SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, and 274

[Release No. 33–11294; 34–100450; IC–35273; File No. S7–16–23]

RIN 3235–AN30

Registration for Index-Linked Annuities and Registered Market Value Adjustment Annuities; Amendments To Form N–4 for Index-Linked Annuities, Registered Market Value Adjustment Annuities, and Variable Annuities; Other Technical Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting rule and form amendments to provide a tailored form to register the offerings of registered index-linked annuities (''RILAs''). Specifically, the Commission is amending the form currently used by most variable annuity separate accounts, Form N–4, to require issuers of RILAs to register offerings on that form as well. To facilitate this amendment, the Commission is also amending certain filing rules and making other related amendments. These changes will implement the requirements relating to RILAs contained in the Consolidated Appropriations Act, 2023. The Commission is also extending the registration, filing, and disclosure requirements that the Commission is adopting for RILA offerings to the offerings of registered market value adjustment annuities. Further, the Commission is adopting other amendments to Form N–4 that will apply to all issuers that use that form. The Commission is applying to RILA and registered market value adjustment annuity advertisements and sales literature a current Commission rule that provides guidance as to when sales literature is materially misleading under the Federal securities laws. Finally, the Commission is adopting technical amendments to Forms N–6 and N–3 to correct errors from prior Commission rulemakings.

DATES:

Effective date: This rule is effective September 23, 2024.

Compliance dates: The applicable compliance dates are discussed in section II.J of this Release.

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

Commission reference	CFR citation (17 CFR)
Securities Act of 1933 (''Securities Act''): [1]	
Rule 156	§ 230.156.
Rule 172	§ 230.172.
Rule 405	§ 230.405.
Rule 415	§ 230.415.
Rule 424	§ 230.424.
Rule 433	§ 230.433.
Rule 456	§ 230.456.
Rule 457	§ 230.457.
Rule 485	§ 230.485.
Rule 497	§ 230.497.
Rule 498A	§ 230.498A.
Regulation S–T:	
Rule 313 of Regulation S–T	§ 232.313.
Rule 405 of Regulation S–T	§ 232.405.
Forms:	
Form N–3	§ 239.17a and 274.11b.
Form N–4	§ 239.17b and 274.11c.
Form N–6	§ 239.17c and 274.11d.
Form 24F–2	§ 239.66 and § 274.24.

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[1] 15 U.S.C. 77a *et seq.*

I. Introduction and Background

The Commission is adopting rule and form amendments (''final amendments'') that are designed to help investors make informed decisions regarding RILAs. To modernize and enhance the registration and disclosure framework for RILAs, we are adopting amendments that will require offerings of RILAs to be registered on Form N–4, the registration form for most variable annuities, as well as adapt that form to accommodate RILAs. These amendments finalize rule and form amendments that the Commission proposed in September 2023.[2]

The amendments implement Congress' directive to the Commission in Division AA, Title I of the Consolidated Appropriations Act, 2023 (''RILA Act'') to adopt a new registration form for RILAs within 18 months of enactment.[3] The RILA Act requires the Commission to design the form to ensure that a purchaser using the form receives the information necessary to make knowledgeable decisions, taking into account (1) the availability of information; (2) the knowledge and sophistication of that class of purchasers; (3) the complexity of the RILA; and (4) any other factor the Commission determines appropriate.

The Commission's amendments will result in disclosure requirements for RILAs that are tailored to the particular characteristics of RILAs and comparable to variable annuity disclosure. We are also adopting related amendments to various Commission rules to effectuate the new disclosure requirements for RILAs and for further consistency in the registration, filing, and disclosure framework for RILAs compared to other similar annuity products. These amendments include, among other things: amendments permitting RILA issuers to use summary prospectuses; amendments that will result in the same requirements for RILAs and variable annuities in terms of updating the issuer's prospectus each year; and amendments that address how RILAs will register and pay for new shares, as well as other aspects of the registration and offering process. Furthermore, we are adopting amendments to extend the registration, filing, and disclosure approach we are adopting for RILAs to annuity contracts that offer fixed investment options and apply market value adjustments (''MVAs'') to amounts withdrawn from a fixed option before the end of the fixed option's term, where the offering is required to be registered with the Commission because of the MVA (''registered MVA annuities'' and, collectively with RILAs, ''non-variable annuities'').[4] We are additionally adopting other amendments to Form N–4 that will apply to all issuers that use that form, which are informed by the staff's historical experience in administering the form and relevant investor testing.[5] We are also adopting amendments that will apply a current Commission rule—which provides guidance as to when sales literature is materially misleading under the Federal securities laws—to RILA and registered MVA annuity advertisements and sales literature. Finally, we are adopting technical amendments to Forms N–6 and N–3 to update certain references used in those forms.

The Commission received comments on the proposal from a variety of interested parties, including life insurance companies, professional and trade associations, a public interest advocacy organization, and individuals.[6] Commenters broadly supported the proposal, including the proposed approach of requiring insurance companies to use Form N–4 to register RILA offerings, the amendments that would permit the use of summary prospectuses, and the amendments to filing and fee-payment rules. Some commenters suggested modifications and additions to the proposed approach, including changes to some of the specific disclosures that Form N–4 would require for RILAs. Others suggested we include registered MVA annuities (which currently, like RILAs, register on Forms S–1 and S–3) and certain other insurance products among those required to register on Form N–4. Some commenters also urged the Commission to extend rule 482 under the Securities Act, which addresses investment company advertising, to RILAs.

After consideration of the comments received, we are adopting the proposed

[2] *See* Registration for Index-Linked Annuities; Amendments to Form N–4 for Index-Linked and Variable Annuities, Investment Company Act Release No. 35028 (Sept. 29, 2023) [88 FR 71088 (Oct. 13, 2023)] (''Proposing Release'' or ''proposal''). The Commission voted to issue the Proposing Release on September 29, 2023. The release was posted on the Commission website that day, and comment letters were received beginning the same day. The comment period closed on November 28, 2023. We have considered all public comment received through May 28, 2024. The comment letters on the Proposing Release are available at *https://www.sec.gov/comments/s7-16-23/s71623.htm.*

[3] Publix Law 117–328; 136 Stat. 4459 (Dec. 29, 2022). The RILA Act provides that, if the Commission fails to adopt the form within 18 months of enactment, RILA issuers can begin registering RILA offerings on existing Form N–4.

[4] *See* facing page of final Form N–4 in final Form N–4; *see also infra* footnote 16 and accompanying text (discussing the operation of MVAs); Section II.B (discussing the final amendments' requirement for registered MVA annuities to register on Form N–4). The term ''non-variable annuities'' distinguishes these annuities from variable annuities whose offerings are registered on Form N–4, in which investors allocate their purchase payments to a range of investment options—typically mutual funds—and the investor's account value changes depending on the performance of the investment options selected. We understand that this term is understood in the industry to refer to annuities other than variable annuities.

[5] *See infra* section I.D.1.

[6] Some commenters raised topics that relate to various insurance product issues but not to the proposed rulemaking. *See, e.g.,* Comment Letter of the Committee of Annuity Insurers (Nov. 28, 2023) (''CAI Comment Letter'') (suggesting the Commission adopt amendments for life insurance products that are similar to RILAs). Another commenter sought clarification on topics related to variable and non-variable annuities that are unrelated to the proposed amendments. VIP Working Group Comment Letter (*e.g.,* seeking guidance on the application of Regulation D to certain offerings of variable and non-variable annuities). These comments are beyond the scope of this rulemaking.

amendments, with certain modifications. The final amendments retain each of the key elements of the proposed rules—the required registration of RILA offerings on Form N–4, the core aspects of the proposed disclosure requirements, the optional use of summary prospectuses by RILAs, the amendments to filing and fee-payment rules, and the amendments addressing materially misleading RILA sales literature. The resulting framework implements the RILA Act's mandate while making the RILA offering process similar to that for other insurance investment products, enhancing the information insurance companies disclose about RILAs, and extending certain antifraud guidance to RILA advertisements. However, we have modified certain proposed disclosure requirements and other aspects of the proposal to address the comments the Commission received. Additionally, the final amendments, in a change from the proposal and in response to comments received addressing the Commission's requests for comment about the registration of offerings of registered MVA annuities, will require these offerings to register on Form N–4. This, along with other amendments we are adopting extending the registration, filing, and disclosure framework we are adopting for RILAs to registered MVA annuities, and extending certain antifraud guidance to registered MVA annuity advertisements and sales literature, will result in greater uniformity in the regulation of non-variable annuities.

A. Overview of RILA Features

A RILA is one of several types of annuity contracts that insurance companies offer.[7] An investor in a RILA allocates purchase payments to one or more investment options under which the investor's returns (both gains and losses) are based at least in part on the performance of an index or other benchmark (collectively, ''indexes'') over a set period of time (''crediting period''). A RILA may be offered on a standalone basis with various index-linked investment options (''index-linked options'') that investors may choose.[8] Alternatively, an insurance company may offer ''combination'' annuity contracts that provide index-linked options together with other investment options, such as mutual funds (''portfolio companies'') offered as investment options under a variable annuity (''variable options'') or fixed investment options, including fixed options subject to an MVA (''MVA options'').[9] The market for RILAs has grown significantly in recent years, with annual RILA sales of $47.4 billion in 2023 alone, 15% higher than in the prior year, and more than quintupling since 2017.[10]

RILAs are complex financial products that are sold to retail investors.[11] The Proposing Release describes some of the most prevalent features that contribute to this complexity, and that might make it challenging for an investor to assess the features, risks, and possible return profile of a RILA.[12] Under a RILA, the insurance company will credit positive or negative ''interest'' to the investor's contract value at the end of each crediting period. The amount credited is based, in part, on the performance of a specified index, rate, or benchmark (*e.g.,* the S&P 500).[13] One aspect of RILAs' complexity involves the various ways that interest may be credited, and how contract features that affect how interest is credited work together. The Proposing Release details RILAs' traditional bounded return structure, which typically limits investors' ability to participate in upside index performance (through features such as ''cap rates'' and/or ''participation rates,'' collectively ''limits on gains''), and also limits investors' losses if the performance of the index goes down in value (through features such as ''buffers'' or ''floors,'' collectively ''limits on losses'').[14] For many RILAs, the investor pays no direct or explicit ongoing fees and expenses under the RILA, and this is sometimes a feature communicated in RILA marketing materials. However, the RILA's bounded return structure requires investors to agree to tradeoffs that come with their own economic costs. That is, RILAs limit or reduce downside risk, but also limit upside performance. In exchange for some protection against losses if the index goes down in value, investors must also agree to contractual provisions limiting the gains they will receive if the index goes up in value. RILAs allow investors some ability to customize a level of risk with which they are comfortable.[15] But despite the bounded return structure, a RILA is not necessarily a low-risk investment product as the investor could lose a significant amount of money if the index performs poorly.

Charges and penalties for early withdrawals are another prevalent feature of RILAs. Investors can lose significant money if they withdraw their money early from an investment option or from the contract. This can arise in

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[7] An annuity contract (''annuity'' or ''contract'') is a type of insurance product in which an investor makes a lump sum payment or a series of payments in return for future payments from the insurance company to meet retirement and other long-term financial goals.

[8] Depending on the context, this Release uses the term ''RILA'' to refer collectively to stand-alone RILAs and the index-linked options available in a combination contract. When referring to the entity registering the RILA, we use the term ''RILA issuer'' or ''insurance company.'' One commenter suggested that the Commission should use a term other than ''RILA,'' as the term ''registered'' in ''RILA'' may serve to confuse investors because there are other investment products that are registered under both the Securities Act and the Investment Company Act of 1940 (the ''Investment Company Act'') that do not include the term ''registered'' (*e.g.,* variable annuities, mutual funds, and exchange-traded funds). *See* Comment Letter of VIP Working Group (Nov. 10, 2023) (''VIP Working Group Comment Letter''). We continue to use the term ''RILA'' in the final amendments and in this Release for consistency with the RILA Act, as well as our understanding of common industry practice. *See, e.g.,* The Design and Regulatory Framework of Registered Index-Linked Annuities, ALI CLE Conference on Life Insurance Products 2022.

[9] *See* Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Investment Company Act Release No. 33814 (Mar. 11, 2020) [85 FR 25964 (May 1, 2020)] (''VASP Adopting Release'') at nn.4–5, 8, and accompanying text (describing the key features of variable annuity contracts and variable life insurance contracts (together, ''variable contracts'')). An investor purchasing a combination contract, for example, may have the ability to allocate purchase payments under the contract to index-linked options; variable options that pass on the returns of mutual funds selected by the investor; and/or fixed account options for which the insurance company promises to pay a fixed and stated minimum rate of interest.

[10] *See* LIMRA, ''LIMRA: Record-High 2023 Annuity Sales Driven by Extraordinary Growth in Independent Distribution,'' news release (Mar. 12, 2024) (reporting 2023 RILA sales of $47.4 billion), *available at https://www.limra.com/en/newsroom/news-releases/2024/limra-record-high-2023-annuity-sales-driven-by-extraordinary-growth-in-independent-distribution/* (stating that high annuity sales were ''largely due to broader engagement with independent distribution'' and that ''[r]ising interest rates have made annuities very attractive to a larger group of investors''). The fourth quarter of 2023 marked the first time RILA product sales surpassed variable annuity sales. *See also* LIMRA, ''LIMRA Secure Retirement Institute: Total Annuity Sales Continued to Decline in 2017,'' news release (Feb. 21, 2018) (reporting 2017 sales of structured annuity products, *i.e.,* RILAs, of $9.2 billion), *available at https://www.limra.com/en/newsroom/news-releases/2018/limra-secure-retirement-institute-total-annuity-sales-continued-to-decline-in-2017/.*

[11] We understand that RILAs are predominantly sold by broker-dealers.

[12] *See* Proposing Release at Section I.A. This paragraph and the paragraphs that follow summarize the RILA features that Section I.A of the Proposing Release discusses.

[13] Insurance companies typically choose indexes for the RILA contract where any gains in the value of the index do not include dividends paid on the securities that make up the index.

[14] *See* Proposing Release at paragraph accompanying n.10. A cap rate places an upper limit on an investor's ability to participate in the index's upside performance directly. A participation rate sets an investor's return to some specified percentage of the index's return. A buffer limits the investor's exposure to losses up to a fixed percentage. A floor places a lower limit on the investor's exposure to loss.

[15] *See infra* Section IV.B.3.

several circumstances: (1) ''surrender charges'' that apply when an investor withdraws money from the contract within a certain period following the investor's last premium payment; (2) ''interim value adjustments'' (or ''IVAs''), which adjust the investor's contract value if amounts are withdrawn (for instance, because of movements to a different investment option, movements out of the contract, or payment of certain benefits) from an index-linked option before the end of its crediting period; [16] and (3) a positive or negative MVA (collectively with IVAs, a ''contract adjustment'') to the amount paid to the investor resulting from changes in interest rates if the investor partially or fully withdraws amounts from the contract or from certain fixed options.[17] Contract adjustments can occur in response to a number of contract transactions, such as a surrender, withdrawal, payment of the death benefit, or the start of annuity payments, and an investor could experience a negative contract adjustment even when the investor takes an otherwise permissible withdrawal, such as under a guaranteed living benefit. These adjustments also can negatively affect other values under the contract, such as the surrender value and death benefit. Moreover, these fees and adjustments are not always mutually exclusive.[18] As a result of these charges and penalties, the investor could lose a significant amount of money in a RILA investment, even if the index has a gain at the time of the withdrawal.

In addition to the complexities that RILAs' bounded return structure and potential charges and penalties for early withdrawals entail, under virtually all RILA investments the insurance company may change or remove key features of index-linked options, such as the cap rates, floors, or even the index.[19] Also, RILA contracts typically state that an investor will be automatically renewed at the end of a crediting period into the same or substantially similar index-linked option, often with a new limit on gains. Furthermore, special tax rules generally apply to RILAs and other annuities, with both tax advantages and potential adverse tax impacts in certain circumstances.[20]

For all of these reasons, providing investors with key information is particularly important in the context of RILAs, since their features are typically complex and their risks may not be apparent or easily understood by prospective investors absent clear disclosure.

B. Overview of Registered MVA Annuity Features

Registered MVA annuities are annuity contracts that offer fixed investment options (where the insurance company promises to pay a fixed and stated minimum rate of interest) and apply MVAs to amounts withdrawn before the end of the fixed option's term.[21] The insurance company might apply an MVA, for example, when an investor withdraws money from the contract, transfers money among investment options, or annuitizes the contract. For these annuities, fixed options are either offered on their own or in a combination contract with index-linked options and/or variable options.

As the Commission explained in the Proposing Release, RILAs and registered MVA annuities differ only with respect to the manner in which interest is calculated and credited.[22] Interest in a RILA contract is calculated and credited at the end of the crediting period based at least in part on the performance of an index or other benchmark, whereas interest in a registered MVA annuity is guaranteed and typically credited daily at a fixed rate.[23] Registered MVA annuities, however, like RILAs, apply contract adjustments upon withdrawals prior to term maturity. An investor in a RILA or registered MVA annuity therefore can lose money—and potentially a significant amount of money—due to a contract adjustment, and the way in which these adjustments are calculated may be complex.

Existing disclosure for registered MVA annuities has many similarities to disclosure for RILAs. Like RILA disclosure, registered MVA annuity disclosure describes the operation of contract adjustments and the risks associated with such contract adjustments.[24] Disclosure for registered MVA annuities, like disclosure for RILAs and other annuity contracts, also describes basic annuity features (including, as for RILAs, information about surrender charges and applicable tax treatment) and the issuer's financial strength.[25]

C. Current Registration Requirements for RILAs and Registered MVA Annuities

RILAs are securities for purposes of the Securities Act.[26] Unlike variable annuity contracts for which the Commission has adopted a specific tailored registration form, insurance companies currently register offerings of RILAs on Securities Act registration Forms S–1 or S–3.[27] As the Proposing Release describes in detail and this Release summarizes, the current requirements for issuers offering RILAs and variable annuities (that is, the requirements prior to the amendments

[16] *See id.* at n.11 and accompanying paragraph. The IVA will adjust the contract value based, generally, on a complex formula where the IVA may change daily and can be positive or negative.

[17] MVAs can apply to RILAs, but, as discussed below, they also can apply to a fixed option available under an annuity contract. *See infra* Sections I.B and II.B.

[18] *See* Proposing Release at n.13 and accompanying paragraph. An investor may also be subject to income taxes and face a Federal income tax penalty if the investor withdraws money before a certain age.

[19] *See id.* at paragraph following n.13.

[20] *See id.* at n.14 and accompanying paragraph.

[21] *See* Proposing Release at Section II.H. The Proposing Release referred to registered MVA annuities as ''registered MVAs.'' For clarity and parallelism with the terms ''RILA'' and ''variable annuity'' (which also refer to different types of annuities), we refer to these products instead as ''registered MVA annuities'' in this Release.

[22] *See id.* One commenter stated that it largely agrees with this characterization. *See* CAI Comment Letter. No commenters disagreed with this characterization. *See also infra* section II.B (discussing more broadly the comments received on the Commission's request for comment in the Proposing Release on whether to require insurance companies to register the offerings of registered MVA annuities on Form N–4).

[23] *See id.; see also* CAI Comment Letter (agreeing with the Commission's statement in the Proposing Release that RILAs and registered MVA annuities differ only with respect to the manner in which interest is calculated and credited).

[24] *See* CAI Comment Letter.

