(ii) Close conjunction means on the page containing the description of the warranted product, or on the page facing that page.

(2) Any seller who offers for sale to consumers consumer products with written warranties by means of a catalog or mail order solicitation shall:

(i) Clearly and conspicuously disclose in such catalog or solicitation in close conjunction to the description of warranted product, or in an information section of the catalog or solicitation clearly referenced, including a page number, in close conjunction to the description of the warranted product, either:

(A) The full text of the written warranty; or

(B) The address of the Internet Web site of the warrantor where such warranty terms can be reviewed (if such Internet Web site exists), as well as that the written warranty can be obtained free upon specific request, and the address or phone number where such warranty can be requested. If this option is elected, such seller shall promptly provide a copy of any written warranty requested by the consumer (and may provide such copy through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this section).

(ii) [Reserved].

(d) *Door-to-door sales.* (1) For purposes of this paragraph:

(i) *Door-to-door sale* means a sale of consumer products in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by a buyer, and the buyer's agreement to offer to purchase is made at a place other than the place of business of the seller.

(ii) *Prospective buyer* means an individual solicited by a door-to-door seller to buy a consumer product who indicates sufficient interest in that consumer product or maintains sufficient contact with the seller for the seller reasonably to conclude that the person solicited is considering purchasing the product.

(2) Any seller who offers for sale to consumers consumer products with written warranties by means of door-to-door sales shall, prior to the consummation of the sale, disclose the fact that the sales representative has copies of the warranties for the warranted products being offered for sale, which may be inspected by the prospective buyer at any time during the sales presentation. Such disclosure shall be made orally and shall be included in any written materials shown to prospective buyers. If the warrantor has elected the option described in paragraph (b)(2) of this section, the sales representative may provide a copy of the warranty through electronic or other means.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2016–12030 Filed 5–23–16; 8:45 am]

**BILLING CODE 6750–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 275

**[Release No. IA–4388; File No. S7–08–16]**

## Performance-Based Investment Advisory Fees

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of intent to issue order.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') intends to issue an order that would adjust for inflation, as appropriate, dollar amount thresholds in the rule under the Investment Advisers Act of 1940 that permits investment advisers to charge performance-based fees to ''qualified clients.'' Under that rule, an investment adviser may charge performance-based fees if a ''qualified client'' has a certain minimum net worth or minimum dollar amount of assets under the management of the adviser. The Commission's order would increase, to reflect inflation, the minimum net worth that a ''qualified client'' must have under the rule. The order would not increase the minimum dollar amount of assets under management.

**DATES:** Hearing or Notification of Hearing: An order adjusting the dollar amount tests specified in the definition of ''qualified client'' will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary. Hearing requests should be received by the Commission's Office of the Secretary by 5:30 p.m. on June 13, 2016. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

**FOR FURTHER INFORMATION CONTACT:** Amanda Hollander Wagner, Senior Counsel, Investment Company Rulemaking Office, at (202) 551–6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

**SUPPLEMENTARY INFORMATION:** The Commission intends to issue an order under the Investment Advisers Act of 1940 (''Advisers Act'' or ''Act'').[1]

### I. Background

Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser from entering into, extending, renewing, or performing any investment advisory contract that provides for compensation to the adviser based on a share of capital gains on, or capital appreciation of, the funds of a client.[2] Congress prohibited these compensation arrangements (also known as performance compensation or performance fees) in 1940 to protect advisory clients from arrangements that Congress believed might encourage advisers to take undue risks with client funds to increase advisory fees.[3] In 1970, Congress provided an exception from the prohibition for advisory contracts relating to the investment of assets in excess of $1,000,000,[4] if an appropriate ''fulcrum fee'' is used.[5] Congress subsequently authorized the Commission to exempt, by rule or order, any advisory contract from the performance fee prohibition if the contract is with persons who the

[1] 15 U.S.C. 80b. Unless otherwise noted, all references to statutory sections are to the Investment Advisers Act, and all references to rules under the Investment Advisers Act, including rule 205–3, are to Title 17, Part 275 of the Code of Federal Regulations [17 CFR 275].

