release*.

⁸ See *Filing Fee Disclosure and Payment Methods Modernization*, Release No. 33-10997 (Oct. 13, 2021) [86 FR 70166 (Dec. 9, 2021)].

⁹ See *Form ADV and Investment Adviser Rules*, Release No. IA-4509 (Aug. 25, 2016) [81 FR 60471 (Sep. 1, 2016)].

17 CFR Part 239

Reporting and recordkeeping requirements; Securities.

17 CFR Parts 270 and 274

Investment companies; Reporting and recordkeeping requirements; Securities.

17 CFR Part 275

Reporting and recordkeeping requirements; Securities.

17 CFR Part 279

Investment advisers; Reporting and recordkeeping requirements; Securities.

STATUTORY AUTHORITY

We are adopting these technical amendments under the authority set forth in Section 19(a) of the Securities Act, Section 211(a) of the Investment Advisers Act and Section 38(a) of the Investment Company Act.

TEXT OF AMENDMENTS

For reasons set forth in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Amend §232.405 by revising paragraph (b)(3)(iii) to read as follows:

§ 232.405 Interactive Data File submissions.

* * * * *

(b) * * *

(3) * * *

(iii) As applicable, all of the information provided in response to Items 3.1, 4.3, 8.2.b, 8.2.d, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a-d, 10.2.a-c, 10.2.e, 10.3, and 10.5 of Form N-2 in any registration statement or post-effective amendment thereto filed on Form N-2; or any form of prospectus filed pursuant to § 230.424 of this chapter (Rule 424 under the Securities Act); or, if a Registrant is filing a registration statement pursuant to General Instruction A.2 of Form N-2, any documents filed pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act, to the extent such information appears therein.

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PART 270 — RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

3. The authority for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, 80a-39, and Public Law 111-203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

Section 270.22c-1 also issued under secs. 6(c), 22(c), and 38(a) (15 U.S.C. 80a-6(c), 80a-22(c), and 80a-37(a))

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4. Amend §270.18f-4(a) by revising the definition of “Designated reference portfolio” to read “*Designated reference portfolio* means a designated index or the fund’s securities portfolio. Notwithstanding the first sentence of the definition of *designated index* of this section, if the fund’s investment objective is to track the performance (including a leverage

multiple or inverse multiple) of an unleveraged index, the fund must use that index as its designated reference portfolio.”

5. Amend §270.20a-1(a) by revising “registered Fund” to read “registered fund”.
6. Amend §270.22c-1(b)(1) by revising “paragraph (e)” to read “paragraph (d)”.
7. Amend §270.22e-3(a)(1) by:
 - a. Replacing “§270.2a-7(a)(16)” with “§270.2a-7(a)(14)”;
 - b. Replacing “§270.2a-7(a)(25)” with “§270.2a-7(a)(21)”.
8. Amend §270.32a-1 introductory text by revising “independent public accounts” to

read “independent public accountants”.

PART 274 — FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

9. The authority for part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, 80a-29, and 80a-37, unless otherwise noted.

* * * * *

10. Amend Form N-5 (referenced in §§239.24 and 274.5) by:
 - a. Revising General Instruction B by removing the first two sentences and adding in their place “Section 6(b) of the 1933 Act [15 U.S.C. 77f(b)] and Rule 457 thereunder [17 CFR 230.457] set forth the fee requirements under the 1933 Act. Please refer to the Commission’s website at <http://www.sec.gov> for accurate fee rate information.”;
 - b. Revising in Item 22(a) “Article 5 of Regulation S-X” to read “Article 6 of Regulation S-X”;
 - c. Revising the Instruction to Item 27 by replacing “Subject to Rule 407, the” with “The”; and

d. Revising Item 28 by removing “, other than those prepared in accordance with Rule 12-16 of Regulation S-X,”.

11. Amend Form N-1A (referenced in §§239.15A and 274.11A) by:

a. Revising in Instruction 2(d) to Item 4(b)(2) “Item 26(b)(2)” to read “Item 26(b)(4)”;

b. Revising in Item 26(b)(5) “paragraph (b)(2)” to read “paragraph (b)(4)”.