[25] *See id.*

[26] Under the final amendments, the final Form N–4 will not register the RILA or registered MVA annuity issuers themselves, only the offering of RILA or registered MVA annuity securities. Unlike separate accounts which register variable annuities, RILA and registered MVA annuity issuers are not investment companies, and thus need not register with the Commission as an investment company as separate accounts do. Index annuities that meet the requirements of section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203) or section 3(a)(8) of the Securities Act are treated as exempt securities for purposes of the Securities Act, but RILAs and registered MVA annuities do not fall within this exemption due, in large part, to the shifting of a significant level of investment risk from the issuer to the investor. RILAs and index-linked options, as used in this Release, refer only to those index annuities that are securities for the purposes of the Securities Act. *See, e.g.,* sections 101(a)(5) and (6) of the RILA Act. Similarly, registered MVA annuities and MVA fixed account options, as used in this release, refer only to annuities that are securities for the purposes of the Securities Act. *See infra* footnote 29 and accompanying text.

[27] *See, e.g.,* General Instruction I of Form S–1 (''This Form shall be used for the registration under the Securities Act of 1933 ('Securities Act') of securities of all registrants for which no other form is authorized or prescribed''). The registration forms for variable annuity contracts are Form N–3 (for variable annuity separate accounts structured as management investment companies) and Form N–4 (for variable annuity separate accounts structured as unit investment trusts). *See* Proposing Release at n.6 and accompanying text. In this Release, we focus only on Form N–4 and not Form N–3, because Form N–4 is the registration form identified in the RILA Act and the form used to register most variable annuity contracts.

the Commission is adopting in this Release) differ in many respects, both in terms of the disclosure issuers must provide and the registration process.[28]

Registered MVA annuities also are securities for purposes of the Securities Act. They are securities because the MVA feature imposes certain investment risks on purchasers.[29] Like RILA offerings, offerings of registered MVA annuities are currently registered on Forms S–1 or S–3. While this section of the Release discusses the registration requirements for RILAs, the current registration requirements for registered MVA annuities are the same as those for RILAs and present the same considerations.

In general, the disclosure requirements of Forms S–1 and S–3 are not specifically tailored to particular kinds of securities given the wide range of securities offerings that issuers can register on these forms.[30] Forms S–1 and S–3 thus do not include specific line-item requirements addressing disclosures about RILAs and their complex features. These forms also require issuers to disclose information about the offering itself as well as extensive information about the registrant issuing the securities that a RILA investor may view as less important than information about the contract's features. Domestic registrants also must include financial statements prepared in accordance with U.S. generally accepted accounting principles (''GAAP'').[31]

The Form N–4 disclosure requirements for variable annuities, on the other hand, are tailored for variable annuities.[32] Form N–4's disclosure requirements are designed to provide investors with key information relating to a variable contract's provisions, benefits, and risks, along with information about the insurance company and the offering. In addition, rule 498A and Form N–4 together implement a layered disclosure approach for variable annuities by permitting insurance companies and others to use a summary prospectus framework for variable annuities while making the more-detailed statutory prospectus, as well as the contract's statement of additional information (''SAI''), available online. Form N–4 also provides a limited exception for insurance companies to file financial statements prepared in accordance with statutory accounting principles (''SAP''), referred to as ''statutory requirements'' in the form instructions, rather than GAAP.[33] Structured data requirements for RILA and variable annuity disclosure also differ.[34]

The Proposing Release also details key differences in the current registration process for RILAs versus variable annuities.[35] While insurance companies pay registration fees at the time they register the offer and sale of RILA securities, a separate account that registers under the Investment Company Act and offers variable annuity securities on Form N–4 pays registration fees based on the net issuance of securities, no later than 90 days after each fiscal year end.[36] Updates to RILA offering registration statements occur by filing a post-effective amendment to a Form S–1 registration statement (which must be declared effective, typically by staff acting pursuant to delegated authority) or by the filing of the insurance company's annual report on Form 10–K containing audited financial statements, which operates as a post-effective amendment to a registration statement on Form S–3.[37] In contrast, a variable annuity registration statement on Form N–4 may be updated by filing an immediately-effective post-effective amendment under rule 485. This permits the efficient registration of continuous offerings of variable annuities.

D. Developments and Analysis Informing Final Amendments

1. Investor Testing Informing Final Amendments

In addition to the RILA Act's requirements described above, the RILA Act also requires the Commission to engage in investor testing as part of its rulemaking process and to incorporate the results of the testing in the design of the new registration form for RILAs, with the goal of ensuring that key information is conveyed in terms that a purchaser can understand. Consistent with the RILA Act, the Commission received feedback on individuals' comprehension and views on RILA disclosure through investor testing. Specifically, the Commission's Office of the Investor Advocate (''OIAD'') conducted two rounds of qualitative interviews with a mix of investors across demographic characteristics, locations, and levels of financial literacy who either already owned annuities or had expressed interest in investing in an annuity product. The results of the two rounds of qualitative testing then helped inform a round of quantitative testing with approximately 2,500 participants.

This investor testing, which the Proposing Release and a report describing investor testing that OIAD conducted describe in detail, helped us to identify areas of Form N–4 that we proposed to amend to help ensure that a RILA purchaser receives key information that the purchaser is able to understand.[38] Feedback from both rounds of qualitative interviews generally showed that the interview participants did not have much, if any, familiarity with RILAs. Furthermore, interviews in both rounds illustrated that many participants struggled to understand the details of the RILA contract presented in sample disclosure that could appear in select rows of the ''Key Information Table'' (or ''KIT'') in RILA registration statements. Participants indicated significant confusion about the features and fees associated with RILAs, and often cited certain specific terminology, such as ''index option,'' ''interim value adjustment,'' ''buffer,'' and ''investment term,'' as confusing to them. Although interview participants may not have been able to understand RILA features and economic tradeoffs fully after reviewing sample KIT disclosure, some were able to identify certain potential drawbacks and explain certain aspects of RILA contracts following their review of this sample disclosure.

The investor testing successfully identified a range of barriers to investor understanding of RILAs and associated disclosure. However, with few exceptions, the variations in RILA disclosures presented to participants did not result in significant improvements in investor

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[28] *See* Proposing Release at Section I.B.

[29] *See* section 3(a)(8) of the Securities Act and 17 CFR 230.151; *see also SEC* v. *Variable Annuity Life Insurance Co. of America,* 359 U.S. 65, 77 (1959).

[30] *See* Proposing Release at nn.15–17 and accompanying paragraph.

[31] *See* 17 CFR 210.4–01(a)(1) (stating that financial statements filed with the Commission which are not prepared in accordance with GAAP will be presumed to be misleading or inaccurate unless the Commission has otherwise provided). *See also* Proposing Release at n.20.

[32] *See* Proposing Release at nn.18–20 and accompanying paragraph.

[33] Specifically, insurance companies, which act as the depositors of variable annuity separate accounts registered on Form N–4, may use SAP financials solely when the insurance company does not otherwise prepare GAAP financial statements or GAAP financial information for use by a parent in the parent's Securities Exchange Act of 1934 (''Exchange Act'') reports or the parent's registration statements filed under the Securities Act. *See id.* at n.20 and accompanying text.

[34] *See* Proposing Release at n.25 and accompanying text, and text following n.26.

[35] *See id.* at paragraphs accompanying nn.21–26.

[36] *See id.* at nn.21 and 26 and accompanying text.

[37] *See id.* at nn.22–24 and accompanying text.

[38] Office of Investor Advocate Division, Investor Testing Report on Registered Index-Linked Annuities (OIAD Working Paper 2023–01), (Sep. 2023) (''OIAD Investor Testing Report'') *available at https://www.sec.gov/files/rila-report-092023.pdf; see also* Proposing Release at Section I.C.

comprehension.[39] The Commission incorporated the investor testing results in its design of the proposed Form N–4 amendments, endeavoring to give particular attention to: (1) disclosure variations that resulted in statistically significant improvements in investor comprehension (specifically, the use of Q&A KIT format); and (2) areas of identified investor confusion while leveraging existing disclosure requirements.[40] Because investor testing did not, for the most part, provide persuasive evidence of superior disclosures, the Commission proposed largely to utilize the existing Form N–4 disclosures that have been developed over time, and with which staff, investors, and RILA issuers are already familiar.

The Commission sought comment on this proposed approach, and it also sought comment throughout the Proposing Release on specific areas for improvement that would aid investor comprehension. Furthermore, the Commission requested specific input from the retail investor community through a short feedback flyer seeking input on their experiences with annuities generally and RILAs specifically (''Feedback Flyer'').[41] Commenters did not generally address the investor testing that informed the proposed approach, and the Commission received no Feedback Flyer responses.[42]

The Commission's Investor Advocate also provided comments discussing the investor testing process and supporting the proposed rules, stating the belief that the proposed RILA registration form would make it easier for investors to understand RILAs.[43] The Investor Advocate stated that the proposed rule's registration form would be more helpful for investors than the forms currently used for RILA registration. The Investor Advocate also stated that modified Form N–4 ''is likely to improve investor comprehension related to the features, costs, and risks of RILAs.''

In addition to these statements, the Investor Advocate suggested areas in which ''more work can be done to help investors make well-informed decisions about RILAs and other complex financial products.'' The Investor Advocate stated that the proposed rule's registration form for RILAs, while informed by investor testing efforts, was not tested itself, and that this represents a missed opportunity in the Commission's rulemaking process. While the RILA Act directed the Commission to ''engage in investor testing'' when developing the registration form for RILAs, the Act did not require that the entirety of the form be investor tested, and doing so would have been impracticable under the circumstances due to the statutory rulemaking timeline, taking into account the time it takes to develop and execute well-designed and probative investor testing. As a result, investor testing efforts necessarily entailed strategic choices about topics on which to focus. These timing factors also required consideration of disclosure areas where maximizing comprehension could be particularly impactful.

For these reasons, investor testing of RILA registration statement disclosure focused primarily on a sample of RILA-related disclosures that could appear in the KIT, if Form N–4 were amended to address RILA offerings.[44] As discussed in the Proposing Release and below, the KIT—which provides summary disclosure in a specific sequence and in a standardized presentation—appears in variable annuity prospectuses, and the Commission proposed to include KIT disclosure in RILA prospectuses.[45] The required ordering, contents, and standardization of KIT disclosure made the sample RILA-related disclosure especially amenable to investor testing, as these structural aspects made it possible to test variations on required disclosure elements easily. The summary disclosure in the KIT covers core features and risks of the annuity that the registration statement describes, with more detail elsewhere in the registration statement. For this reason, using the KIT to determine areas where investor comprehension could be enhanced was particularly impactful, as knowledge gained from this investor testing could be applied to disclosure in multiple other areas of the registration statement. The KIT is one of the first disclosure items that appears not only in the statutory prospectus, but also in the summary prospectus for issuers that choose to use summary prospectuses. It is also formatted in a manner that is designed to enhance readability. The investor testing therefore focused on disclosure that could have maximal impact in terms of investor attention.

While the Investor Advocate states that there is no ''data to indicate whether the registration form effectively conveys the information necessary for investors to make well-informed investment decisions about RILAs,'' the sample KIT disclosure did include topics that comprise the primary features and risks of RILAs, and the investor testing did identify aspects of this disclosure that investors may find particularly challenging to understand. This in turn provided helpful input in identifying the disclosure areas where clear language, and enhanced focus in the registration statement, could help investors understand unique, and often complex, aspects of RILAs. We discuss these disclosure areas in more depth in Section II below.

The Investor Advocate further stated that, although the Commission has ''made commendable efforts to improve the clarity and conciseness of disclosure provided to investors within the existing regulatory disclosure infrastructure,'' new and innovative approaches to disclosure are encouraged to significantly reduce investors' disclosure burden. The Investor Advocate encouraged the Commission ''to explore more significant departures from the status quo in the realm of disclosure related to RILAs and other complex products.'' We agree that exploring innovative disclosure approaches could enhance the investor experience for investors in complex products.[46] A wholesale reimagining of disclosure for funds and other registered investment products, however, is outside of the scope of this rulemaking and impracticable in the context of this rulemaking given statutory time constraints. We also believe that requiring RILAs to use Form N–4, and adapting the current disclosure approach for variable annuities to RILAs, is consistent with the RILA Act's mandate as discussed below.[47]

[39] *See* Proposing Release at n.58 and accompanying text, and paragraphs following n.58.

[40] *See id.* (stating that the Q&A KIT format demonstrated a statistically significant, albeit quantitatively small, improvement over the non-Q&A KIT format, and stating that investor testing successfully identified a range of barriers to investor understanding of RILAs and associated disclosures).

[41] *See id.* at n.59 and accompanying text; *see also* Feedback Flyer *available at https://www.sec.gov/files/rules/proposed/2023/rila-feedback-flyer.pdf.*

[42] One commenter, while not commenting on the investor testing substantively, discussed the RILA trends that the OIAD Investor Testing Report described, as discussed in more detail below. *See infra* footnote 305 and accompanying text.

[43] *See* Comment Letter of Cristina Martin Firvida, SEC Investor Advocate (Dec. 22, 2023) (''Investor Advocate Comment Letter'').

[44] *See* OIAD Investor Testing Report.

[45] *See* Proposing Release at Section II.B.2; *see also* Item 2 of current Form N–4 (current KIT requirements); *infra* Section II.C.3 (describing amendments to current KIT requirements).

[46] The Commission is continually considering ways to enhance disclosure and the retail investor experience. *See, e.g.,* Request for Comment on Fund Retail Investor Experience and Disclosure, Investment Company Act Release No. 33113 (June 5, 2018) [83 FR 26891 (June 11, 2018)] (''Investor Experience RFC'').

[47] *See infra* Section II.A.

Furthermore, we agree that continuing to test specific Commission-mandated disclosures, including to assess how investors respond to these disclosures, as well as continuing to analyze the Commission's approach to its disclosure regime generally, are important complements to our regulatory program. We encourage Commission staff to incorporate these investor testing principles not only in the course of recommending new disclosure requirements, but also in continuing to develop its investor testing program outside of the confines of particular rulemaking actions.

In addition to investor testing focused specifically on sample RILA disclosure, our final amendments—and the current disclosure requirements in Form N–4 that we are building upon—also draw on the Commission's past investor testing efforts, outreach, and other empirical research concerning investors' preferences. This includes, for example, information about summary content and layered disclosure approaches.[48] The Commission has historically received feedback showing that investors generally prefer concise, layered disclosure.[49] Investors participating in certain past quantitative and qualitative investor testing initiatives on the Commission's behalf have also expressed preferences for, wherever possible, the use of a summary containing key information about an investment product or service written in clear, concise, and understandable language and presented in an accessible format.[50] Each of these sources of evidence of investor preferences, understanding, and behaviors in response to disclosures specific to RILAs and other investment products more generally has provided important context and support for the final amendments' approach to RILA disclosure.

2. Analysis of Comments on Recurring Disclosure Topics Informing Final Amendments

The proposed amendments collectively were designed to provide investors with disclosures tailored to RILAs and to highlight key information about these complex products, building on the Commission's layered disclosure framework for variable annuities. The proposed requirements were developed with consideration for clear, concise, and understandable disclosure about RILA features and risks. Certain commenters expressed concern, however, that the proposed disclosure requirements included ''excessive repetition,'' especially with respect to certain topics.[51] Commenters stated that excessive repetition adds to the length of the prospectus without commensurate value to investors, obscures new information that investors should be focusing on, and is not consistent with plain English principles. In addition to general concerns about repetition in the proposed requirements, commenters expressed concerns about specific disclosure areas where they viewed the proposed requirements as resulting in particularly repetitive disclosure.[52]

We agree that no disclosure should be repeated simply for the sake of repetition, and we also agree that repetition in disclosure can have negative effects on investor understanding as commenters expressed. As discussed below, the final form amendments take commenters' concerns into account. There are certain areas where the final amendments reduce the discussion of the same or similar topics in multiple locations, where this reduction could appropriately be made while continuing to promote the goal of highlighting key information about RILAs and enhancing understanding of RILA features and risks.[53]

The final amendments, like the proposal, continue to incorporate the principle of layered disclosure. Layered disclosure aims to provide investors with key information relating to an investment's features, benefits, and risks in a concise and reader-friendly presentation, with more-detailed or technical information available to those investors who find the information valuable. The use of layered disclosure means that the disclosure requirements we are adopting necessarily address particular topics in more than one location in the registration statement. Where this occurs, the disclosure requirements intentionally include summary disclosure in the first ''layer,'' and additional details building on the summary in the second ''layer.'' [54] This approach is designed to help investors with different informational needs access the information that will be most useful to them.

Additionally, and as discussed in more detail below, there are certain disclosure requirements in Form N–4 as amended that address similar topics as other disclosure requirements, where investors could benefit from considering these topics in several different contexts. This also reflects that, except with respect to certain disclosure items that are designed to be read in tandem, RILA investors may not necessarily read a prospectus from cover to cover, but instead may choose to read sections of the prospectus about topics where they are seeking particular information.[55] For instance, in addition to the numeric examples illustrating maximum potential loss, the final disclosure requirements include narrative discussion of a RILA's maximum potential loss from poor index performance in several locations in the prospectus. This is intentional. RILAs are frequently marketed as a product that will protect against investment losses through loss-limiting features. Information about maximum potential loss is relevant in the contexts of the contract overview and KIT, as well as in considering principal risks and more in-depth disclosure about the investment options a contract offers.[56] Therefore, disclosure that is designed to enhance understanding of this aspect of a RILA contract, in varying contexts, will help investors make informed decisions that take into account this often-misunderstood aspect of investing in a RILA.[57]

[48] *See* Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Investment Company Act Release No. 33286 (Oct. 30, 2018) [83 FR 61730 (Nov. 30, 2018)] (''VASP Proposing Release'') at paragraphs accompanying nn.38–43.

[49] *See, e.g.,* Investor Experience RFC; *see also* Proposing Release at n.61 (discussing feedback in comments on the Investor Experience RFC, generally showing that retail investors prefer concise, layered disclosure and feel overwhelmed by the volume of information they currently receive, and reflecting a preference for shorter summary disclosures, with additional information available online or upon request).

[50] *See* Proposing Release at n.62.

[51] *See* CAI Comment Letter; *see also* Comment Letter of Ova Datop (Oct. 25, 2023) (''Datop Comment Letter'').

[52] *See* CAI Comment Letter (discussing proposed maximum potential loss disclosure requirements); Datop Comment Letter (discussing proposed risk warnings).

[53] *See, e.g.,* discussion below about changes from the proposal to remove some of the numeric examples illustrating maximum potential loss that, as proposed, would have appeared in multiple locations throughout the prospectus (at *infra* Sections II.C.2 and II.C.4).

[54] For example, the KIT will put investors on notice of the existence and general impact of a contract adjustment, while other disclosure later in the prospectus discusses contract adjustments in detail, including a brief discussion in simple terms of the manner in which contract adjustments are determined. *See* Items 3 and 7(e) of final Form N–4. If an investor wants more details about the specific formulas that are used to calculate contract adjustments, this information is available in the SAI. *See* Item 22(d) of final Form N–4.

[55] As discussed below, we anticipate that investors will read the Overview and KIT sections of the prospectus together. *See infra* Sections II.C.2 and II.C.3.

[56] *See, e.g., infra* Sections II.C.2, II.C.3, II.C.4, and II.C.5.

[57] *See, e.g.,* Proposing Release at Section I.C.

E. Overview of the Final Amendments

We are adopting rule and form amendments that modernize and enhance the registration, filing, and disclosure framework for RILAs by adapting the existing framework that is familiar to investors and issuers for variable annuity separate accounts to accommodate RILAs. The final amendments implement the RILA Act's mandate.