[2] 15 U.S.C. 80b–5(a)(1).

[3] H.R. Rep. No. 2639, 76th Cong., 3d Sess. 29 (1940). Performance fees were characterized as ''heads I win, tails you lose'' arrangements in which the adviser had everything to gain if successful and little, if anything, to lose if not. S. Rep No. 1775, 76th Cong., 3d Sess. 22 (1940).

[4] 15 U.S.C. 80b–5(b)(2). Trusts, governmental plans, collective trust funds, and separate accounts referred to in section 3(c)(11) of the Investment Company Act of 1940 (''Investment Company Act'') [15 U.S.C. 80a–3(c)(11)] are not eligible for this exception from the performance fee prohibition under section 205(b)(2)(B) of the Advisers Act.

[5] 15 U.S.C. 80b–5(b). A fulcrum fee generally involves averaging the adviser's fee over a specified period and increasing or decreasing the fee proportionately with the investment performance of the company or fund in relation to the investment record of an appropriate index of securities prices. *See* rule 205–2 under the Advisers Act; Adoption of Rule 205–2 under the Investment Advisers Act of 1940, As Amended, Definition of ''Specified Period'' Over Which Asset Value of Company or Fund Under Management is Averaged, Investment Advisers Act Release No. 347 (Nov. 10, 1972) [37 FR 24895 (Nov. 23, 1972)].

In 1980, Congress added another exception to the prohibition against charging performance fees, for contracts involving business development companies under certain conditions. *See* section 205(b)(3) of the Advisers Act.

Commission determines do not need the protections of that prohibition.[6]

The Commission adopted rule 205–3 in 1985 to exempt an investment adviser from the prohibition against charging a client performance fees in certain circumstances.[7] The rule, when adopted, allowed an adviser to charge performance fees if the client had at least $500,000 under management with the adviser immediately after entering into the advisory contract (''assets-under-management test'') or if the adviser reasonably believed, immediately prior to entering into the advisory contract, that the client had a net worth of more than $1,000,000 at the time the contract was entered into (''net worth test''). The Commission stated that these standards would limit the availability of the exemption to clients who are financially experienced and able to bear the risks of performance fee arrangements.[8] In 1998, the Commission amended rule 205–3 to, among other things, change the dollar amounts of the assets-under-management test and net worth test to adjust for the effects of inflation since 1985.[9] The Commission revised the former from $500,000 to $750,000, and the latter from $1,000,000 to $1,500,000.[10]

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') [11] amended section 205(e) of the Advisers Act to provide that, by July 21, 2011 and every five years thereafter, the Commission shall adjust for inflation the dollar amount thresholds included in rules issued under section 205(e), rounded to the nearest $100,000.[12] In May 2011, the Commission published a release (the ''May 2011 Release'') that included a notice of intent to issue an order revising the dollar amount thresholds of the assets-under-management test (from $750,000 to $1,000,000) and the net worth test (from $1,500,000 to $2,000,000).[13] The Commission issued an order to revise the dollar amount thresholds of the assets-under-management and net worth tests, as described above, on July 12, 2011.[14]

The May 2011 Release also proposed amendments to rule 205–3 providing, among other things, that the Commission would issue an order every five years in the future adjusting the rule's dollar amount thresholds for inflation.[15] On February 15, 2012, the Commission adopted these proposed amendments, which amended rule 205–3 in three ways to carry out the inflation adjustment of the rule's dollar amount thresholds.[16] First, the amendments revised the dollar amount thresholds in rule 205–3, in order to codify the order the Commission issued on July 12, 2011.[17] Second, the amendments added to rule 205–3, as proposed, a new paragraph stating that the Commission will issue an order on or about May 1, 2016, and approximately every five years thereafter, adjusting for inflation the dollar amount thresholds of the rule's assets-under-management and net worth tests.[18] Finally, the amendments to rule 205–3 specify the price index on which future inflation adjustments will be based—the Personal Consumption Expenditures Chain-Type Price Index (''PCE Index''), which is published by the United States Department of Commerce.[19] The PCE Index is an indicator of inflation in the personal sector of the U.S. economy [20] and is used in other provisions of the federal securities laws, including the determination of whether a person meets a specific net worth minimum in Regulation R under the Securities Exchange Act of 1934 [15 U.S.C. 78a].[21]