12. Amend Form N-2 (referenced in §§239.14 and 274.11a-1) by:

a. Revising Instruction 16 to Item 4.1 by removing the phrase “If a change in the methodology for determining the ratio of expenses to average net assets results from applying paragraph 2(g) of Rule 6-07, explain in a note that the ratio reflects fees paid with brokerage commissions and fees reduced in connection with specific agreements only for fiscal years ending after September 1, 1995.”; and

b. Revising the General Instructions to Item 25.2 by adding Instructions 6 and 7 as follows:

“6. The Registrant may redact specific provisions or terms of exhibits required to be filed by paragraph k. of this Item if the Registrant customarily and actually treats that information as private or confidential and if the omitted information is not material. If it does so, the Registrant should mark the exhibit index to indicate that portions of the exhibit have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and the type that the Registrant treats as private or confidential. The Registrant also must include brackets indicating where the information is omitted from the filed version of the

exhibit. If requested by the Commission or its staff, the Registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the Registrant's supplemental materials, the Commission or its staff may require the Registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the Registrant's analyses. The Registrant may request confidential treatment of the supplemental material submitted under this Instruction 6 pursuant to Rule 83 of the Commission's Organizational Rules [17 CFR 200.83] while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it, if the Registrant complies with the procedures outlined in Rule 418 under the Securities Act [17 CFR 230.418].

7. Each exhibit identified in the exhibit index (other than an exhibit filed in eXtensible Business Reporting Language) must include an active link to an exhibit that is filed with the registration statement or, if the exhibit is incorporated by reference, an active hyperlink to the exhibit separately filed on EDGAR. If the registration statement is amended, each amendment must include active hyperlinks to the exhibits required with the amendment."

13. Amend Form N-3 (referenced in §§239.17a and 274.11b), Cover Page, by adding a new paragraph immediately after the sentence "[t]he Commission also may use the information provided on Form N-3 in its regulatory, disclosure review, inspection, and policy making roles." The following new paragraph will be the final paragraph of the Cover Page: "A Registrant is

required to disclose the information specified by Form N-3, and the Commission will make this information public. A Registrant is not required to respond to the collection of information contained in Form N-3 unless the Form displays a currently valid Office of Management and Budget (“OMB”) control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. § 3507.”

14. Amend Form N-CEN (referenced in § 274.101) by:

a. Replacing the Instruction following Item F.3 to read “If the answer to Item F.3 is yes, respond to Item F.12 through Item F.19. If the answer to Item F.3 is no, respond to Item F.4 through Item F.11, and Item F.17 through Item F.19.”; and

b. Replacing Item F.18 to read “Reliance on rule 12d1-4. Did the Registrant rely on rule 12d1-4 under the Act (17 CFR 270.12d1-4) during the reporting period? [Y/N]”.

15. Amend Form N-PX (referenced in §274.129), Cover Page by replacing “§§ 239.24 and 274.5 of this chapter” with “17 CFR 239.24 and 274.5”.

16. Amend Form N-MFP (referenced in §274.201), by revising in Item A.14.c. “A.14.a-c.” to read “A.14.a-b.”

PART 275 — RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

17. The authority for part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b-2(a)(11)(G), 80b-2(a)(11)(H), 80b-2(a)(17), 80b-3, 80b-4, 80b-4a, 80b-6(4), 80b-6a, and 80b-11, unless otherwise noted.

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Section 275.204-2 is also issued under 15 U.S.C. 80b-6.

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Section 275.204-5 is also issued under sec. 913, Public Law 111-203, sec. 124 Stat. 1827-28 (2010).

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18. Amend §275.204-2(a)(15)(ii) by replacing “.” with “; and”.
19. Amend §275.204-3(b) by replacing “Subject to paragraph (g), you” with “You”.
20. Amend §275.204-5(e)(1) by replacing “§275.204-1(b)(3)” with “§275.204-1(b)”.
21. Amend §275.206(4)-1(b)(2)(i) by replacing “,” with “;”.

PART 279 — FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

22. The authority for part 279 continues to read, in part, as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b-1, *et seq.*, Public Law 111-203, 124 Stat. 1376.

23. Amend Form ADV (referenced in §279.1) by:

- a. Revising in General Instruction 4 to Form ADV “Section 10 of Schedule R” to read “Section 4 of Schedule R”; and
- b. Revising in the Instruction to Section 4.B.7 of Schedule R “pre-fill Schedule B with the same indirect owners you have provided in Schedule B” to read “pre-fill the chart below with the same indirect owners you have provided in Schedule B for your *filing adviser*”.

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Dated: March 29, 2022

Vanessa A. Countryman,
Secretary