• *Use of Form N–4 to Register RILA Offerings.* As proposed, we are amending Form N–4 so that issuers seeking to register the offering of RILAs must use that form. To accommodate this, we are also adopting amendments to Form N–4 that specifically address the features and risks of RILAs, with certain modifications from the proposal in consideration of comments received. These modifications address, among other things, disclosure relating to the potential for investment loss from an investment in a RILA, current limits on index gains, and guaranteed limits on index losses or gains. Further, because the insurance company will register the offering of a RILA on Form N–4 under the final amendments, it will be subject to the requirements in the form related to financial statements. This includes, as proposed, the form instruction that currently permits variable annuity issuers to file insurance company SAP financial statements in certain circumstances. Generally as proposed, the final amendments require RILA issuers to tag certain information in Inline eXtensible Business Reporting Language (''Inline XBRL'') format.

• *Use of Form N–4 for Registered MVA Annuities.* In a change from the proposal, the final amendments extend the registration, filing, and disclosure requirements we are adopting for RILA offerings to offerings of registered MVA annuities on Form N–4.

• *Form N–4 Amendments for Variable Annuity Offerings.* We are adopting form amendments that are applicable to offerings of variable annuities. These amendments are informed by the staff's historical experience in administering the form and respond to observations from investor testing relevant to variable annuity offerings.[58] We are adopting these amendments generally as proposed, with some modifications in consideration of comments received.

• *Summary Prospectus.* Consistent with the inclusion of RILAs on Form N–4 and generally as proposed, we are adopting amendments that permit RILA issuers to make use of the summary prospectus framework available to variable annuity registrants on Form N–4. In a modification from the proposal, issuers of registered MVA annuities also will be able to use the summary prospectus framework, consistent with the inclusion of registered MVA annuities on Form N–4.

• *Updates to the Filing Rules.* To accommodate RILA and registered MVA annuity offering registrations on Form N–4, we are adopting amendments that require issuers of these securities to pay fees in arrears on Form 24F–2, as well as amendments to address RILAs and registered MVA annuities in the rules that variable annuities use to file post-effective amendments and to update prospectuses. We are adopting these amendments as proposed with conforming amendments to address the inclusion of registered MVA annuities on Form N–4.

• *Communications Rules Applicable to Non-Variable Annuities.* The final amendments, as proposed, require RILA issuers to comply with rule 156, which provides guidance as to when sales literature is materially misleading under the Federal securities laws. We are adopting conforming amendments to rule 156 to address the inclusion of registered MVA annuities on Form N–4. Additionally, in a change from the proposal, we are also making a technical amendment to rule 433 to allow those non-variable annuity issuers that can meet the rule's conditions to continue to use a free writing prospectus without it needing to be preceded or accompanied by a prospectus that satisfies the requirements of section 10 of the Securities Act.

II. Discussion

A. Use of Form N–4 for RILAs

Most variable annuity issuers register variable annuity offerings on Form N–4, which the Commission designed to provide investors with product-specific information about annuity contracts, and which utilizes the summary prospectus layered disclosure framework the Commission adopted in 2020 for variable contracts.[59] As proposed, we are requiring insurance companies to register RILA offerings on Form N–4, leveraging the form's existing insurance-product specific disclosures and framework while incorporating revised disclosures informed by investor testing and staff experience to assist investors in making knowledgeable decisions about RILA offerings.[60]

Commenters broadly supported registering RILA offerings on Form N–4.[61] A number of commenters agreed that proposed Form N–4 would provide RILA investors with more meaningful and helpful disclosures as compared to the disclosures required on the registration forms currently used by RILAs that are not tailored to RILA features.[62] Some commenters emphasized that the proposed disclosures about the contract and its features and the incorporation of Form N–4's layered disclosure would be of particular benefit to investors.[63] Additionally, one commenter suggested that requiring RILAs to register on forms that are not tailored for RILA offerings has impeded the ability of RILA investors to find and understand the information that is most relevant to their investment decisions, and has also slowed product development and impeded the entry of new issuers to the RILA marketplace.[64] Commenters suggested that investors also would benefit from registering RILAs and variable annuity contracts on the same registration form because it would facilitate the ability of investors to

[58] *See id.* at n.63 and accompanying paragraph.

[59] Variable annuities register on Form N–3 if they are issued by separate accounts that are organized as management investment companies. However, most variable annuities are issued by separate accounts that are organized as unit investment trusts and therefore use Form N–4. *See* Proposing Release at n.20. The separate account established by the sponsoring insurance company is the legal entity that registers its securities. Separate accounts are typically registered as investment companies under the Investment Company Act. *See* section 2(a)(37) of the Investment Company Act. The Commission first adopted the registration form for variable annuities approximately 40 years ago. *See* Registration Forms for Insurance Company Separate Accounts that Offer Variable Annuity Contracts, Investment Company Act Release No. 14575 (June 14, 1985) [50 FR 26145 (June 25, 1985)] (''Forms N–3 and N–4 Adopting Release'').

[60] *See* the facing page of final Form N–4 (Form N–4 is ''to be used by insurance companies to register the offerings of registered index-linked annuity contracts . . . under the Securities Act''). Accordingly, following the compliance date for the final amendments, insurance companies will no longer be permitted to register RILA offerings on Forms S–1 or S–3, as they do today.

[61] *See* Comment Letter of the American Council of Life Insurers (Nov. 28, 2023) (''ACLI Comment Letter''); Comment Letter of Better Markets, Inc. (Nov. 28, 2023) (''Better Markets Comment Letter''); CAI Comment Letter; Comment Letter of Gainbridge Life Insurance Company and Delaware Life Insurance Company (Nov. 28, 2023) (''Gainbridge Comment Letter''); Investor Advocate Comment Letter; Comment Letter of the Insured Retirement Institute (Nov. 28, 2023) (''IRI Comment Letter''). No commenters disagreed with the proposed use of Form N–4 to register RILA offerings.

[62] *See id.* One of these commenters stated that it would object to the inclusion on Form N–4 of additional company-related disclosures applicable to registrations under Forms S–1 and S–3 because those disclosures are less relevant to RILA offerings. *See* CAI Comment Letter.

[63] *See* Better Markets Comment Letter; CAI Comment Letter; Gainbridge Comment Letter; IRI Comment Letter; Investor Advocate Comment Letter.

[64] *See* IRI Comment Letter.

compare and contrast different RILA and variable annuity offerings.[65] One of these commenters also stated that, by leveraging the experience of investors, registrants, and Commission staff with the existing Form N–4 framework, the proposal would help achieve greater regulatory uniformity, simplify the registration of RILA and variable annuity combination products, and reduce the burdens insurance companies face in preparing RILA registrations.[66]

After considering these comments, we are adopting a registration framework that requires the registration of RILA offerings on Form N–4 as proposed. Consistent with the views expressed by commenters, registering RILA offerings on final Form N–4 should benefit investors by requiring tailored disclosures relevant to RILA investors and facilitating the ability of investors to compare similar products. Registering RILA offerings on final Form N–4 also provides greater regulatory uniformity, reducing burdens for both RILA issuers in preparing RILA registration statements and Commission staff in reviewing them.

Finally, one commenter requested the Commission provide guidance regarding the ability of certain RILA contracts currently registered on Form S–3 to rely on 17 CFR 240.12h–7 (''rule 12h–7'') following their transition to Form N–4.[67] Rule 12h–7 provides an exemption from Exchange Act reporting applicable to insurance companies with respect to certain securities, including RILAs, that are registered under the Securities Act and regulated under State law. In order to be eligible for this exemption, among other conditions, the issuer of the securities must take steps reasonably designed to ensure that a trading market for the securities does not develop, including requiring written notice to, and acceptance by, the issuer prior to any assignment or other transfer of the securities and reserving the right to refuse assignments or other transfers at any time on a non-discriminatory basis (''anti-assignment clause'').[68] One commenter suggested that there are a number of RILA contracts that do not have an anti-assignment clause because the issuing insurance companies have chosen to register the offerings on Form S–3 and therefore have not relied on rule 12h–7 because Form S–3 is only available to issuers subject to Exchange Act reporting requirements. This commenter suggested that unilaterally adding an anti-assignment clause now to already-issued contracts previously registered on Form S–3 would violate State law. Now that RILA offerings will be registered on Form N–4, this commenter suggested that issuers of these RILA contracts would like to rely on rule 12h–7. As the Commission explained in rule 12h–7's adopting release, the anti-assignment clause requirement is an important condition of the exemption from Exchange Act reporting because it ensures that the issuer will take steps reasonably designed to preclude the development of a trading market in the contracts.[69] Although all issuers relying on rule 12h–7 are required to take such reasonable steps, rule 12h–7 provides that an anti-assignment clause is not required where it is prohibited by State law.[70] Under that rule, where an issuer of a RILA contract that is currently registered on Form S–3 is seeking now to rely on rule 12h–7, that issuer would not need to modify the contract to include an anti-assignment clause where including such a clause is prohibited by State law.[71] Whether including an anti-assignment clause is prohibited under State law is based on the facts and circumstances and laws of each applicable State.

B. Use of Form N–4 for Registered MVA Annuities

We are adopting amendments to require the offerings of registered MVA annuities to be registered on Form N–4 and, as a result, extend the registration and disclosure requirements we are adopting for RILAs to registered MVA annuities. Similar to the amendments we are adopting for RILAs, these amendments will benefit investors by providing a tailored disclosure regime with clear, relevant, and layered disclosure. Further, by including registered MVA annuities on Form N–4 along with RILAs and variable annuities, investors should benefit from being able to compare and contrast different types of annuity contracts. Both issuers and investors will also benefit by leveraging their existing familiarity with the form.

In the Proposing Release, we solicited comment on whether to require insurance companies to register the offerings of registered MVA annuities on Form N–4, and we detailed the various changes to disclosure that would be necessary to accommodate this change.[72] Commenters that spoke to this issue supported registering offerings of registered MVA annuities on Form N–4,[73] suggesting that investors in registered MVA annuities would benefit from a comparable disclosure regime that provides clear, relevant, and layered disclosure.[74] One of these commenters stated that registered MVA annuities are a significantly simpler product than RILAs and present a subset of identical risks to investors as RILAs.[75] Commenters also stated that many of the disclosures that would be required for RILAs on Form N–4 would also be appropriate for registered MVA annuities, such as disclosures on the operation of contract adjustments and the risks associated with such contract adjustments.[76] One commenter stated that only minor modifications to the disclosures for RILAs would be required to reflect that an investor's return in a RILA is based on the performance of an index while the return of a registered MVA annuity is based on a stated rate of interest.[77] Further, this commenter stated that registered MVA annuities

[65] *See* CAI Comment Letter; Gainbridge Comment Letter.

[66] *See* CAI Comment Letter.

[67] *See* CAI Comment Letter. Under the final amendments, RILAs that have previously registered offerings of securities on Forms S–1 or S–3 prior to the Compliance Date will need to file a post-effective amendment to their registration statement pursuant to rule 485(a) by May 1, 2026 using Form N–4. *See infra* Section II.J.

[68] *See* rule 12h–7(e).

[69] *See* Indexed Annuities and Certain Other Insurance Contracts, Exchange Act Release No. 34–59221 (Jan. 8, 2009) [74 FR 3138 (Jan. 16, 2009)] (''12h–7 Adopting Release'') at Section III.B.2.

[70] *See* rule 12h–7(e). Consistent with rule 12h–7(e), by ''State law'' we mean the law of any State or action of the insurance commissioner, bank commissioner, or any agency or officer performing like functions of any State.

[71] Of course, an issuer seeking to rely on rule 12h–7 would also need to comply with the rule's other requirements, including that it takes steps reasonably designed to ensure that a trading market for the securities does not develop. *See* rule 12h–7(e).

[72] Proposing Release at Section II.H.

[73] No commenters opposed using Form N–4 to register MVA annuity offerings, although one commenter urged that using Form N–4 should be optional in certain circumstances discussed below. *See infra* footnote 79. One commenter stated that contingent deferred annuities (''CDAs'') could be considered covered by the RILA Act and insurers should be permitted to use Form N–4 for these annuities under the provision in that Act allowing insurers to use Form N–4 for RILAs if the Commission does not provide a new registration form for RILAs by the statutory deadline. *See* VIP Working Group Comment Letter. We disagree. The RILA Act covers annuities that, among other things, have returns based on the performance of a benchmark index and may be subject to a market value adjustment if amounts are withdrawn before the end of the period during which that market value adjustment applies. CDA lifetime payment guarantees are not based on a benchmark or index and are not subject to such market value adjustments. Additionally, because CDAs are substantially different products than RILAs, significant modifications to Form N–4 would be required to accommodate offerings of CDAs.

[74] *See* CAI Comment Letter; IRI Comment Letter; VIP Working Group Comment Letter.

[75] CAI Comment Letter.

[76] *See* IRI Comment Letter; CAI Comment Letter.

[77] CAI Comment Letter.

may be offered in combination products with variable annuities and/or RILAs that will be registered on Form N–4. Given that such products will have one prospectus, this commenter stated that investors, issuers, and the Commission would benefit from such products registering on Form N–4, rather than registering on both Form N–4 (for the variable annuity or RILA component) and Form S–1 or Form S–3 (for the registered MVA annuity component).

At the same time, some commenters generally stated that registered MVA annuities should be permitted, but not required, to register on Form N–4.[78] Specifically, one commenter stated that, in particular, registration on Form N–4 should be optional for ''closed blocks,'' or registered MVA annuity offerings that no longer involve the issuance of new contracts.[79]

After considering comments, we have determined to require insurance companies to register offerings of registered MVA annuities on Form N–4 to provide investors with the tailored information necessary to make an investment decision, as discussed above.[80] Further, given the parallels outlined above between RILAs and registered MVA annuities and the use of combination contracts that can offer RILAs, registered MVA annuities, and variable annuities, registering offerings of registered MVA annuities on Form N–4 will be efficient for investors, insurance companies, and the Commission. As a result, we are requiring, not just permitting, the use of Form N–4 for registered MVA annuities. Permitting insurance companies to register offerings of closed block registered MVA annuities on Forms S–1 or S–3 would not provide these investor benefits or efficiencies. It also would hamper comparability if different registered MVA annuities provided materially different disclosure. However, the Commission administers the requirements for prospectuses included in registration statements on Form N–4 in a way that allows variances in disclosure or presentation—including now those relating to closed blocks of registered MVA annuities—if appropriate for the circumstances involved while remaining consistent with the objectives of the form.[81]

As a result of this change, registered MVA annuities must make the disclosures required in Form N–4 to the extent applicable. For example, they must meet the requirements of the front and back cover pages to the extent the disclosures apply to the offering of registered MVA annuities being registered.[82] As outlined in the Proposing Release, we also are adopting a number of specific disclosure requirements for registered MVA annuities designed to accommodate their inclusion on the form and provide investors disclosures tailored to registered MVA annuity products and highlight key information about these products.[83]

Table 1 outlines the key amendments, including certain conforming amendments, we are adopting to Form N–4 to accommodate offerings of registered MVA annuities:

TABLE 1—OVERVIEW OF FORM N–4 FOR REGISTERED MVA ANNUITIES

Item	Description	Substantive changes from the current form	Discussion
		Prospectus (Part A)	
N/A	Facing Page and General Instructions.	Added registered MVA annuity contracts to list of permissible uses.	Section II.C.8(a), Section II.C.8(b).
N/A	General Instructions	Added definition of ''Contract Adjustment'' to account for MVA fixed account options.	Section II.C.8(b).
6	Description of the Insurance Company, Registered Separate Account, and Investment Options.	New contract adjustment disclosures for MVA fixed account options.	Section II.C.4(a).
7	Charges and Adjustments	New contract adjustment disclosures applicable to MVA fixed account options.	Section II.C.6(b).
17	Investment Options Available Under the Contract.	New contract adjustment disclosures for MVA fixed account options.	Section II.C.4(b).
		Statement of Additional Information (Part B)	
26	Financial Statements	Providing that insurance companies can use the relevant instructions with regard to offerings of registered MVA annuities and adding requirements relating to changes in and disagreements with accountants for registered MVA annuities.	Section II.E.
		Other Information (Part C)	
31A	Information about contracts with Index-Linked Options and Fixed Options Subject to a Contract Adjustment.	New disclosure of registered MVA annuity specific information.	Section II.C.7.

[78] CAI Comment Letter; IRI Comment Letter.

[79] CAI Comment Letter. This commenter urged that if such closed blocks were required to register on Form N–4, the compliance period be extended from 12 months to 24 months to provide the necessary time to convert an additional class of contract to the new registration form. *See infra* Section II.J. for a discussion of effective and compliance dates for all rules and forms associated with the final amendments.

[80] *See supra* Sections I.B. and I.C.

[81] See final Form N–4, General Instruction C.1.(d). This rulemaking does not affect the Commission position on existing variable contracts whose issuers provide alternative disclosures to investors as stated in the VASP Adopting Release at Section II.E.3.

[82] *See, e.g., infra* Section II.C.1.

[83] *See* Proposing Release at Section II.H.

In addition to these changes to Form N–4, we are providing to registered MVA annuities the same offering and filing framework we are extending to RILAs for the same reason as we are making these changes for RILAs as discussed in more detail below.[84] This includes, for example, amendments permitting registered MVA annuities to use a summary prospectus, pay securities fees annually based on net sales, and use the same process to update their registration statements that will apply to RILAs. To implement the inclusion of registered MVA annuities in the amendments to the rules under the Securities Act, we also are adding a defined term ''registered market value adjustment annuity'' to rule 405 that is consistent with the amendments to Form N–4.[85] We are also extending the same requirements as to the use of Inline XBRL to registered MVA annuities for the same reasons we are extending these requirements to RILAs.[86]

C. Contents of Form N–4

Consistent with the proposal, many items of current Form N–4 will apply to RILAs in final Form N–4. These existing items of current Form N–4 will also apply to registered MVA annuities. We are also adopting amendments to Form N–4 to require disclosures specific to RILAs as well as amendments that also will apply to offerings of variable annuities. Some of these disclosures will also apply to registered MVA annuities. Table 2 outlines the substantive amendments we are adopting to Form N–4.[87]

TABLE 2—OVERVIEW OF FORM N–4

Item	Description	Substantive changes from the current form	Discussion
		Prospectus (Part A)	
1	Front and Back Cover Pages	Adding new legends and other standardized disclosures	Section II.C.1.
2	Overview of the Contract	New non-variable annuity-specific disclosures; moving order of appearance up.	Section II.C.2.
3	Key Information	New non-variable annuity-specific disclosures; changing to a question-and-answer format; moving order of appearance down; change discussion of restrictions on optional benefits to cover all benefits.	Section II.C.3.
4	Fee Table	New contract adjustment disclosure	Section II.C.6(a).
5	Principal Risks of Investing in the Contract.	Providing more detailed disclosures applicable to all issuers	Section II.C.5.
6	Description of the Insurance Company, Registered Separate Account, and Investment Options.	New non-variable annuity-specific disclosures and one new item regarding variable options.	Section II.C.4(a).
7	Charges and Adjustments	New disclosures related to contract adjustments; renamed item.	Section II.C.6(b).
8	General Description of Contracts.	No substantive change	Section II.C.9(b).
9	Annuity Period	No substantive change	Section II.C.9(b).
10	Benefits Available Under the Contract.	No substantive change	Section II.C.9(b).
11	Purchases and Contract Value.	No substantive change	Section II.C.9(b).
12	Surrenders and Withdrawals	No substantive change	Section II.C.9(b).
13	Loans	No substantive change	Section II.C.9(b).
14	Taxes	No substantive change	Section II.C.9(b).
15	Legal Proceedings	No substantive change	Section II.C.9(c).
16	Financial Statements	No substantive change (but see Item 26)	Section II.E.
17	Investment Options Available Under the Contract.	New non-variable annuity-specific disclosures	Section II.C.4(b).
		Statement of Additional Information (Part B)	
18	Cover Page and Table of Contents.	No substantive change	Section II.C.9(b).
19	General Information and History.	No substantive change	Section II.C.9(c).
20	Non-Principal Risks of Investing in the Contract.	No substantive change	Section II.C.9(b).
21	Services	No substantive change	Section II.C.9(b).
22	Purchase of Securities Being Offered.	New disclosure of specific contract adjustment information	Section II.C.6(c).