## II. Discussion

### *A. Order Adjusting Dollar Amount Tests*

Pursuant to section 418 of the Dodd-Frank Act and rule 205–3(e), today we are providing notice [22] that the Commission intends to issue an order making the required inflation adjustment to the assets-under-management test and the net worth test in the definition of ''qualified client'' in rule 205–3. As discussed above, section 418 of the Dodd-Frank Act and rule 205–3(e) require that we adjust the dollar amount thresholds of the rule by order on or about May 1, 2016 and every five years thereafter.[23] We intend to issue an order that would maintain the dollar amount of the assets-under-management test at $1,000,000, and would increase the dollar amount of the net worth test from $2,000,000 to

[6] Section 205(e) of the Advisers Act. Section 205(e) of the Advisers Act authorizes the Commission to exempt conditionally or unconditionally from the performance fee prohibition advisory contracts with persons who the Commission determines do not need its protections. Section 205(e) provides that the Commission may determine that persons do not need the protections of section 205(a)(1) on the basis of such factors as ''financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the Commission determines are consistent with [section 205].''

[7] Exemption To Allow Registered Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 996 (Nov. 14, 1985) [50 FR 48556 (Nov. 26, 1985)] (''1985 Adopting Release''). The exemption applies to the entrance into, performance, renewal, and extension of advisory contracts. *See* rule 205–3(a).

[8] *See* 1985 Adopting Release, *supra* note 7, at Sections I.C and II.B. The rule also imposed other conditions, including specific disclosure requirements and restrictions on calculation of performance fees. *See id.* at Sections II.C–E.

[9] *See* Exemption To Allow Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 1731 (July 15, 1998) [63 FR 39022 (July 21, 1998)].

[10] *See id.* at Section II.B.1.

[11] Public Law 111–203, 124 Stat. 1376 (2010).

[12] *See* section 418 of the Dodd-Frank Act (requiring the Commission to issue an order every five years revising dollar amount thresholds in a rule that exempts a person or transaction from section 205(a)(1) of the Advisers Act if the dollar amount threshold was a factor in the Commission's determination that the persons do not need the protections of that section).

[13] *See* Investment Adviser Performance Compensation, Investment Advisers Act Release No. 3198 (May 10, 2011) [76 FR 27959 (May 13, 2011)].

[14] *See* Order Approving Adjustment for Inflation of the Dollar Amount Tests in Rule 205–3 under the Investment Advisers Act of 1940, Investment Advisers Act Release No. 3236 (July 12, 2011) [76 FR 41838 (July 15, 2011)] (''2011 Order''). The 2011 Order was effective as of September 19, 2011. *Id.* The 2011 Order applies to contractual relationships entered into on or after the effective date and does not apply retroactively to contractual relationships previously in existence.

[15] *See* May 2011 Release, *supra* note 13.

[16] *See* Investment Adviser Performance Compensation, Investment Advisers Act Release No. 3372 (Feb. 15, 2012) [77 FR 10358 (Feb. 22, 2012)].

[17] *See* rule 205–3(d)(1)(i) and (ii).

[18] *See* rule 205–3(e).

[19] *See* rule 205–3(e)(1).