[84] *See infra* Sections II.C, D, E, and F.

[85] ''Registered market value adjustment annuity'' is defined as an annuity or an option available under an annuity, that is not a registered index-linked annuity, and (1) that is deemed a security; (2) that is offered or sold in a registered offering; (3) that is issued by an insurance company that is subject to the supervision of either the insurance commissioner or bank commissioner of any State or any agency or officer performing like functions as such commissioner; (4) that is not issued by an investment company; and (5) whose contract value may reflect a positive or negative adjustment (based on calculations using a predetermined formula, a change in interest rates, or some other factor or benchmark) if amounts are withdrawn before the end of a specified period. This definition mirrors that of ''registered index-linked annuity'' we are adding to rule 405 for RILAs, other than the last provision which is based on the definition of ''contract adjustment'' we are adding to Form N–4.

[86] *See infra* Section II.C.10.

[87] Some of the final amendments entail a non-substantive change such as a change to a defined term or specifying that the provision would continue to be applicable only to a registered separate account or variable option. These are not discussed in the following table but are instead discussed in Sections II.C.8 and II.C.9 *infra.*

TABLE 2—OVERVIEW OF FORM N–4—Continued

Item	Description	Substantive changes from the current form	Discussion
23	Underwriters	No substantive change	Section II.C.8(c).
24	Calculation of Performance Data.	Clarifying only applies to variable options	Section II.C.8.
25	Annuity Payments	No substantive change	Section II.C.9(b).
26	Financial Statements	Providing that insurance companies can use the relevant instructions relating to financial statements and adding requirements relating to changes in and disagreements with accountants for non-variable annuities.	Section II.E.
Other Information (Part C)			
27	Exhibits	Adding power of attorney for all issuers and accountant letters for non-variable annuity issuers as exhibits.	Section II.C.8(d).
28	Directors and Officers of the Insurance Company.	No substantive change	Section II.C.9(c).
29	Persons Controlled or Under Common Control with the Insurance Company or the Registrant.	No substantive change	Section II.C.9(c).
30	Indemnification	No substantive change	Section II.C.9(c).
31	Principal Underwriters	No substantive change	Section II.C.9(c).
31A	Information about contracts with Index-Linked Options and Fixed Options Subject to a Contract Adjustment.	New disclosure of non-variable annuity specific information	Section II.C.7.
32	Location of Accounts and Records.	No substantive change	Section II.C.8.
33	Management Services	No substantive change	Section II.C.9(b).
34	Fee Representation and Undertakings.	Adding new non-variable annuity undertakings	Section II.C.8(d).

1. Front and Back Cover Pages (Item 1)

Currently, issuers using Form N–4 are required to include on the front and back cover pages basic identifying information about the issuer and the contract, information on how to review the document (*e.g.,* what the SAI is and where to find it), as well as certain legends, for example, one relating to the ability for an investor to cancel the contract within 10 days.[88] We are adopting amendments to require insurance companies registering offerings of non-variable annuities to include this general information on the front and back cover pages of the prospectus, as well as non-variable annuity—specific disclosures on the front cover page. We are adopting these amendments substantially as proposed, with modifications in response to comments. The following table summarizes the cover page requirements, as amended:

TABLE 3—INFORMATION REQUIRED BY ITEM 1 OF FORM N–4 AS AMENDED

Item No.	Disclosure	Cover	Changed from proposal?
Identifying Information			
Item 1(a)(1)	Registered separate account's name	Front	No.
Item 1(a)(2)	Insurance company's name	Front	No.
Item 1(a)(3)	Types of contracts offered (*e.g.,* group, individual, etc.)	Front	No.
Item 1(a)(4)	Name and class of contract	Front	No.
Item 1(a)(5)	List of types of investment options offered under the contract with cross references to the appendix with further information about those options.	Front	No.
Item 1(a)(9)	Date of prospectus	Front	No.
Item 1(b)(4)	EDGAR identifier number	Back	No.
Legends			
Item 1(a)(6)	Statement that the contract is a complex investment and involves risks, including potential loss of principal. For contracts that include an index-linked option: A prominent statement, as a percentage, of the maximum amount of loss that an investor could experience from negative index performance after taking into account the current limits on index loss, which may include a range of the maximum amount of loss if the contract offers different limits on index loss	Front	Yes. Revised statements about potential for investment loss, manner in which the insurance company determines the maximum loss due to negative index performance, and minimum limits on index gains and losses.

[88] *See* current Form N–4, Item 1.

TABLE 3—INFORMATION REQUIRED BY ITEM 1 OF FORM N–4 AS AMENDED—Continued

Item No.	Disclosure	Cover	Changed from proposal?
	Prominent disclosure of any minimum limits on index losses that will always be available under the contract or, alternatively, a prominent statement that the insurance company does not guarantee that the contract will always offer index-linked options that limit index losses, which would mean risk of loss of the entire amount invested. A prominent statement that the insurance company limits the amount an investor can earn on an index-linked option. A prominent statement, for each type of limit offered (*e.g.,* cap, participation rate, etc.), of the lowest limit on index gains that may be established under the contract.		
Item 1(a)(7)	Statement that the contract is not a short-term investment and is not appropriate for an investor who needs ready access to cash. Statement that withdrawals could result in, among other things, surrender charges and negative contract adjustments, including a prominent disclosure stating, as a percentage, the maximum potential loss resulting from a negative contract adjustment, if applicable.	Front	No.
Item 1(a)(8)	Statement that the insurance company's obligations under the contract are subject to its financial strength and claims-paying ability.	Front	No.
Item 1(a)(10)	Statement that the Commission has not approved or disapproved of the securities or passed upon the accuracy or adequacy of the disclosure in the prospectus and that any contrary representation is a criminal offense (as required in 17 CFR 230.481(b)(1)).	Front	No.
Item 1(a)(11)	Statement that additional information about the contract is available on *Investor.gov*.	Front	No.
Item 1(a)(12)	A legend that states that if you are a new investor, you may cancel your contract within 10 days of receiving it without paying fees or penalties with some details about the operation of this process including whether a contract adjustment will be applied to the returned amount.	Front	No.
	Other Information		
Item 1(b)(1)	Statement that the SAI contains additional information, that it is available to investors, and how investors may obtain the SAI or make inquiries about their contracts.	Back	No.
Item 1(b)(2)	Statement about whether and from where information is incorporated by reference.	Back	No.
Item 1(b)(3)	Statement that reports and other information about the registered separate accounts and, if applicable, the insurance company, are available on the Commission's website and that copies of this information may be obtained.	Back	Yes. Applied this requirement to insurance companies in addition to separate accounts.

We proposed to make several changes to the front cover page, including four additional disclosures in Item 1(a).[89] Certain proposed changes received no comments and we are adopting them as proposed:

(1) Changes to Item 1(a)(1) to require disclosure of ''the registered separate account's name'' whereas this item previously asked for ''the registrant's name.''

(2) Changes to Item 1(a)(2) to require disclosure of ''the insurance company's name'' instead of the current requirement for ''the depositor's name.''

(3) Changes to Item 1(a)(3) to require disclosure of the types of *contracts* offered by the prospectus (*e.g.,* group, individual, single premium immediate, flexible premium deferred), as opposed to the current form, which requires disclosure of the types of *variable annuity* contracts offered by the prospectus.

(4) New Item 1(a)(5), which requires disclosure of the types of investment options under the contract and a cross reference to the prospectus appendix providing additional information about each option.

(5) We also are moving certain items to different locations on the front cover page without changing the content of the required disclosure.[90]

We are adding new Items 1(a)(6) and (7) to the front cover page of final Form N–4, which we are adopting with modifications from the proposal, as discussed below. The four items on the back cover page—Item 1(b)—are largely unchanged with the exception of extending the disclosure requirements (suggested by a commenter) of Item 1(b)(3) to include the insurance company, if applicable.[91]

In addition, and as proposed, the additional disclosures on the front cover page also will be required for

[89] *See* Proposing Release at Section II.B.1.

[90] Specifically, on Form N–4, current Item 1(a)(5), which requires disclosure of the date of the prospectus, is moving to final Item 1(a)(9); current Item 1(a)(6), which requires a statement required by rule 481(b)(1) under the Securities Act, is moving to final Item 1(a)(10); current Item 1(a)(7), which requires a statement that additional information about certain investment products, including variable and non-variable annuities, has been prepared by Commission staff and is available at investor.gov, is moving to final Item 1(a)(11); and current Item 1(a)(8), which requires a legend stating that new investors to the contract may be able to cancel the contract within 10 days without paying fees or penalties, is moving to final Item 1(a)(12).

[91] *See* CAI Comment Letter. The modification to Item 1(b)(3) is discussed in further detail below. Current Item 1(b)(3) indicates that reports and information about the registered separate account are available on the Commission's website. That language has been retained in final Form N–4. The statement would address available reports about the insurance company only if applicable.

registration statements relating to offerings of variable annuities filed on that form to the extent relevant.[92] Specifically, these are disclosures relating to the complexity of the investment and potential loss of principal, that the contract is not a short-term investment and the appropriateness of that investment, and that an insurance company's obligations under the contract are subject to its financial strength and claims paying abilities.[93] While these disclosures are important for investors in non-variable annuities, they also are relevant in many cases to investors in variable annuities.

The comments that we received on the proposed cover page requirements were mixed. One commenter generally supported these disclosures, stating that the proposal ensured that the most important disclosures about RILAs appear on the cover page.[94] Another commenter suggested that, other than the disclosures related to maximum loss, the proposed cover page disclosures were, for the most part, designed to result in short, concise, and sensible cover page disclosures.[95] Other commenters, however, raised concerns.[96]

First, some commenters raised concerns about the volume of disclosures proposed to be included on the cover pages, particularly those related to the maximum losses.[97] One such commenter suggested that the inclusion of all of these disclosures could cut against the form's layered disclosure approach.[98] These cover page disclosures are generalized statements designed to put an investor on notice of key considerations to help an investor make informed decisions. In particular, they are designed to highlight the complexities and certain associated risks of non-variable annuities for investors, and including this key information on the cover page helps ensure that an investor has information about these key aspects of a non-variable annuity at the outset. The number of specific features and risks highlighted on the cover page is driven by the complex nature of the non-variable annuity being registered. Further, because these points are generalized on the cover page but discussed in more detail later in the prospectus, they are consistent with the concept of layered disclosure. These disclosures also should help investors better understand the nature of the various investment options available under the contract.

Second, commenters addressed certain specific items the Commission proposed to include on the front cover page. Commenters raised particular concerns with the proposed requirement to disclose as a percentage the maximum amount of loss from negative index performance that an investor could experience after taking into account the minimum guaranteed limit on index loss provided under the contract.[99] Commenters objected to this disclosure because, in their view: (1) requiring RILA issuers to disclose this percentage was unnecessary because the chance of investors experiencing this maximum loss was extremely remote,[100] (2) the cover page lacks appropriate context for this percentage and instead RILA issuers should include a narrative (not numeric) disclosure stating that an investor could lose a significant amount of money by investing in an index-linked option,[101] and (3) such maximum potential loss disclosure was unwarranted because other issuers of securities are not required to include this information on the cover pages of their prospectuses.[102] Separately, some commenters similarly opposed the proposed requirement to disclose, as a percentage, the maximum potential loss resulting from a negative contract adjustment as such a maximum loss would also be unlikely.[103]

In response to comments opposing the proposed requirement to disclose as a percentage the maximum amount of loss from negative index performance or from a contract adjustment that an investor could experience, the final disclosure requirements are designed to reflect that the risk that an investor could lose a substantial amount of money due to negative index performance is a key risk of a RILA.[104] Similarly, loss related to negative contract adjustments is a key risk of all non-variable annuities. Providing the maximum possible loss in these circumstances on the front cover page will alert investors to these risks in concrete terms. Moreover, disclosure of a maximum ''potential'' loss is not intended to suggest the maximum loss is likely to occur. The form does not prevent the insurance company from providing additional appropriate context.

Although issuers of other securities like mutual funds and ETFs do not disclose the maximum potential loss associated with those securities, such products also are not generally structured to provide loss protection. For RILAs, in contrast, loss protection is a central feature of the product and an emphasis in RILA marketing.[105] Numeric disclosure of the potential maximum loss helps an investor understand the extent to which a given RILA provides loss protection in simple terms. This is particularly important because investor testing has shown that investors struggled with the mechanics of loss protection and the consequences of withdrawals.[106] Placing this disclosure on the front cover page is designed to put investors on notice that those loss protections can, in the context of RILAs, have limitations and highlight, in the context of all non-variable annuities, a potential consequence of withdrawals. A numeric example is well suited for the cover page because it communicates the extent of loss protection briefly and

[92] *See* Proposing Release at Section II.B.1. Commenters did not specifically address the inclusion of these disclosures for variable annuity offerings.

[93] *See* final Form N–4, Item 1(a)(6), (7), and (8).

[94] *See* Better Markets Comment Letter.

[95] *See* CAI Comment Letter.

[96] Commenters suggested that, should the Commission extend the use of Form N–4 to registered MVA annuities, their comments would also apply to disclosures related to those securities. *See, e.g.,* CAI Comment Letter (supporting some aspects of the proposal but criticizing the maximum loss disclosure on the cover page); VIP Working Group Comment Letter.

[97] *See* CAI Commenter Letter; VIP Working Group Comment Letter.

[98] *See* CAI Comment Letter.

[99] Proposed Form N–4, Item 1(a)(6).

[100] VIP Working Group Comment Letter (stating that the analysis done by OIAD in the OIAD Investor Testing Report suggested that losses on these products over the long term have historically been remote); Comment Letter of Benji Johnson (Oct. 31, 2023) (''Johnson Comment Letter''); CAI Comment Letter; Datop Comment Letter; *see also* ACLI Comment Letter.

[101] CAI Comment Letter.

[102] VIP Working Group Comment Letter; Johnson Comment Letter; Datop Comment Letter.

[103] Proposed Form N–4, Item 1(a)(7). *See* CAI Comment Letter; VIP Working Group Comment Letter. Several commenters also suggested that these two maximum potential loss disclosures, one from index performance and the other from contract adjustments, could cause investors to mistakenly believe that such losses are likely. CAI Comment Letter; VIP Working Group Comment Letter; Johnson Comment Letter.

[104] VIP Working Group Comment Letter; Johnson Comment Letter; CAI Comment Letter; Datop Comment Letter; *see also* ACLI Commenter Letter.

[105] One commenter raising concern with this disclosure's placement in the cover page ''acknowledge[d] that the risk of loss associated with RILAs is an important concept to convey [and that] [u]nlike most other investments, RILAs provide a level of downside protection, and an investor should therefore understand the limits of that protection.'' CAI Comment Letter.

[106] OIAD Investor Testing Report at Section 5, Qualitative Testing, Results from Round 1. *See* Proposing Release at n.75 and accompanying text (investor testing participants struggled to understand loss limiting features, such as buffers), and at n.33 and accompanying text (investor testing participants often did not understand that there are multiple aspects of a typical RILA contract that could negatively affect an investor's contract value or the amount that the investor could withdraw from the contract (*e.g.,* surrender charges, interim value adjustments, and tax penalties)).

concretely, and additional context will be available elsewhere in the prospectus.

Commenters also raised concerns with various proposed disclosure requirements' reference to ''minimum guaranteed'' limits on index loss (or gain), including raising this concern with respect to the cover page.[107] Another commenter sought clarification regarding whether a similar disclosure requirement referring to guaranteed minimums for the life of the contract was intended to require insurance companies to establish such minimums.[108]

We understand that not all RILAs provide minimum guaranteed limits on index loss for the life of the contract that could be used to calculate the proposed maximum possible loss due to negative index performance. After considering comments, we are modifying the language of this disclosure requirement to reflect this fact. Under the final amendments, the insurance company must prominently state as a percentage the maximum amount of loss from negative index performance that an investor could experience after taking into account the current limits on index loss provided by the index-linked options under the contract.[109] The insurance company may provide a range of the maximum amount of loss if the contract offers different limits on index loss. Basing this disclosure on the contract's actual current limits on index losses is designed to address commenters' concerns about RILAs without guaranteed limits, and permitting the insurance company to provide a range of losses allows the insurance company to reflect the range of loss protection offered under the contract.

We are modifying the proposed language of this disclosure requirement to specify that an insurance company that does not disclose a minimum limit on index loss that will always be available under the contract must prominently state that it does not guarantee that the contract will always offer index-linked options that limit index loss, which would mean risk of loss of the entire amount invested. We are requiring this disclosure because RILAs are long-term investments, with an investor's returns determined by the economic terms available both at the time of investment and during future crediting periods. The guaranteed minimum limits on index losses that always will be available—or the fact that the insurance company makes no guarantee at all—are key considerations for an investor considering a RILA that should be disclosed on the cover page. The final amendments' approach therefore incorporates the proposed requirement to disclose on the front cover page the maximum loss from negative index performance taking into account guaranteed minimum limits on index losses but, in response to comments, provides information on any guaranteed minimum limits without assuming that each RILA offers them.[110]

One commenter stated that it found confusing the proposed requirement to state that the potential for investment loss could be significantly greater than the potential for investment gain.[111] After considering comments we have determined not to require the proposed disclosure because an investor's potential inability to recoup prior losses due to limits on gains is a nuanced concept that is challenging to articulate in concise cover page disclosure. We are instead requiring the insurance company to disclose information about the contract's limits on participation in positive index performance, not only because these limits are central features of a RILA, but also because they can limit an investor's ability to recoup losses (which the proposed disclosure item was designed to convey). We therefore are requiring the insurance company to prominently state, for each type of limit offered (*e.g.,* cap, participation rate, etc.), the lowest limit on index gains that may be established under the contract.[112] This information is particularly important for an investor considering a RILA because RILAs are long-term investments and the investor's returns are driven not just by the economic terms available at the time of investment, but also in future crediting periods. In another change from the proposal, we are not adopting the proposed Item 1(a)(6) requirement to state that an investor could lose a significant amount of money if the index declines in value. We are doing so because the required disclosure in this item, and elsewhere on the form, of the maximum possible loss due to declines in index performance make clear that investors face the potential for losses in these circumstances.[113]

Finally, one commenter suggested that we amend a current back cover page disclosure requirement regarding the availability of additional information to apply to RILAs.[114] This sub-item currently requires variable annuity prospectuses to state that reports and other information about a registered separate account may be found on the Commission's website.[115] The commenter suggested applying this requirement to insurance companies that issue RILAs to the extent that they provide reports and other information to the Commission through their regular reporting under the Exchange Act. We agree that some investors might find the information and reports about the insurance companies useful when making investment decisions and have adjusted this requirement in the final form accordingly.[116]

2. Overview of the Contract (Item 2)

We are, largely as proposed, amending the requirements for the Overview of the Contract (''Overview'') to include RILAs generally, require disclosure about certain key elements of any index-linked option offered under the contract, and highlight any contract adjustments. Consistent with the inclusion of registered MVA annuities on Form N–4, the Overview also will discuss these annuities, as applicable. As discussed below, this section will precede the KIT.[117]

Under the final amendments, insurance companies that are registering non-variable annuities must provide the same Overview disclosures that are currently required for variable annuities, modified to include certain RILA-specific disclosures. All contracts registered on the form must provide an Overview with a concise description of the contract, including information about: (1) the contract's purpose; (2) the phases of the contract, including a discussion of the available investment options; (3) the primary features of the contract; and (4) contract

[107] *See* VIP Working Group Comment Letter (stating that contracts do not include a minimum guaranteed limit on losses); CAI Comment Letter.