[20] *See, e.g.,* Jo Craven McGinty, *CPI vs. PCE: Untangling the Alphabet Soup of Inflation Gauges,* The Wall Street Journal (Mar. 20, 2015), *available at http://www.wsj.com/articles/cpi-vs-pce-untangling-the-alphabet-soup-of-inflation-gauges-1426867398;* Clinton P. McCully, Brian C. Moyer, and Kenneth J. Stewart, ''Comparing the Consumer Price Index and the Personal Consumption Expenditures Price Index,'' Survey of Current Business (Nov. 2007) at 26 n.1 (PCE Index measures changes in ''prices paid for goods and services by the personal sector in the U.S. national income and product accounts'' and is primarily used for macroeconomic analysis and forecasting).

[21] *See* Definitions of Terms and Exemptions Relating to the ''Broker'' Exceptions for Banks, Securities Exchange Act Release No. 56501 (Sept. 24, 2007) [72 FR 56514 (Oct. 3, 2007)] (adopting periodic inflation adjustments to the fixed-dollar thresholds for both ''institutional customers'' and ''high net worth customers'' under Rule 701 of Regulation R); *see also* Amendments to Form ADV, Investment Advisers Act Release No. 3060 (July 28, 2010) [75 FR 49234 (Aug. 12, 2010)] (increasing for inflation the threshold amount for prepayment of advisory fees that triggers an adviser's duty to provide clients with an audited balance sheet and the dollar threshold triggering the exception to the delivery of brochures to advisory clients receiving only impersonal advice).

The Dodd-Frank Act also requires the use of the PCE Index to calculate inflation adjustments for the cash limit protection of each investor under the Securities Investor Protection Act of 1970. *See* section 929H(a) of the Dodd-Frank Act.

[22] *See* section 211(c) of the Advisers Act (requiring the Commission to provide appropriate notice of and opportunity for hearing for orders issued under the Advisers Act).

[23] *See supra* notes 12 and 18 and accompanying text.

$2,100,000. As required under rule 205–3, both dollar amounts would take into account the effects of inflation by reference to historic and current levels of the PCE Index. While the dollar amount of the assets-under-management test would not change, because the amount of the Commission's inflation adjustment calculation is smaller than the rounding amount specified under rule 205–3, the dollar amount of the net worth test would be adjusted as a result of the Commission's inflation adjustment calculation effected pursuant to the rule.[24]

We anticipate that future changes to the dollar amount tests that are issued by order will be reflected in technical amendments to rule 205–3(d), which would be adopted after such order is issued.[25]

*B. Effective Date*

We anticipate that, if we issue the order described above, the effective date will be 60 days following the order date.[26] To the extent that contractual relationships are entered into prior to the order's effective date, the dollar amount test adjustments in the order would not generally apply retroactively to such contractual relationships, subject to the transition rules incorporated in rule 205–3.[27]

By the Commission.

Dated: May 18, 2016.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–12167 Filed 5–23–16; 8:45 am]

**BILLING CODE 8011–01–P**

[24] Specifically, rule 205–3(e) provides that the adjusted dollar amounts shall be computed by: (1) Dividing the year-end value of the PCE Index (or any successor index thereto) for the calendar year preceding the calendar year in which the order is being issued (in this case, 2015), by the year-end value of the PCE Index (or successor) for the calendar year 1997 (such quotient, the ''Adjustment Percentage''); (2) for the assets-under-management test, multiplying $750,000 by the Adjustment Percentage and rounding the product to the nearest multiple of $100,000; and (3) for the net worth test, multiplying $1,500,000 by the Adjustment Percentage and rounding the product to the nearest multiple of $100,000.As of April 8, 2016, the end-of-year 2015 PCE Index was 109.819, and the end-of-year 1997 PCE Index was 79.657. Assets-under-management test calculation to adjust for the effects of inflation: (109.819/79.657) × $750,000 = $1,033,986.34; $1,033,986.34 rounded to the nearest multiple of $100,000 = $1,000,000. Net worth test calculation to adjust for the effects of inflation: (109.819/79.657) × $1,500,000 = $2,067,972.68; $2,067,972.68 rounded to the nearest multiple of $100,000 = $2,100,000.The values of the PCE Index are available from the Bureau of Economic Analysis, a bureau of the United States Department of Commerce. *See http://www.bea.gov; see also* Bureau of Economic Analysis, Table 2.3.4., ''Price Indexes for Personal Consumption Expenditures by Major Type of Product,'' *available at http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=1&isuri=1&903=64* (last visited April 8, 2016).