[108] CAI Comment Letter. *See* Proposing Release at Section II.B.1. for a discussion of the proposed disclosure requirement.

[109] We understand that, unlike the current limits on index *gain,* current limits on index *loss* do not change often, if at all, during the life of the contract. *See infra* Sections II.C.2 and II.C.3.a (discussing concerns raised by commenters relating to the disclosure of current limits on index gain).

[110] These changes, which are contained in Item 1(a)(6)(a), are mirrored in Instruction 3(a) to Item 3 and Item 5(a). *See, e.g., infra* at footnote 386.

[111] *See* Johnson Comment Letter; *see also* proposed Form N–4, Item 1(a)(6).

[112] *See* final Form N–4, Item 1(a)(6)(b).

[113] *See also, e.g.,* final Form N–4, Instruction 3(a) to Item 3.

[114] CAI Comment Letter.

[115] Current Form N–4, Item 1(b)(3).

[116] *See* final Form N–4, Item 1(b)(3). Because registered MVA annuities are also issued by an insurance company, not a registered separate account, this change will also apply to registration statements relating to offerings of those securities.

[117] Because we are requiring the Overview to appear before the KIT, current Item 3 (Overview of the Contract) will be renumbered as Item 2. *See infra* Section II.C.3.

adjustments.[118] We are adopting these amendments as proposed. Because offerings of registered MVA annuities will be registered on Form N–4, these requirements also will apply to offerings of registered MVA annuities, as applicable. No substantive changes from the proposed approach, however, were necessary to address registered MVA annuities.

In addition to information about the purpose of the contract, under the final amendments, a prospectus that offers index-linked options must include in the Overview (as part of the discussion of the phases of the contract): (1) a statement that the insurance company will credit positive or negative interest at the end of a crediting period to amounts allocated to an index-linked option based, in part, on the performance of the index; (2) a statement that an investor could lose a significant amount of money if the index declines in value; (3) an explanation that the insurance company limits the negative or positive index returns used in calculating interest credited to an index-linked option at the end of its crediting period, accompanied by a brief description and an example of the manner in which such returns may be limited; and (4) disclosure of guaranteed minimum limits on index losses or gains.[119] We are adopting the amendments described in (1)–(3) generally as proposed. We are adopting changes to the language of the proposed disclosure requirements addressing minimum limits on index losses and gains, which will be parallel to changes we are adopting to this language throughout Form N–4, as discussed in more detail below.[120] Specifically, we are changing the language of the proposed disclosure requirement addressing minimum limits on index losses to specify that an insurer that does not offer a minimum guaranteed limit on index losses must disclose that fact. We are adopting changes to the proposed language of the requirement for disclosing minimum limits on index gains to specify that insurers must prominently state, for each type of limit offered (*e.g.,* cap, participation rate, etc.), the lowest limit on index gains that may be established under the contract.[121]

As proposed, the Overview also will provide, if applicable, a discussion of contract adjustments that must include a statement that an investor could lose a significant amount of money due to the contract adjustment if amounts are removed from an investment option or from the contract prior to the end of a specified period, accompanied by a brief description of the transactions subject to a contract adjustment.[122] In a change from the proposal, we are not adopting the proposed requirement to include in the Overview numeric risk of loss disclosures associated with negative index performance or contract adjustments, as discussed further below.

As proposed, the Overview will precede the KIT. We are reordering these sections based on investor testing results indicating that investors reviewing sample KIT disclosure had difficulty understanding the basic features and concepts of RILA contracts, for example, ''index,'' ''investment term,'' ''interim value adjustment,'' and ''buffer.'' [123] The Overview provides general information about the contract and important context about the information summarized in the KIT. In particular, the Overview will, as discussed below, require descriptions and examples to help investors understand these RILA features, including contract adjustments, which we anticipate will provide a basis for better understanding the issues that the KIT disclosures address. Based on our observations of investor testing, investors may generally benefit from having more context in order to understand the KIT disclosures. Placing the Overview first may similarly provide context for the issues flagged in variable annuity KITs.

We received one comment on this proposed reordering in Form N–4. The commenter stated that the repetition of certain information in both the Overview and the KIT undermines our rationale for proposing to reorder the two sections.[124] We disagree that covering some of the same topics in the Overview and the KIT is inconsistent with changing the order of these disclosures. The KIT is designed to identify, in a consolidated location, key risks and features of the contract it describes.[125] Certain of this information is also included in the high-level contract summary provided in the Overview. The disclosure is included in both locations to allow the reader to understand the contract at a high level (in the Overview of the Contract), as well as key features and risks of the annuity whose offering is being registered (in the KIT). Further, KIT requirements that address the same topic in different contexts may aid investor understanding of complex disclosure, and this approach is consistent with a layered disclosure approach.

In terms of the proposed content requirements for the Overview section, one commenter generally supported the proposed amendments.[126] This commenter not only stated that the proposed amendments to the Overview were generally appropriate (including requirements applicable to RILAs and variable annuities), but also that the proposed disclosure requirements regarding the index-linked options ''cover most of the key aspects that investors should be aware of to understand the cyclical nature of the index-linked options,'' and ''strike the right balance by providing investors with the proper level of summary disclosure, with additional information appearing later in the prospectus.'' While no commenter generally opposed our proposed changes, several requested modifications to some of the specific proposed disclosures.

As discussed above, some commenters raised general concerns about disclosure that appears in both the Overview and the KIT and suggested that we reduce or eliminate perceived duplicative disclosure in those two sections to simplify and streamline the prospectus.[127] Such comments largely concerned the proposed narrative and numeric risk of loss disclosures for index-linked options and contract adjustments. One commenter stated it did not oppose the inclusion of narrative and numeric risk of loss disclosure in the Overview for end-of-term index declines and negative contract adjustments because ''the generally free-writing nature of the Overview allows the registrant to provide appropriate context for the reader.'' [128] Conversely, two commenters generally opposed the proposed risk of loss disclosures for negative index performance and

[118] Final Form N–4, Item 2(a)–(d).

[119] Final Form N–4, Items 2(b)(2)(i)–(iv).

[120] Final Form N–4, Item 2(b)(2)(iii).

[121] Final Form N–4, Items 2(b)(2)(iii) and (iv).

[122] Final Form N–4, Item 2(d). Although one commenter suggested that we relocate the proposed disclosure item for contract adjustments under the sub-item for index-linked option disclosures, we are not making this change because contract adjustments are not specific to index-linked options; they apply to MVA annuity options as well. In a change from the proposal, we are replacing ''index-linked option'' with ''investment option'' to convey contract adjustments are associated with other types of investment options in addition to index-linked options.

[123] *See, e.g.,* OIAD Investor Testing Report at Section 5, Qualitative Testing, Results from Round 1, Summary of Qualitative Testing, Section 6, Quantitative Testing, Summary of Quantitative Testing.

[124] *See* CAI Comment Letter.

[125] *See* VASP Adopting Release at paragraph following n.106.

[126] CAI Comment Letter.

[127] CAI Comment Letter; ACLI Comment Letter.

[128] CAI Comment Letter.

contract adjustments on the grounds that RILA issuers should not be required to make disclosures that are not required of variable annuities, and cited concerns that such disclosures incorrectly portray such products as high-risk investments.[129]

One of these commenters stated that the proposal to require RILA issuers to disclose that an investor could lose a ''significant amount of money'' is inconsistent with existing disclosure for variable annuity products, which requires a statement that ''an investor can lose money by investing in the Contract.'' [130] This commenter stated that a RILA investor is at no greater risk of losing a more substantial amount of money than a variable annuity investor, and that if all performance variables were equal, a RILA investor has reduced risk of loss compared to a variable annuity investor because RILAs have the added benefit of downside protection. This commenter also objected to the proposed requirement to disclose in the Overview that an investor could lose a ''significant'' amount of money due to an index decline or a contract adjustment, viewing that term as subjective. Another commenter asked that we modify the proposed narrative risk of loss disclosure for negative contract adjustments to state that losses could be significant under ''extreme market conditions.'' [131] This commenter also opposed requiring numeric risk of loss disclosure associated with a negative contract adjustment on the grounds that the narrative disclosure ''is sufficient without including a numeric figure.'' One commenter asked that we clarify that the proposed numeric risk of loss disclosure for contract adjustments could be modified to avoid any implication that the risk of loss is greater than 100%.[132]

We are adopting the Overview's narrative risk of loss disclosures largely as proposed.[133] These disclosures, each of which is a single sentence, are appropriate in light of the fact that RILAs, unlike variable annuities and other investment companies, are structured products that have unique features and risks despite contract similarities to variable annuities. Unlike variable annuities, index-linked options offer downside protection from market declines—and are marketed on that basis. The disclosures we are adopting will alert RILA investors that there are limits to those protections. Moreover, we are retaining the proposed requirement to state that an investor could lose money, with the ''significant'' descriptor designed to put investors on notice of losses they might not anticipate, given that investor testing revealed that investors tend to overestimate loss protection.[134] Significant losses associated with index-linked options may be infrequent, but they can and do happen, and investors should be aware of the possibility. We also are not modifying the proposed disclosure requirement to state that significant losses associated with contract adjustments may only occur under ''extreme market conditions'' because an investor who withdraws from a contract before the end of the crediting period may suffer significant losses relative to the value of the initial investment, regardless of market conditions. Nevertheless, the form does not prohibit an insurer from accompanying the required statement with contextual disclosure that explains when significant losses associated with contract adjustments might occur.

While we are adopting the narrative risk of loss disclosures as proposed, in a change from the proposal and in response to comments raising concerns about duplicative disclosure, we are not adopting the proposed numeric risk of loss disclosures associated with index declines or contract adjustments in the Overview. This change recognizes that the proposed numeric disclosures appear on the cover page, as well as the KIT, and, as one commenter observed, the Overview and the KIT are designed to be read together.[135] Requiring narrative-only risk of loss disclosure in the Overview is sufficient to flag this potential risk for investors because it will be immediately followed by the KIT, which will require the numeric risk of loss disclosure.[136] Although one commenter suggested we require numeric disclosure in the Overview rather than the KIT, as discussed further below, the brevity of the numeric disclosure is well suited to the KIT.[137]

Some commenters sought clarification regarding whether our proposal to require insurers to disclose guaranteed minimum limits on index losses or gains effectively seeks to impose a substantive requirement for insurance companies to offer minimum limits.[138] One commenter asked whether a prospectus for a contract that does not offer minimum limits may omit the proposed disclosure.[139] The proposal—and the final amendments we are adopting—are designed to result in clear disclosure of minimum limits that are an inherent feature of the contract, not to dictate contract terms or prescribe specific minimum limits.

For downside protection, we understand some RILA issuers may not offer index-linked options with minimum limits on index losses that will always be available under the contract. Because downside protection is one of the chief selling points for index-linked options, a particular RILA not offering minimums on index losses that will always be available under the contract is material information that must be prominently disclosed in the prospectus. Without downside protection, investors are at risk of losing their entire investment due to poor index performance. And without a minimum rate of downside protection that will always be available under the contract, an investor is considering making a long-term investment without certainty as to the amount of downside protection that will apply to future crediting periods. Likewise, without disclosing a minimum limit on index gains that will always be available under the contract, an investor would not know the extent to which investments in future index-linked options would result in credited interest when there is positive index return. To help ensure that investors have this information while also responding to comments requesting clarification, we are modifying the proposed requirement to disclose guaranteed minimums on index losses. Instead, the final amendments require the insurer to prominently disclose any minimum limits on index losses that will always be available under the contract, or, alternatively, prominently state that the insurer does not guarantee that the contract will always offer index-linked

[129] ACLI Comment Letter; Gainbridge Comment Letter.

[130] ACLI Comment Letter.

[131] VIP Working Group Comment Letter.

[132] CAI Comment Letter.

[133] Final Form N–4, Items 2(b)(2)(ii) and 2(d). The only change we are adopting to the narrative risk of loss disclosure requirements is a revision to Item 2(d), replacing ''Index-Linked Option'' with ''Investment Option,'' to clarify that contract adjustments may apply to options other than index-linked options.

[134] *See* OIAD Investor Testing Report at Section 5, Qualitative Testing (qualitative interviews suggested confusion with RILA terms and concepts relating to, for example, loss limiting features such as buffers).

[135] CAI Comment Letter.

[136] Final Form N–4, Instructions 2(a) and 3(a) to Item 3.

[137] CAI Comment Letter. *See also infra* footnote 174 and accompanying paragraph for related discussion.

[138] CAI Comment Letter; VIP Working Group Comment Letter; Gainbridge Comment Letter.

[139] VIP Working Group Comment Letter; Gainbridge Comment Letter.

options that limit index losses.[140] In addition, largely as proposed, we are adopting a requirement for insurers to disclose the minimum limits on index gains guaranteed for the life of the contract, with some changes to the proposed language to address commenters' requests for clarification.[141]

These changes from the proposal are intended to clarify that this requirement is designed to seek disclosure on the minimum limit on index gains that will always be available under the contract for each type of limit offered. The final amendments also conform this disclosure requirement with our understanding of current practices and the nature of RILA investments—that is, while an insurance company may not offer loss protection, a RILA inherently involves some degree of participation in index gains. The insurance company therefore must disclose the minimum extent to which investors can participate in index gains under the contract. Specifically, the final rule will require the insurer to prominently state, for each type of upside limit being offered (*e.g.,* cap, participation rate, etc.), the lowest limit on index gains that may be established under the contract.[142]

3. Key Information Table (Item 3)

The KIT requirements in Form N–4 currently require a brief description of key facts about a variable annuity to appear in the prospectus, in a specific sequence and in a standardized presentation.[143] The KIT functions as an integral part of the layered disclosure in Form N–4 by identifying key considerations upfront, with more detail to follow later in the prospectus. We are adopting the final amendments generally as proposed with modifications to address comments we received. As proposed, we are requiring that insurance companies provide a KIT in registration statements relating to RILA offerings, as is currently done with variable annuities, and in a modification from the proposal are extending this requirement to offerings of registered MVA annuities.[144] We are adopting amendments to the current KIT requirements to highlight key features of non-variable annuities, with some modifications from the proposal in response to comments. These amendments are informed by investor testing and are designed to build on the existing KIT disclosure framework and highlight important considerations related to non-variable annuities, including certain aspects of RILAs that our investor testing observed are difficult for investors to understand and thus require clear disclosure in order to help investors make informed investment decisions.[145] In addition, as proposed, we are adopting amendments to the KIT that will apply to both non-variable and variable annuities that are designed to provide investors with a better understanding of these products.

Commenters generally supported the proposed requirement that insurance companies provide a KIT in RILA registration statements.[146] Comments on the proposed amendments affecting the KIT's specific format and disclosure requirements, however, were mixed.[147] One commenter supported the proposed amendments to the KIT.[148] This commenter stated that the disclosure required to appear in the KIT provides investors with a complete picture of RILA risks in a prominent place. In contrast, other commenters supported a portion of the proposed amendments to the KIT but also opposed certain of the proposed amendments, as discussed further below.[149] Commenters suggested that, should the Commission extend the use of Form N–4 to registered MVA annuities, their comments would also apply to disclosures related to those securities, to the extent applicable.[150]

The overall format of the final KIT is depicted below:

TABLE 4—KEY INFORMATION TABLE AS ADOPTED

Fees, Expenses, and Adjustments:	
Are There Charges or Adjustments for Early Withdrawals? Are There Transaction Charges? Are There Ongoing Fees and Expenses?	
Risks:	
Is There a Risk of Loss from Poor Performance? Is this a Short-Term Investment? What Are the Risks Associated with the Investment Options? What are the Risks Related to the Insurance Company?	
Restrictions:	
Are There Restrictions on the Investment Options?	

[140] Final Form N–4, Item 2(b)(2)(iii).

[141] Proposed Form N–4, Item 2(b)(2)(iv) would have required insurers to ''[d]isclose the minimum limit on Index gains guaranteed for the life of the Contract for any Index-Linked Option,'' whereas final Form N–4, Item 2(b)(2)(iv) will require insurers to ''[p]rominently state, for each type of limit offered (*e.g.,* cap, participation rate, etc.), the lowest limit on Index gains that may be established under the Contract.''

[142] Final Form N–4, Item 2(B)(2)(iv). We are requiring parallel disclosure in other Items of final Form N–4 relating to disclosure of minimum limits on index losses and/or gains that will always be available under the contract. *See also* final Form N–4, Item 1(a)(6); Item 5(a); Item 6(d)(2)(i)(B); and Item 17(b).

[143] For variable annuity issuers who rely on rule 498A to provide summary prospectuses to investors, the KIT currently appears as a disclosure item in the summary prospectus.

[144] *See* final Form N–4, General Instruction B.1 and Instruction 1(a)–1(c) to Item 3.

[145] *See, e.g.,* OIAD Investor Testing Report at Section 5, Qualitative Testing (following two rounds of in-depth interviews to assess potential RILA KIT disclosure for areas of confusion or misunderstanding, qualitative interviews suggested confusion with RILA terms and concepts relating to, for example, contract adjustments such as interim value adjustments and loss limiting features such as buffers); OIAD Investor Testing Report at Section 6, Quantitative Testing, Results, Subgroup Analysis (noting 5.7 percentage point effect of the Q&A KIT structure on overall comprehension for ''non-investors'' during quantitative testing).

[146] *See, e.g.,* Gainbridge Comment Letter (stating that the KIT requirement for RILA issuers will allow investors to readily compare RILAs to each other and to variable annuities); Better Markets Comment Letter (stating that a RILA-tailored KIT is key to helping investors understand the RILA-specific risks presented to them).

[147] *See, e.g.,* Better Markets Comment Letter; CAI Comment Letter.

[148] *See* Better Markets Comment Letter.

[149] *See* CAI Comment Letter (stating that the SEC has generally struck the correct balance in the KIT, with some exceptions); ACLI Comment Letter (stating that it supports CAI's comments and opposing the KIT amendments requiring a Q&A format and repetition of Overview disclosure).

[150] *See, e.g.,* CAI Comment Letter.

TABLE 4—KEY INFORMATION TABLE AS ADOPTED—Continued

Are There any Restrictions on Contract Benefits?	
Taxes:	
What Are the Contract's Tax Implications?	
Conflicts of Interest:	
How Are Investment Professionals Compensated? Should I Exchange My Contract?	

a. Formatting of the KIT

Form N–4 currently prescribes format requirements for the KIT to enhance the readability and comparability of the disclosure.[151] As proposed, we are adopting amendments to Form N–4 to require these current format requirements to apply to all offerings registered on Form N–4, including non-variable annuity offerings.[152] Specifically, the final amendments will require insurance companies to disclose required KIT information in the tabular presentation reflected in the instructions, in the order specified, without any modification or substitution with alternate terminology of the title, headings, and sub-headings for the tabular presentation, unless the instructions otherwise provide. Insurance companies will be permitted to exclude any disclosures (other than the title, headings, and sub-headings for this tabular presentation) in the KIT that are not applicable or modify any of the statements required to be included, so long as the modified statement contains comparable information. Insurance companies also will be required to provide cross-references to the location in the statutory prospectus where the subject matter is described in greater detail, and in the case of electronic versions of the prospectus, to make those references accessible either by direct electronic link or through equivalent methods or technologies, as required for variable annuity KIT disclosure. Insurance companies will include these cross-references adjacent to the relevant disclosure, either within the table row, or presented in an additional table column. All disclosures in the KIT should be short and succinct, consistent with the limitations of a tabular presentation.

Commenters generally supported the application of the current KIT format requirements to RILA offerings.[153] In response to one of the Proposing Release's requests for comment, one commenter stated that the KIT should continue to permit insurance companies to cross-reference relevant sections of the prospectus either within the applicable row of the KIT or as an additional column rather than requiring issuers to add a new column in the KIT labeled ''Location in the Prospectus.'' [154] We agree and are maintaining the current requirements for cross-reference location because staff, investors, and RILA issuers are familiar with these requirements, and investor testing did not identify any concerns with this aspect of the KIT.[155]

We are adopting, as proposed, three amendments to the KIT formatting and presentation requirements in Form N–4 that will apply to registration statements both for non-variable and variable annuities. These changes are designed to provide investors with a better understanding of these products and are informed in part by the results of investor testing. First, we are adopting, generally as proposed, a requirement that issuers present information in the KIT in a question-and-answer (''Q&A'') format.[156] As a result of this change, the various line items of the KIT will be rephrased as questions (*e.g.,* ''Are There Charges or Adjustments for Early Withdrawals?'' instead of ''Charges for Early Withdrawals or Adjustments''). The instructions will further require that, unless the context otherwise requires, issuers must begin the response with a ''Yes'' or ''No'' in bold text when answering a question presented in a given row of the KIT.

Comments on the Q&A format were mixed.[157] One commenter expressed that the Q&A format may be helpful and more accessible to some investors but may also result in a less concise and simple KIT.[158] Another commenter opposed the Q&A format on the grounds that it would result in more narrative responses, which would make comparisons between products more difficult for investors.[159] This commenter favored retaining the current wording.

After considering comments received, we are adopting the Q&A format generally as proposed, except for the Charges or Adjustments for Early Withdrawals and the Risks Related to the Insurance Company line items, each of which we discuss in further detail below. Rephrasing the current line items in a Q&A format should more effectively convey the KIT information to investors and will therefore help non-variable and variable annuity investors make informed investment decisions. As stated in the Proposing Release, the Q&A format should improve investor comprehension of non-variable annuity-specific topics based on the results of our quantitative investor testing.[160] Because our investor testing showed that the Q&A format impacted overall comprehension more for non-investors than independent investors, the Q&A format should particularly improve comprehension for less-experienced investors.[161] Because the KIT disclosures as amended continue to be brief by their nature, we anticipate that any negative impact the Q&A format

[151] *See* current Form N–4, Instruction 1 to Item 2.

[152] *See* final Form N–4, Instruction 1(a)–(c) to Item 3.

[153] *See* Better Markets Comment Letter (expressing that the proposed KIT requirements present RILA risks in a format that investors will easily understand); CAI Comment Letter (stating that the proposed KIT presentation is similar to the presentation currently used by insurance companies for combination RILA/variable annuity offerings and that this presentation will work equally well for combination and standalone RILAs registered on Form N–4).

[154] *See* CAI Comment Letter.

[155] *See generally* Proposing Release at Section 1.C.

[156] *See* final Form N–4, Instruction 1(d) to Item 3.

[157] *See* ACLI Comment Letter; CAI Comment Letter.

[158] *See* CAI Comment Letter.

[159] *See* ACLI Comment Letter.

[160] *See* Proposing Release at Section II.B.2.

[161] *See* Proposing Release at n.78 and accompanying text. For purposes of investor testing, participants were classified into three groups: those with no investments in stocks, bonds, mutual funds, or other securities (non-investors); those with investments exclusively in retirement savings accounts (retirement only); and those with investments outside of retirement accounts (independent investors). *See* OIAD Investor Testing Report at Section 6, Quantitative Testing, Subgroup Analysis, Investor Status.

may have on comparability or conciseness will be justified by the benefit that investors will gain from understanding complex non-variable annuity-specific information.

Second, we are adopting, as proposed, amendments changing the order in which the KIT (Item 2 of current Form N–4) appears relative to the Overview of the Contract (Item 3 of current Form N–4), as discussed above.[162]

Third, as proposed, we are deleting Form N–4's general instruction stating that where the discussion of information required by the Overview of the Contract or KIT also responds to the disclosure requirements in other items of the prospectus, registrants need not include additional disclosure in the prospectus that repeats the information disclosed in the Overview of the Contract or the KIT.[163] Comments on the deletion were mixed.[164] One commenter stated that there is value in ''strategically locating certain disclosures in multiple places to help investors.'' [165] Another commenter opposed this deletion because it would lead to certain information appearing more than once in the prospectus.[166]

In administering Form N–4, we have observed that this instruction has led to confusion on the part of registrants. Moreover, as discussed above, the layered disclosure framework requires certain disclosure topics to be discussed in multiple locations.[167] This framework is designed to help ensure both that the KIT contains key disclosures and that the more-detailed sections to which investors are directed contain all of the key information about the given topic.[168] This approach is particularly important for RILAs in light of the challenges our investor testing showed investors have in understanding these products, in that investors will see key disclosures in one place—the KIT—regardless of whether they review targeted sections of the prospectus.

b. Fees, Expenses, and Adjustments

Non-variable annuities typically have implicit fees, expenses, charges, and adjustments for early or mid-term withdrawals that can be confusing or surprising to investors. This was observed in our investor testing regarding RILAs.[169] We anticipate that investors will benefit from tailored disclosure about certain unique features of a non-variable annuity's fee and expense structure as described below to help them make informed decisions.

Early Withdrawal Charges and Adjustments. The first line item in the ''Fees, Expenses, and Adjustments'' section of the amended KIT, ''Are There Charges or Adjustments for Early Withdrawals?,'' addresses surrender charges and contract adjustments. Because non-variable annuities may have surrender charges, we are adopting, as proposed, a requirement that insurance companies provide the existing KIT surrender charge disclosure in this first line item so that investors understand how surrender charges are assessed (*e.g.,* that if they make a withdrawal within a specified period after their last premium payment, they may pay a significant surrender charge that will reduce the value of their investment).[170] This disclosure must include the maximum surrender charge, the maximum number of years that a surrender charge may be assessed, and an example of the maximum surrender charge an investor could pay in dollars based on a $100,000 investment. In a change to the current form requirements, we also are requiring, as proposed, that insurance companies disclose that this loss will be greater if there is a negative contract adjustment, taxes, or tax penalties, to make clear that an investor may lose more than just the surrender charge upon an early withdrawal.

We also are requiring specific disclosure on contract adjustments, which can result in investor losses if the investor withdraws money from an investment option, or withdraws money from the non-variable annuity entirely, before the end of a specified period.[171] We are adopting these requirements as proposed except that they will apply to contract adjustments applicable to registered MVA annuities as well as RILAs. Specifically, if the contract includes contract adjustments, the insurance company will be required to include a statement that if all or a portion of contract value is removed from an investment option or from the contract before the expiration of a specified period, the insurance company will apply a contract adjustment, which may be negative. This statement will include the maximum potential loss (as a percentage of the investment) resulting from a negative adjustment. The insurance company also will be required to provide an example of the maximum negative adjustment that could be applied (in dollars) assuming a $100,000 investment. We are also adopting, as proposed, a requirement that the insurance company provide a brief narrative description of the contract transactions subject to a contract adjustment (*e.g.,* withdrawals, surrender, annuitization, etc.) as part of the response to this item to make clear to investors the range of transactions that could result in a contract adjustment.

Commenters generally opposed one or more of the amendments to the early withdrawal charges line. One commenter specifically opposed the inclusion in the KIT of numeric maximum potential loss disclosure (as a percentage of an investment) due to a negative contract adjustment on the grounds that the KIT's design would not provide adequate context for the disclosure and could therefore lead investors to believe that such losses are likely, even when the risk of loss is remote.[172] This commenter suggested instead that the KIT should contain only narrative statements regarding the risk of loss. The commenter also opposed the inclusion in the KIT of this numeric loss disclosure because it is included in other parts of the prospectus. While we

[162] *See supra* Section II.C.2. The current instructions to Form N–4 require that, notwithstanding 17 CFR 230.421(a), the KIT, Overview of the Contract, and Fee Table must be disclosed in the numerical order in which they appear in Form N–4. The final form changes this instruction to reflect the change in order. *See* final Form N–4, General Instruction C.3(a). The change in order will also apply to summary prospectus disclosure location under the final amendments to rule 498A.

[163] *See* final Form N–4, General Instruction C.3(a).

[164] *See* ACLI Comment Letter; CAI Comment Letter.

[165] *See* CAI Comment Letter.

[166] *See* ACLI Comment Letter.

[167] *See supra* Section I.D.2.

[168] For example, while both the KIT and Item 5 require disclosures about principal risks, the KIT currently expressly contemplates that more detailed information will be repeated later in the prospectus, specifically requiring registrants to provide cross-references to the more detailed prospectus discussion. *See* current Form N–4, Instruction 1(b) to Item 2. This instruction remains unchanged in the KIT of the final Form N–4. *See* final Form N–4, Instruction 1(b) to Item 3. Item 5 requires registrants to summarize the principal risks of the contract in one place, and was not intended to permit an insurance company to omit principal risks from that section if those risks were also disclosed in the KIT. *See* Proposing Release at n.86 and accompanying text (''The principal risks section is designed to provide a consolidated presentation of principal risks which can be cross-referenced by registrants to reduce repetition that might otherwise occur if the same principal risks are repeated in different sections of the prospectus.'').

[169] *See supra* Section I.D.1.

[170] Final Form N–4, Instruction 2(a) to Item 3.

[171] Contract adjustments include adjustments made when amounts are removed prematurely from an index-linked option, often referred to as interim value adjustments, as well as adjustments made when amounts are removed prematurely from the contract, often referred to as market value adjustments. Thus, a specified period would include index-linked option crediting periods (which again, are typically referred to by insurance companies as ''investment terms'' or ''terms''), as well as any specified period relating to a market value adjustment.

[172] *See* CAI Comment Letter.

are adopting changes to this proposed disclosure elsewhere in the prospectus, we are adopting amendments to this first line item of the KIT as proposed.[173] While we appreciate that this disclosure appears elsewhere in the prospectus, including the numeric maximum potential loss disclosure in the KIT in particular is appropriate because the brevity of numeric disclosure and its effectiveness in communicating this key risk of loss is well suited for the KIT. In this regard, the KIT was designed to ''provide a brief description of key facts'' and be ''easy to read and navigate.'' [174] Further, additional context for the numeric disclosure will be provided by cross-references to other parts of the prospectus.[175] As discussed above,[176] the inclusion of numeric loss disclosure in both the KIT and elsewhere in the prospectus is consistent with a layered disclosure approach and is designed to help investors make more informed investment decisions. Also, as discussed above, the form does not prevent the insurance company from providing additional appropriate context.[177]

One commenter suggested that the example of the maximum negative adjustment that could be applied (in dollars) assuming a $100,000 investment should not be required if the maximum potential loss (as a percentage of an investment) due to a negative adjustment is retained.[178] This commenter expressed that, where the percentage maximum potential loss is 100% under a RILA, a typical investor would understand the dollar amount associated with that loss and would not need the example. We are retaining this example because it illustrates how an investment can be impacted by a negative contract adjustment in dollar figures, which may be more salient to some investors than a percentage.

One commenter stated that requiring disclosure relating to interim value adjustments under the ''Fees and Expenses'' heading is inappropriate because interim value adjustments are not fees but are instead the approximate fair market value of the investments underpinning the RILA.[179] We are retaining negative contract adjustment disclosure under the heading of the KIT that addresses fees and expenses. Interim value adjustments operate like an implicit fee in that they have a similar impact on an investor as an explicit fee or expense by decreasing the amount of an investor's investment. Further, including information about interim value adjustments under this heading may aid investors' understanding of their potential effects since investor testing showed that investors struggled to understand the concept of interim value adjustments in general.[180] To address the commenter's concern that the disclosure could imply that a contract adjustment is a conventional fee or expense, we have renamed this section of the KIT ''Fees, Expenses, *and Adjustments*'' and changed the question in the left-hand column of the early withdrawal charges and adjustments line item to read ''Are There Charges *or Adjustments* for Early Withdrawals?'' (italics indicating text in final Form N–4 that has been added to the proposed text).[181]

Transaction Charges. The second line item in the ''Fees, Expenses, and Adjustments'' section of the amended KIT, ''Are There Transaction Charges?,'' will require registrants to disclose that the investor may also be charged for other transactions in addition to surrender charges (and now contract adjustments), along with a brief narrative description of the types of such charges (*e.g.,* front-end loads, charges for transferring cash value between investment options, etc.).[182] This line item is designed to provide a simple narrative description to alert investors that surrender charges and contract adjustments are not the only charges they could pay when they engage in certain contract transactions. We did not receive comments on this line item, and we are adopting these requirements as proposed.

Ongoing Fees and Expenses. The third line item in the ''Fees, Expenses, and Adjustments'' section, ''Are There Ongoing Fees and Expenses?,'' is designed to alert investors that they will bear recurring fees on an annual basis. This item currently requires the insurance company to disclose (1) a minimum and maximum annual fee table and (2) a lowest and highest annual cost table, both along with applicable legends.[183] We are adopting amendments requiring insurance companies to provide this disclosure with respect to RILAs, as proposed, and registered MVA annuities, in a change from the proposal.[184]

We also are adopting, largely as proposed, amendments requiring that, where a contract imposes limits on gains on the amount an investor can earn on an index-linked option, insurance companies must disclose that they impose these limits on gains and that they can act as an implicit ongoing fee.[185]

Specifically, insurance companies must disclose that: (1) there is an implicit ongoing fee on index-linked options to the extent that an investor's participation in index gains is limited by the insurance company through the use of a cap, participation rate, or some other rate or measure; (2) this means that the investor's returns may be lower than the index's returns; (3) in return for accepting this limit on index gains, an investor will receive some protection from index losses; and (4) this implicit ongoing fee is not reflected in the tables below. In a change from the proposal, we are modifying the first statement to provide that there is an implicit ongoing fee on index-linked options *to the extent* that an investor's participation in index gains is limited by the insurance company through the use of a cap, participation rate, or some other rate or measure.[186] In another change from the proposal, insurance companies will be required to provide both a statement to the effect that this implicit fee means that the investor's returns may be lower

[173] *See supra* Section II.C.2.

[174] *See* VASP Adopting Release at paragraph following n.106.

[175] *See* final Form N–4, Instruction 1(b) to Item 3.

[176] *See supra* Sections III.A.2, II.C.1, and II.C.2 (discussing numeric loss disclosure in the context of the prospectus's layered disclosure approach, cover page, and Overview, respectively).

[177] *See supra* Sections II.C.1, and II.C.2.

[178] *See* CAI Comment Letter. The instructions to this line item provide an example of this disclosure that includes the statement that the loss ''will be greater if you also have to pay a surrender charge, taxes, and penalties.'' One commenter recommended that, if the Commission does require an example of maximum negative adjustments, the Commission should ensure that the form instructions do not require insurance companies to state or imply that the loss could be greater than 100% due to other factors, such as surrender charges. *See* CAI Comment Letter. The language in the form relating to greater losses due to these other factors is an example provided in a specific context, and insurance companies will not be required to make this disclosure where it is not correct.

[179] *See* VIP Working Group Comment Letter.

[180] *See* OIAD Investor Testing Report at Section 5, Qualitative Testing.

[181] *See also infra* Section II.C.6.a (regarding similar changes relating to the transaction expense table).

[182] Final Form N–4, Instruction 2(b) to Item 3.

[183] *See* current Form N–4, Instruction 2(c) to Item 2. The minimum and maximum annual fee table requires a tabular description of the fees and expenses that an investor may pay each year, depending on the investment options chosen. This includes minimum and maximum percentages for: base contract fees; portfolio company fees and expenses; and optional benefits available for an additional charge. The lowest and highest annual cost table requires a tabular description of the lowest and highest cost an investor could pay each year, based on current charges and a set of standardized assumptions (*e.g.,* $100,000 investment and 5% annual appreciation).

[184] *See* final Form N–4, Instruction 2(c) to Item 3.

[185] *See* final Form N–4, Instruction 2(c)(i)(G) to Item 3.

[186] *See* final Form N–4, Instruction 2(c)(i)(G) to Item 3 (emphasis added); *see* proposed Form N–4, Instruction 2(c)(i)(G) to Item 3.

than the index's returns and also a statement that the implicit fee is not reflected in the fee and cost tables. This disclosure replaces the proposed statement that the limit on index gains helps the insurance company generate a profit on the index-linked option, as we discuss in more detail later in this section of the release. As proposed, the disclosure will be required to precede the minimum and maximum fee table if the contract offers index-linked options and imposes ongoing fees and expenses.

Also as proposed, in the case of a contract that offers an index-linked option subject to limits on gains but does not impose any explicit ongoing fees or expenses under the contract, the insurance company will include the disclosure *in lieu* of such tables.[187] That is, the disclosure will take the place of the fee and cost tables rather than precede them. Where there are no explicit ongoing fees, minimum and maximum annual fee and cost tables showing zero fees would tend to mislead investors because an index-linked option imposing limits on gains has implicit fees inherent in limiting upside index participation. The substance of the required disclosure will be largely the same as the disclosure discussed above but will not include the statement that the ''implicit ongoing fee is not reflected in the tables below'' since no tables will follow this disclosure.[188]

Lastly in this line item, we are adopting, as proposed, amendments revising the last sentence in the required legend in the lowest and highest annual cost table to include the italicized language: ''This estimate assumes that you do not take withdrawals from the Contract, which could add surrender charges *and negative Contract Adjustments* that substantially increase costs.'' [189] This will further alert investors to the cost impact of a contract adjustment if they withdraw money early.

Commenters generally opposed one or more of the amendments to the Ongoing Fees and Expenses line item. One commenter expressed concerns that excluding disclosures of any ongoing fees that may be implicit to index-linked options in the KIT, but requiring variable options to disclose ongoing fees, could result in disparate treatment of these two types of annuities. Specifically, the commenter stated that this will produce unequal disclosure between the two products, which would not be appropriate in light of the similar profit margins to insurance companies generated by the fees.[190] The commenter did not suggest a specific alternative approach to quantify and disclose these implicit costs. We requested comment on whether it would be appropriate to develop a standardized methodology or calculation for accurately determining these costs.[191] Two commenters raised challenges with accurately determining these types of costs.[192] After considering comments regarding the challenges, we are not requiring numeric disclosure of implicit ongoing index-linked fees, but continue to welcome feedback from market participants and others on the feasibility of establishing a standardized approach to disclose these implicit fees.

One commenter assumed the Commission intended that the lowest and highest annual cost table would only be disclosed in registration statements relating to variable options because the table's instructions reference ''portfolio company fees and expenses,'' which are relevant only to variable options.[193] The commenter therefore suggested that we amend the instructions to clarify that the table should be omitted if a prospectus is not offering variable options, and suggested that we not include references to ''negative Contract Adjustments'' in the legend preceding the table because variable options are not subject to contract adjustments. This table is not intended to be limited to variable options but rather applies to all investment options where ongoing fees are charged. While non-variable options sometimes do not have explicit ongoing fees, where ongoing fees are charged in connection with a non-variable option, they must be disclosed in this table. In addition, if the contract does not have a contract adjustment, insurance companies should revise the legend accordingly. Similarly, insurance companies would not include references to portfolio company fees and expenses in the minimum and maximum annual fee table and the assumptions in the lowest and highest annual cost table if the contract does not offer variable options.

Some commenters opposed one or more of the required statements describing implicit fees.[194] Some of these commenters believed describing insurance company limits on the amount an investor can earn in a RILA as an ''implicit ongoing fee'' is inaccurate.[195] One commenter viewed such limits as factors that contribute to the pricing of RILA contracts.[196] Other commenters stated that these limits may not be triggered to actually limit an investor's credited interest.[197] These commenters expressed that, for index-linked options with caps, if index returns are positive and less than the cap, there is no limitation on an investor's credited interest, and for index-linked options with participation rates, there is often no upper limit on the credited interest even though the investor may receive only a percentage of the index return as credited interest.