[25] *See* May 2011 Release, *supra* note 13, at n.27 (noting that the Commission anticipated, when it issued its notice of intent to issue an order revising the dollar amount thresholds of the assets-under-management test and the net worth test, that ''future changes to the dollar amount test that are issued by order, will be reflected in technical amendments to rule 205–3'').

[26] When the Commission issued the 2011 Order adjusting the dollar amount tests of rule 205–3 as described above, the 2011 Order's effective date was approximately 60 days following its issuance. *See supra* note 14.

[27] *See* rule 205–3(c)(1) (''If a registered investment adviser entered into a contract and satisfied the conditions of this section that were in effect when the contract was entered into, the adviser will be considered to satisfy the conditions of this section; Provided, however, that if a natural person or company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser), the conditions of this section in effect at that time will apply with regard to that person or company.''); *see also* May 2011 Release, *supra* note 13, at section II.B.3.

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

### 28 CFR Part 61

**RIN 1110–AA32**

## National Environmental Policy Act Procedures

**AGENCY:** Federal Bureau of Investigation, Department of Justice.

**ACTION:** Notice of proposed rule; request for public comment.

**SUMMARY:** The Department of Justice is proposing to promulgate regulations establishing the Federal Bureau of Investigation's (FBI's) National Environmental Policy Act (NEPA) procedures. These proposed regulations would establish a process for the FBI's implementation of NEPA, Executive Order 11514, Executive Order 12114, and Council on Environmental Quality (CEQ) and Department of Justice (Department) regulations addressing the procedural provisions of NEPA. Pursuant to CEQ regulations, the FBI is soliciting comments on the proposed FBI NEPA regulations from members of the interested public.

**DATES:** Written comments must be postmarked and electronic comments must be submitted on or before July 25, 2016. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

**ADDRESSES:** Submit comments online at *http://www.regulations.gov.* Submit written comments by addressing them to FBI NEPA Comments, ATTN: Scott A. Bohnhoff, 935 Pennsylvania Ave. NW., Room WB–460, Washington, DC 20535 or by facsimile to 202–436–7248.

**FOR FURTHER INFORMATION CONTACT:** Scott Bohnhoff, FBI Occupational Safety and Environmental Programs (OSEP) Unit Chief; Email: *Scott.Bohnhoff@ic.fbi.gov;* Telephone: (202) 436–7500.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access and Filing

Electronic comments are preferred. For comments sent via U.S. Postal Service, please do not submit duplicate electronic or facsimile comments. Please confine comments to the proposed rule.

All submissions received must include the agency name (FBI) and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

### Explanation of Proposed Rule

CEQ's NEPA implementing regulations contained in 40 CFR parts 1500 through 1508 require each Federal agency to adopt procedures (40 CFR 1507.3) to ensure that decisions are made in accordance with the policies and purposes of NEPA (40 CFR 1505.1). The Department has established such policies and procedures at 28 CFR part 61. The FBI NEPA Program has been established to supplement the Department's procedures and to ensure that environmental considerations are fully integrated into the FBI's mission activities.

The FBI NEPA regulations are intended to promote reduction of paperwork by providing guidelines for development of streamlined and focused NEPA documents and to reduce delay by integrating the NEPA process into the early stages of planning. They are also intended to promote transparency by ensuring that NEPA documents are written in plain language and follow a clear format so that they are easily understood by the public and all parties involved in implementation of the proposed action.

The FBI NEPA regulations are not intended to serve as a comprehensive NEPA guide, but will serve as a framework for the FBI NEPA Program. The FBI plans to apply its NEPA regulations in conjunction with NEPA, the CEQ regulations (40 CFR parts 1500 through 1508), the Department's implementing regulations (28 CFR part