We also received comments that characterizing limits on credited interest as fees could confuse investors about how RILAs operate because investors understand fees as money collected from them, but a limit on credited interest is not money collected from investors.[198] One commenter stated that these limits are not like fees as they are not applied in all circumstances, such as when an index's returns are below these limits, and thus act more like an opportunity cost rather than like a fee.[199]

While contractual limits placed on an investor's gains, such as a cap rate or participation rate, are not fees or charges in a conventional sense, these limits can have the effect of reducing investment returns (*e.g.,* where the index outperforms a cap or a participation rate is less than 100%).[200] As a result, it is appropriate to characterize these contractual limits as ongoing implicit fees given they have the same impact on investors. We recognize, however, that these contractual limits may not act to reduce an investor's credited interest in any given case. Accordingly, after considering comments, we are modifying the proposed statement that the imposition of limits on gains will act as an implicit ongoing fee. Instead, we

[187] *See* final Form N–4, Instruction 2(c)(iii) to Item 3; *see* proposed Form N–4, Instruction 2(c)(iii) to Item 3.

[188] *See* final Form N–4, Instruction 2(c)(iii) to Item 3. The proposed disclosure in lieu of the tables was identical to the proposed disclosure preceding the tables. *See* proposed Form N–4, Instruction 2(c)(iii) to Item 3.

[189] *See* final Form N–4, Instruction 2(c)(ii)(A) to Item 3. Currently, this legend only refers to surrender charges, not negative contract adjustments.

[190] *See* VIP Working Group Comment Letter.

[191] *See, e.g.,* Proposing Release at request for comment number 48.

[192] *See* ACLI Comment Letter; CAI Comment Letter.

[193] *See* CAI Comment Letter.

[194] *See* ACLI Comment Letter; CAI Comment Letter; Gainbridge Comment Letter.

[195] *See* ACLI Comment Letter; CAI Comment Letter.

[196] *See* Gainbridge Comment Letter.

[197] *See* ACLI Comment Letter; CAI Comment Letter.

[198] *See* ACLI Comment Letter; Gainbridge Comment Letter.

[199] *See* CAI Comment Letter.

[200] Dodie C. Kent and Ronal Coenen, Jr., Variable Annuities and Other Insurance Investment Products (Third Edition), Registered Index-Linked Annuity Contracts (''Kent and Coenen'') at sec. 29:2.2.

are requiring disclosure that there is an implicit ongoing fee on index-linked options to the extent that an investor's participation in index gains is limited by the insurance company through the use of a cap, participation rate, or some other rate or measure. The addition of the qualifying language ''to the extent'' is designed to communicate to investors that a contractual limit acts as an implicit fee once it is triggered, but not before. After considering comments, we have determined that describing these limits as involving an implicit ''fee'' communicates the concept of reducing an investor's credited interest more effectively than ''potential opportunity cost,'' as suggested by a commenter, which is a less concrete concept and therefore potentially more confusing for investors. Moreover, the modification discussed above regarding when these limits on gains will reduce an investor's credited interest, together with the characterization of the effect of these limits on gains as acting as an ''implicit'' ongoing fee, also will make clear these limits can have an effect akin to that of a fee.

Some commenters opposed requiring insurance companies to disclose that limiting the amount an investor can earn on an index-linked option helps the insurance company make a profit on the option.[201] These commenters stated that they believe the statement is misleading because insurance companies generate profit in other ways (or in other ways in addition to the limits), including through the use of derivative instruments. One commenter indicated that, even though other registered securities products generate revenue, not every form requires information about how revenue and profit is generated.[202] After further consideration, we are not adopting the profit statement because the two replacement statements discussed above in this section more clearly explain to investors how limits on index gains may decrease the amount earned on a contract. Specifically, the final disclosure alerts investors to opportunity costs associated with a contract by illustrating that limits can result in lower returns for investors as compared to the contract's underlying index. Further, alerting investors that the implicit fee is not reflected in the cost and fee tables is designed to help investors understand that the explicit ongoing fees that are reflected in these tables do not fully capture the complete costs that investors may incur under the contract.

One commenter opposed the amendments requiring insurance companies to disclose that in return for accepting a limit on index gains, an investor will receive some protection from index losses.[203] This commenter expressed that limits on gains sometimes do not actually limit an investor's credited interest, but an investor nevertheless receives protection from losses and, in such scenarios, characterizing the protection from index loss as received in exchange for accepting a limit on gains is inaccurate. We are including the ''in return for'' statement in the disclosure as proposed. An investor that accepts a limit on index gains in the form of a crediting rate (*e.g.,* a cap) and also receives some downside protection from index losses (*e.g.,* a buffer) is receiving the protection *in exchange for* accepting the limit, even if the limit is never triggered and therefore does not decrease the investor's credited interest. RILA industry experts have made similar statements.[204]

c. Risks

Risk of Loss. We are adopting amendments to the instructions to the line item entitled ''Is There a Risk of Loss from Poor Performance?'' with some modifications from the proposal. Form N–4 currently requires disclosure on risk of loss in connection with variable options, and we proposed to extend this risk of loss requirement to index-linked options. As proposed, insurance companies will be required to state, in the context of both index-linked or variable options, that an investor can lose money by investing in the contract. Index-linked options, like variable options, are subject to the risk of investment loss from poor performance.[205] In a change from the proposal, we are adopting amendments to provide that, if an annuity contract offers an index-linked option, the insurance company must disclose, as a percentage, the maximum amount of loss an investor could experience from negative index performance after taking into account the *current limits* on index loss provided under the contract.[206] The proposal required disclosure of maximum loss from negative index performance after taking into account the *minimum guaranteed limit* on index loss. In another change from the proposal, the instructions will specify that an insurance company may give a range of the maximum amount of loss if the contract offers different limits on index loss. Also in a change from the proposal, an insurance company will be required to either prominently disclose the minimum limit on index loss that will always be available under the contract or, alternatively, prominently state that the insurance company does not guarantee that the contract will always offer index-linked options that limit index loss, which would mean risk of loss of the entire amount invested. These amendments are designed to make clear to investors that they can still lose money even though index-linked options typically include features designed to limit investment loss, and that the level of downside protections currently offered may change in the future.

One commenter raised concerns about the inclusion of the numeric maximum amount of loss an investor could experience from negative index performance as part of this line item.[207] Our views on the utility and efficacy of including numeric risk of loss disclosure in the prospectus generally are discussed above.[208] We continue to believe that this disclosure is appropriate for the KIT and are specifically retaining the numeric maximum amount of loss an investor could experience from negative index performance under the Risks heading because the maximum loss that an investor may experience due to negative index performance is a key risk associated with index-linked options. Flagging this risk in the KIT under this heading is consistent with the KIT's mandate to ''provide a brief description of key facts'' to investors in a way that is ''easy to read and navigate.'' [209]

We are adopting amendments to the instruction to this line item to specify that an insurance company may provide a range of the maximum amount of loss.[210] Permitting the insurance company to provide a range of losses allows the insurance company to reflect the range of loss protection offered

[201] *See* ACLI Comment Letter; CAI Comment Letter; Gainbridge Comment Letter.

[202] *See* ACLI Comment Letter.

[203] *See id.*

[204] *See* Dodie C. Kent and Ronald Coenen Jr., The Design and Regulatory Framework of Registered Index-Linked Annuities, ALI CLE Conference on Life Insurance Products 2022 (stating that the potential limit on upside performance is the trade-off that investors make for potential downside protection).

[205] MVA options, which provide a fixed rate of interest (subject to an MVA), are not subject to the risk of loss from poor performance, and therefore would not be required to provide this disclosure.

[206] *See* final Form N–4, Instruction 3(a) to Item 3.

[207] *See* CAI Comment Letter.

[208] *See supra* footnotes 105–106 and accompanying paragraph.

[209] *See* VASP Adopting Release at paragraph following n.106.

[210] *See* final Form N–4, Instruction 3(a) to Item 3.

under the contract.[211] We also are adopting amendments requiring that an insurance company either disclose the minimum limit on index loss that will always be available under the contract or state that the insurance company does not guarantee that the contract will always offer index-linked options that limit index loss. As discussed above, this disclosure is designed to inform investors as to how the downside protections that are currently offered may change in the future, including disclosure of any minimum guaranteed limits that will always be available under the contract. Permitting the insurance company to provide a range of losses allows the insurance company to reflect the range of loss protection offered under the contract, and basing the disclosure on current limits address commenter concerns that not all RILAs guarantee a particular level of downside protection that will always be available under the contract, as discussed above.[212]

Short-Term Investment. The second line item under the Risks heading, which under the final amendments to Form N–4 will be titled ''Is this a Short-Term Investment?,'' currently requires a statement that the contract is not a short-term investment and is not appropriate for an investor who needs ready access to cash, along with a brief explanation. This statement and an accompanying brief explanation is equally applicable to non-variable annuities. We therefore are requiring insurance companies to provide this disclosure as proposed for RILAs and, in a change from the proposal, for registered MVA annuities.[213] We also are amending this item, as proposed, to require insurance companies to state that (1) amounts withdrawn from the contract may result in surrender charges, taxes, and tax penalties; and (2) if applicable, that amounts removed from an investment option or the contract before a specified period may also result in a negative contract adjustment and loss of positive index performance.[214] These disclosures are designed to make clear to investors some of the key reasons why these investments are not short-term investments. They are particularly important for an investor considering an annuity in light of the potential negative consequences if the investor withdraws money early from a particular investment option or the contract. We are not limiting these disclosures to contracts with index-linked options, because these disclosures may be equally material for other investment options. We also are adopting, as proposed, new risk disclosure for investment options that mature at the end of a specific period that will require issuers offering such options to state that contract value will be reallocated at the end of the crediting period according to the investor's instructions, and to disclose the default reallocation in the absence of such instructions.[215]

We received one comment on this portion of the proposal. The commenter opposed the amendments requiring issuers to state that the contract value will be reallocated at the end of the crediting period according to the investor's instructions, and to disclose the default reallocation in the absence of such instructions.[216] This commenter expressed that the required disclosure is not related to the risks of short-term investing. The commenter suggested that this disclosure be moved to the Overview of the Contract and that any restrictions on transfers not covered by the Overview of the Contract be moved to the KIT line item ''Are There Restrictions on the Investment Options?''. After considering comments on this amendment, we are adopting this amendment as proposed. This disclosure illustrates that even though investment options under the contract may mature at the expiration of a specified period, the annuity contract itself is not a short-term investment and amounts invested in such short-term options will be automatically reallocated to new investment options under the contract. The disclosure also illustrates liquidity risk by making the investor aware that the contract value in an index-linked option (or fixed investment option that matures at the expiration of a specified period) is not automatically disbursed to the investor or ''liquid'' at the end of a crediting period. This disclosure is particularly important in illustrating that RILAs are not short-term investments in light of the difficulty investors participating in investor testing had in understanding crediting periods.[217]

Risks Associated with Investment Options. The third line item under the Risk heading, ''What are the Risks Associated with the Investment Options?'', is intended to focus on the general risk of poor investment performance. Currently, the KIT requires the insurance company to state that: (1) an investment in the contract is subject to the risk of poor investment performance and can vary depending on the performance of the investment options available under the contract; (2) each investment option will have unique risks; and (3) the investor should review these investment options before making an investment decision. We are adopting, as proposed, conforming changes to the required statement to refer to index-linked options now that RILAs are included on Form N–4.[218]

Largely as proposed, but with some modifications in response to comments, we are adopting amendments requiring insurance companies to provide additional information about any index-linked options offered under the contract to highlight how the insurance company limits the investor's participation in gains and losses of the index.[219] For the risk of limited upside, as proposed, the insurance company will be required to (1) state that the cap, participation rate, or some other rate or measure, as applicable, will limit positive index returns (*e.g.,* limited upside), (2) provide an example for each type of limit imposed under the contract (*e.g.,* ''if the Index return is 12% and the cap rate is 4%, we will credit 4% in interest at the end of the Crediting Period''), and (3) prominently state that this may result in the investor earning less than the index's return. For the risk of limited protection in the case of market decline, largely as proposed, the insurance company will be required to: (1) state that the floor, buffer, or some other rate or measure, as applicable, will limit negative index returns (*e.g.,* limited protection in the case of market decline); and (2) provide an example for each type of limit imposed under the contract (*e.g.,* ''if the Index return is −25% and the buffer rate is –10%, we will credit −15% (the amount that exceeds the buffer rate) at the end of the crediting period''). In a change from the proposal, and in response to comments as discussed below, we are not requiring

[211] *See supra* Section II.C.1.

[212] *See supra* Section II.C.1; *see also* CAI Comment Letter; VIP Comment Letter (discussing proposed minimum guaranteed rate disclosure in Items 6 and 1, respectively).

[213] *See* final Form N–4, Instruction 3(b) to Item 3.

[214] In a change from the proposal, we are replacing ''index-linked option'' with ''investment option'' to convey contract adjustments are associated with other types of investment options in addition to index-linked options.

[215] In a change from the proposal, the form now states that the risk disclosure is required for ''investment options that mature at the end of a specified period. We proposed risk disclosure for ''index-linked'' options. We made this change to ensure that this requirement is applicable to MVA options in addition to index-linked options, in light of the addition of offerings of registered MVA annuities to the form.

[216] *See* CAI Comment Letter.

[217] *See* OIAD Investor Testing Report at Section 5, Qualitative Testing, Results from Round 1.

[218] *See* proposed Form N–4, Instruction 3(c) to Item 3.

[219] *See generally* final Form N–4, Instruction 3(c) to Item 3.

the inclusion of a statement that, even after limiting a negative index return, investors could still lose up to XX% of their investment. However, in a change from the proposal and in response to comments as discussed below, we are adding a requirement that insurance companies disclose, if applicable, that an index is a ''price index,'' not a ''total return index,'' and therefore does not reflect dividends paid on the securities composing the index, or the index deducts fees and costs when calculating index performance, either of which will reduce the index return and will cause the index to underperform direct investment in the securities composing the index.

Comments on the proposed amendments to this line item were mixed. One commenter opposed the requirement that insurance companies disclose examples of each type of limit imposed on an investor's participation in gains and losses of the index.[220] This commenter stated that this information unnecessarily repeated similar disclosure required in the Overview of the Contract. We are retaining these numeric examples because, regardless of this disclosure's appearance elsewhere in the prospectus, the KIT is designed to flag key considerations for the investor in one location in a concise and succinct manner. In this regard, numeric disclosure is particularly effective at conveying risks in a concise and succinct manner and thus is particularly effective in the KIT. The numeric examples are designed to highlight that each index-linked option will have unique risks. The examples highlight one of the central economic tradeoffs of index-linked options: that an investor will sacrifice the potential for returns if the index goes up in exchange for some protection from loss if the index goes down. Illustrating economic consequences of limits in a numeric example is a concrete and thus effective way of communicating certain key considerations about index-linked options that investor testing specifically showed were difficult for investors to understand.[221] However, in consideration of comments received, we are adopting a change from the proposal to reduce the discussion of the same or similar topics in multiple locations, where this reduction could be made appropriately while continuing to promote the goal of highlighting key information about RILAs and enhancing understanding of RILA features and risks. Specifically, we are not including the proposed requirement that a RILA issuer would have to prominently state that ''even after limiting a negative index return, the investor could still lose up to XX% of their investment,'' as this disclosure is already required under the Risks heading in the context of the ''Is There a Risk of Loss from Poor Performance?'' line item.[222]

We received comments suggesting that the difference between a ''price return index'' and a ''total return index'' is not currently adequately disclosed to RILA investors.[223] The performance of a RILA is based on the performance of an index (such as the S&P 500) or another benchmark. The performance of a ''price return index'' is typically lower than that of a ''total return'' index because a price return index does not reflect dividends.[224] Two commenters expressed that RILA investors may be misled by index-linked options that use a ''price return index'' instead of a ''total return index.'' Specifically, one commenter stated that the ''biggest drag'' on the performance of RILAs and all indexed annuities is the use of a price return index rather than a total return index and that current disclosures do not adequately explain the differences between the index types.[225] This commenter expressed that disclosure explaining the differences between the two types of indexes is particularly important for index-linked options without upside or downside limits since investors may believe their upside potential is unlimited when, in fact, there is a limit in the form of a lower price return. The commenter also noted that with no apparent fees, index-linked options may appear to be a better choice than an index fund, which has fees, without the investor understanding that an index fund will provide better upside potential in the form of a total return rather than a price return. Another commenter indicated that disclosure indicating that there are no ongoing fees associated with an index-linked option that uses a price return index inaccurately suggests that the option is free except for surrender charges.[226]

After considering these comments, we agree that this disclosure is appropriate. Investors should be alerted to the fact that a price return index does not assume the reinvestment of dividends and thus will underperform a total return index and direct investment in securities underlying the index. Accordingly, in a change from the proposal, we are adding a requirement in the KIT that insurance companies disclose, if applicable, that an index is a ''price return index,'' not a ''total return index,'' and therefore does not reflect dividends paid on the securities composing the index, or the index deducts fees and costs when calculating index performance, either of which will reduce the index return and will cause the index to underperform direct investment in the securities composing the index.[227]

Insurance Company Risks. We are adopting the fourth line item under the Risk heading largely as proposed, with modifications to allow insurance companies to provide a narrative description of insurance-company related risks. Under the proposal, this line item would have been required to be preceded by the question, ''Is There any Chance the Insurance Company Won't Pay Amounts Due to Me Under the Contract?'' The proposal would have required the insurance company to answer this question with a ''yes'' or ''no'' answer. As under current Form N–4, the proposed disclosure also would have required a statement to the effect that any obligations, guarantees, or benefits under the contract that may be subject to the claims-paying ability of the insurance company will depend on the financial solvency of the insurance company. In a change from the proposal, we are modifying the line item to state ''What Are the Risks Related to the Insurance Company?'' so that insurance companies may provide a narrative description of insurance-company related risks. As proposed, and under current Form N–4, insurance companies will be required to include a

[220] *See* CAI Comment Letter.

[221] Investors had difficulty understanding buffers, among other things. *See supra* paragraph accompanying footnote 38.

[222] *See* proposed Form N–4, Instruction 3(a) to Item 3 and final Form N–4, Instruction 3(c)(B) to Item 3.

[223] *See* Comment Letter of Jason Lee (Oct. 30, 2023) (''Lee Comment Letter''); Johnson Comment Letter.

[224] An index-linked option's index is used to measure the amount the insurance company increases or decreases the value of the investment, but contract value allocated to an index-linked option is not invested directly in the index components. The indices associated with index-linked options are often ''price return'' indices, and their performance is the difference in index value from the beginning of the term and the end of the term. For example, if the index had a price of $1,200 on the first day of the term and a price of $1,260 on the last day of the term, the price return would be 5% ((1,260–1,200)/1,200). Price return indices do not reflect dividends. This contrasts with an investor investing in an index through an index fund (or investing directly in the components of an index), where such an investment's return would include dividends. Thus, the ''price return'' of an index is typically lower than the ''total return'' of an index and the performance of a ''price return index'' is typically lower than that of a ''total return index.''

[225] *See* Johnson Comment Letter.

[226] *See* Lee Comment Letter.

[227] *See* final Form N–4, Instruction 3(c)(C) to Item 3.

statement to the effect that any obligations, guarantees, or benefits under the contract that may be subject to the claims-paying ability of the insurance company will depend on the financial solvency of the insurance company.[228] Further, as proposed and under current Form N–4, the insurance company will also be required either to provide its financial strength ratings or state, if applicable, that they are available upon request, and indicate how such requests can be made.

We received one comment on this portion of the proposal.[229] The commenter opposed the wording, ''Is There any Chance the Insurance Company Won't Pay Amounts Due to Me Under the Contract?,'' expressing concerns that it will inflate the risks related to insolvency when paired with the required bolded ''yes'' response as compared to the actual risk of insolvency. This commenter expressed that it is rare for an insurer to fail to fulfill its contractual guarantees due to financial insolvency. Instead, the commenter suggested that the row question be changed to ''What are the Risks Related to the Insurance Company?'' to avoid the implication of high credit or counterparty risk.

After considering this comment, we are retitling this line item in the KIT as described above and permitting a narrative response. Specifically, insurance companies will be directed, consistent with the current form and the proposal,[230] to state in response to this line item that an investment in the contract is subject to the risks related to the insurance company, including that any obligations (including under any fixed options and index-linked options), guarantees, or benefits are subject to the claims-paying ability of the insurance company and that more information about the insurance company, including if applicable its financial strength ratings, is available upon request with an indication of how such requests can be made.[231] In a modification from the proposal, we are changing the title of this line item so that the disclosure is not required to begin with a ''yes'' or ''no'' to avoid investors misunderstanding the possibility that amounts due will not be paid to investors due to insurance company insolvency. A narrative response that need not begin with a simple ''yes'' addresses the actual risk of insolvency of a given insurance company, while avoiding investors misunderstanding the likelihood of an insurer becoming insolvent.

d. Restrictions

Investments. We are adopting, substantially as proposed, amendments requiring insurance companies to include the disclosure required by the first line item under the heading ''Restrictions,'' ''Are There Limits on the Investment Options?'' We are modifying the current item to require the insurance company to state whether there are any restrictions that may limit the investment options that an investor may choose, as well as any limitations on the transfer of contract value among investment options.[232] As these limitations can exist for non-variable annuities as well as variable annuities, we are adopting this requirement as proposed. The disclosure requirement, which addresses restrictions relating to investment options generally, will apply to variable annuities, RILAs and registered MVA annuities (each of which will provide disclosure relevant to applicable investment options).

Currently, the form also generally requires the insurance company to state that it reserves the right to remove or substitute portfolio companies as investment options, if applicable. Insurance companies typically reserve the right to change the index-linked options that are available under a contract as well as key features of available index-linked options. To alert investors that the available index-linked options and key terms of those index-linked options may change in the future, we are adopting, as proposed, amendments to require the insurance company to state any reservation of its rights under the contract, including, if applicable, the right to (1) add or remove index-linked options; (2) change the features of an index-linked option from one crediting period to the next, including the changes to the index and the current limits on gains and limits on index losses (subject to any contractual minimum guarantees); and (3) substitute the index of an index-linked option during its crediting period. We are also adopting, as proposed, amendments to require that insurance companies disclose any right to stop accepting additional purchase payments, which may be significant to investors given the impact this reservation can have on investors' ability to accumulate contract value for retirement, grow the death benefit, and increase optional benefit values. We did not receive comments on any of these amendments.

Contract Benefits. The second line item under ''Restrictions,'' ''Are There any Restrictions on Contract Benefits?'' requires a statement about whether there are any restrictions or limitations relating to benefits offered under the contract, and/or whether a benefit may be modified or terminated by the insurance company. It also requires a statement that withdrawals that exceed limits specified by the terms of a contract benefit may affect the availability of the benefit by reducing the benefit by an amount greater than the value withdrawn and/or could terminate the benefit. As proposed, we are broadening this item to include disclosure on restrictions or limitations relating to any benefit under the contract, not just optional benefits (as currently required). While a benefit under the contract might be characterized as standard (*i.e.,* not ''optional''), it could have restrictions that should be disclosed in the KIT because of the benefit's importance to the investor's rights under the contract, such as a proportionate withdrawal calculation under a standard death benefit.[233] We are requiring insurance companies to include this disclosure for RILAs, as proposed, and also registered MVA annuities in a modification from the proposal, because the disclosure is equally applicable to those annuities as it is to variable annuities. We did not receive comments on proposed amendments to this line item.

e. Taxes

We also are adopting, as proposed, amendments requiring insurance companies to include the line item under the heading ''Taxes,'' ''What are the Contract's Tax Implications?'' [234] This line item is designed to alert investors to the tax implications of variable contracts and as amended, of non-variable annuities. This line item currently requires a statement that an

[228] This disclosure requirement included conforming changes to current Form N–4 to address RILAs. *See* Proposing Release at n.105 and accompanying text.

[229] *See* CAI Comment Letter.

[230] While the current form refers to depositor, the substance of the required disclosure is the same as what is being adopted.

[231] *See* Final Form N–4, Instruction 3(d) to Item 3.

[232] *See* final Form N–4, Instruction 4(a) to Item 3. The current item requires the insurance company to state whether there are any restrictions that may limit the investments that an investor may choose, as well as any limitations on the transfer of contract value among portfolio companies. Consistent with the corresponding changes made to defined terms, we are also specifying that this item applies to any investment option, not just the portfolio companies available as investment options under a variable option. *See infra* Section II.B.8.b.

[233] *See* final Form N–4, Instruction 4(b) to Item 3. Similarly, we are adopting, as proposed, a change to the discussion in the Overview about contract features that will broaden that discussion to cover both optional and standard contract benefits. *See* final Form N–4, Item 2(c).

[234] *See* final Form N–4, Instruction 5 to Item 3.

investor should consult with a tax professional to determine the tax implications of an investment in, and purchase payments received under, the contract. The insurance company must also state that there is no additional tax benefit to the investor if the contract is purchased through a tax-qualified plan or individual retirement account (''IRA''), and that withdrawals will be subject to ordinary income tax and may be subject to tax penalties. We are applying this requirement to non-variable annuities because the same tax considerations apply. We did not receive comments on the proposed amendments to this line item.

f. Conflicts of Interest

Investment Professional Compensation. We are requiring, as proposed, insurance companies to include the first line item under the heading ''Conflicts of Interest,'' ''How are Investment Professionals Compensated?'' [235] This current line item for variable contracts is designed to alert investors to the existence of compensation arrangements for investment professionals and the potential conflicts of interest arising from these arrangements. It requires issuers to disclose that an investment professional may be paid for selling the contract to investors. An issuer must describe the basis upon which such compensation is typically paid (*e.g.,* commissions, revenue sharing, compensation from affiliates and third parties). An issuer also must state that investment professionals may have a financial incentive to offer or recommend the contract over another investment. The same compensation arrangements and potential conflicts are relevant for non-variable annuities, and we therefore are requiring an insurance company registering a non-variable annuity to provide the same disclosure. We did not receive comments on these amendments.

Exchanges. We are requiring, as proposed, insurance companies to include the second line item under the heading ''Conflicts of Interest,'' ''Should I Exchange My Contract?'' [236] This current line item for variable contracts is designed to alert investors to potential conflicts of interest that may arise from contract sales that stem from exchanges. It requires issuers to state that some investment professionals may have a financial incentive to offer a new contract in place of the one owned by the investor. An issuer must further state that investors should only exchange their contract if they determine, after comparing the features, fees, and risks of both contracts, that it is preferable to purchase the new contract rather than continue to own the existing contract. These same considerations apply to an investor considering an exchange involving a non-variable annuity. In a change that will apply to variable and non-variable annuities, and to put investors on notice that there may also be costs or charges associated with terminating an existing contract, we are also requiring, as proposed, that issuers disclose in this legend that investors should consider any fees or penalties to terminate the existing contract in considering whether to exchange a contract. We did not receive comments on these amendments.

4. Principal Disclosure Regarding Index-Linked Options and MVA Options (Items 6 and 17)

We are adopting amendments to Form N–4 to provide investors with the principal disclosures regarding index-linked options, largely as proposed, and MVA options, in a modification from the proposal, available under the contract, as required in two items of the form. First, investors will be provided with detailed information about the index-linked options and MVA options available under the contract in Item 6 (Description of the Insurance Company, Registered Separate Account, and Investment Options). In addition, investors will be provided with a summary information table, with legends highlighting risks, that outlines the available index-linked options and MVA options in Item 17 (Investment Options Available Under the Contract). These amendments build on the existing disclosure requirements in each form item to help ensure that investors have key information about the annuity contract and available investment options, regardless of whether the contract is a variable annuity, a RILA, a registered MVA annuity, or combination contract offering a variety of these options.

a. Description of Insurance Company, Registered Separate Account, and Investment Options (Item 6)

We are adopting amendments to Item 6 of Form N–4 that will, largely as proposed, modify certain existing disclosure requirements concerning the insurance company, registered separate account, and variable options, and expand the item to include new disclosures for any index-linked and fixed options offered under the contract. To address the inclusion of registered MVA annuities on Form N–4, we are adopting changes to the proposed requirements to address fixed options subject to a contract adjustment. Items 6(a)–(c) will continue to require a concise discussion about the insurance company, registered separate account, and variable options. The amendments in Item 6(d) will require new disclosures about key aspects of any index-linked option offered under the contract, while Item 6(e) will add disclosures for fixed options generally, including MVA options.

Insurance Company, Registered Separate Account, and Variable Options

We are adopting the amendments to Items 6(a)–(c) as proposed. As discussed in the Proposing Release, these provisions largely retain the current requirement to provide a concise discussion about the insurance company, registered separate account, and variable options, slightly modified to implement certain definitional changes and minor restructuring to accommodate the addition of RILAs to the form.[237]

One commenter addressed proposed Item 6(a), which would, if applicable, require a filer to indicate that the insurance company is relying on the exemption provided by rule 12h–7 under the Exchange Act.[238] This commenter asked that these rule 12h–7 representation requirements be revised to make clear that they only apply to an insurance company registrant (not a separate account) and only to an insurance company as an issuer of a RILA (not an insurance company in its role as depositor of a registered separate account).[239] The instruction to Item 6(a), however, serves as a reminder to registrants that rely on a rule 12h–7 exemption to include the prospectus disclosure that the rule requires.[240] If a registrant is relying on rule 12h–7, it must provide the disclosure required by

[235] *See* final Form N–4, Instruction 6(a) to Item 3.

[236] *See* final Form N–4, Instruction 6(b) to Item 3.

[237] *See* final Form N–4, Item 6(a)–(c). For example, because the insurance company is obligated to pay all amounts promised to investors under the contracts subject to its financial strength and claims-paying ability, disclosure about this topic must be framed in terms of the insurance company, not the registered separate account, as the requirement is currently worded.

[238] CAI Comment Letter.

[239] CAI Comment Letter.

[240] *See* rule 12h–7(f) under the Exchange Act (requiring that the prospectus for the securities contain a statement indicating that the issuer is relying on the exemption provided by the rule). Pursuant to section 30(d) of the Investment Company Act, a separate account must comply with the Investment Company Act's reporting requirements in lieu of the Exchange Act's reporting requirements that apply to other kinds of issuers and therefore does not need to rely on rule 12h–7.

that rule—independent of any form requirement—and in providing the disclosure can provide the additional details the commenter identified in its comment letter. We therefore are not making the suggested change.[241] This commenter similarly asked that we revise the proposed instruction to allow insurers to add clarifying disclosure that identifies generally the types of securities that support an insurer's reliance on rule 12h–7 (for example, a general statement that the insurer relies on rule 12h–7 with respect to registered stand-alone RILA contracts, registered index-linked options, or other registered non-variable insurance contracts the insurer issues).[242] The proposed instruction does not preclude a registrant from disclosing this information.

We received no comments on the proposed amendments to Item 6(b) (Registered Separate Account) or 6(c) (Variable Options), and we are adopting those sub-items as proposed.

Index-Linked Options

We are adopting amendments to Item 6(d) that will require an insurance company to disclose information about the key features of the index-linked options currently offered under the contract.[243] These amendments are substantially as proposed, but with some modifications in response to comments. Under the final amendments, the prospectus must include a description of each index-linked option currently offered under the contract, including information about: (1) limits on index losses; (2) limits on index gains; (3) crediting period; (4) crediting methodology and examples; (5) relevant indexes; (6) maturity; and (7) other material features of the index-linked option. As discussed in the Proposing Release, these disclosures are designed to complement more general disclosures about index-linked options located elsewhere in the prospectus by providing investors specific information about each index-linked option's features and risks.[244] In particular, the new disclosures are designed to address points that investor testing participants suggested might be confusing and/or for which they indicated that they would prefer more information.[245]

One commenter expressly supported our proposal to require detailed disclosure about index-linked options in the prospectus, stating that ''the disclosure items and instructions under proposed new Item 6(d) are helpful and appropriate,'' and ''would generally provide investors with the information they need to understand how the index-linked options operate, while also providing enough flexibility in the instructions to describe RILAs in the market today and to allow for future innovation.'' [246] No commenters opposed the proposed inclusion of disclosure about index-linked options in the prospectus as a general topic. Accordingly, we are requiring detailed disclosure about index-linked options in the prospectus, subject to modifications to certain of the proposed aspects of this disclosure, as discussed below.

Description of the Index-Linked Options Currently Offered

Under the final amendments, the prospectus must describe the index-linked options currently offered under the contract. As proposed, the description must state that the insurance company will credit positive or negative interest at the end of a crediting period to amounts allocated to an index-linked option based, in part, on the performance of the index and—to dispel potential investor confusion relating to the reference to an index—that an investment in an index-linked option is not an investment in the index or in any index fund.[247]

We are adopting, as proposed, the requirement to state that an investor could lose a significant amount of money if the index declines in value.[248] In a change from the proposal, we are not requiring the prospectus to state that the potential for investment loss could be significantly greater over time than the potential for investment gain.[249] As discussed above, we are not adopting a parallel cover page disclosure because a separate requirement that addresses limits on index losses covers this risk in a more direct way than the proposed statements.[250] We are not adopting this aspect of the proposed Item 6 requirement for the same reasons.

As proposed, to emphasize the risks associated with an early withdrawal from an index-linked option, the prospectus must state that an investor could lose a significant amount of money due to the contract adjustment if amounts are removed from an index-linked option prior to the end of its crediting period.[251] In a change from the proposal, and as discussed below, we are not adopting the proposed requirement to accompany either this risk of loss statement or the risk of loss statement regarding negative index performance with numeric disclosure of the maximum amount of loss an investor could experience from contract adjustments or negative index performance.[252]

Substantially as proposed, to inform investors of the possibility that their investment options could be unilaterally changed without action on their part, the insurance company will be required to state, if applicable, that it can add or remove index-linked options and change the features of an index-linked option from one crediting period to the next, including the index and current limits on gains and limits on index losses, subject to any contractual minimum guarantees.[253]

Lastly, similar to the current requirement for variable options, and substantially as proposed, a prospectus that offers index-linked options must state that certain information regarding the features of each currently offered index-linked option is available in an appendix to the prospectus, with a cross-reference to that appendix.[254]

One commenter addressed the proposed description of index-linked options currently offered under the contract with concerns regarding the narrative and numeric risk of loss disclosures.[255] This commenter opposed including any disclosures addressing the maximum loss an investor could experience—narrative or numerical—in the description of index-linked options. This commenter asserted that disclosure on index-linked options in this section of the prospectus should focus on describing the mechanics of the index-linked options and contract

[241] In addition to requiring rule 12h–7 prospectus disclosure in Item 6, we are adding a related check box on the facing page. *See infra* Section II.C.8.a.

[242] CAI Comment Letter.

[243] Final Form N–4, Item 6(d).

[244] In the context of variable annuities, this type of detail about variable options is not required by Item 6 because each portfolio company issues its own prospectus that contains more detailed information about the portfolio company. *See* current and final Form N–4, Item 6(c); *see also infra* footnote 245.

[245] Proposing Release at nn.125–126 and accompanying text.

[246] CAI Comment Letter.

[247] Final Form N–4, Item 6(d)(1)(i).

[248] Final Form N–4, Item 6(d)(1)(ii). This disclosure mirrors a parallel requirement in Item 2(b)(2)(ii). *See supra* section II.C.2.

[249] Proposed Form N–4, Item 6(d)(1)(ii).

[250] Proposed Form N–4, Item 1(a)(6); *see supra* Section II.C.1.

[251] Final Form N–4, Item 6(d)(1)(iii).

[252] *See* proposed Form N–4, Instructions to Item 6(d)(1)(ii) and (iii); *see also supra* Section II.C.2.

[253] Final Form N–4, Item 6(d)(1)(iv).

[254] Final Form N–4, Item 6(d)(1)(v); *see also* final Form N–4, Item 17(b) (Appendix). In a change from the proposal, we are adding ''current'' before ''limit on index loss'' and removing ''guaranteed'' before ''minimum limit on index gain'' to conform to the revised headings in the Item 17(b) table for index-linked options. *See infra* Section II.C.4.b.

[255] CAI Comment Letter.

adjustments, not investment risks, and suggested that investors likely will have already read the maximum risk of loss disclosures in earlier sections of the prospectus, so including similar disclosure along with descriptions of index-linked options would not be helpful.

Including risk of loss statements along with descriptions of the index-linked options that are offered under the contract (in the location in the prospectus that requires the greatest amount of detail about index-linked options) will result in a more complete understanding of the options the contract offers. The potential risk of loss associated with an index option is a key piece of information for investors to consider alongside other index-option-specific details disclosed in response to this item of Form N–4. Accordingly, the final amendments will require statements regarding the risk of loss associated with index declines, subject to conforming modifications as discussed above in the context of similar cover page disclosure. We are also adopting the requirement to include a statement about risk of loss associated with negative contract adjustments, as proposed, for the same reasons.[256] In a change from the proposal, however, we are not adopting the proposed instructions that would have required numeric disclosure of the potential scope of loss due to negative index performance or a negative contract adjustment in Item 6. After considering comments, we agree that numeric examples are appropriately located in other parts of the prospectus, namely the KIT and the Item 5 principal risk disclosure (for the reasons discussed in the release sections describing those disclosures), and need not be repeated here.[257] For this reason, we are adopting an approach that does not require numeric disclosure showing risk of loss in the discussion of index-linked options, but that retains related narrative statements about risk of loss, to ensure that all material aspects of each index-linked option are disclosed in one place.[258]

Limits on Index Losses and Gains

Description of limits on index losses and gains: Under the final amendments, the insurance company must describe the limits on index losses and gains for each index-linked option.[259] In each case, and as applicable, the insurance company will be required to state that such limits apply and describe how index losses and gains would be limited (for example, through the use of a floor or buffer to limit losses, or a cap or participation rate to limit gains).[260] We are also requiring the insurance company to provide examples to help investors understand how these limits work in practice. To illustrate the limits on index losses, the prospectus must include an example showing how the limit on index losses could operate to limit a negative return (*e.g.,* if the index return is −25% and the buffer is −10%, the insurance company will credit −15% (the amount that exceeds the buffer) at the end of the term, meaning the investor's contract value will decrease by 15%).[261] The prospectus similarly must include an example of how the limit on gains could operate to limit a positive return (*e.g.,* if the index return is 12% and the cap rate is 4%, the insurance company will credit 4% at the end of the term, meaning the investor's contract value will increase by 4%).[262] We received no comments on this aspect of the release, and are adopting as proposed.

Current limits on index losses and gains: The final amendments to Item 6 also will require insurers to disclose, for each index-linked option, current limits on index losses and gains (along with a statement that the current limit will not change during an index-linked option's crediting period).[263] In a change from the proposal and in response to comments, insurers will be permitted to comply with the requirement to provide current limits on index gains by posting the information to a website that is publicly accessible, free of charge, and specifically incorporating this information by reference into the prospectus.[264] An insurer relying on this incorporation by reference approach must: (1) state in the prospectus at the place where current upside rates would normally appear that the information about current limits on index gains is incorporated by reference; and (2) provide the website address where such rates can be found, with an active hyperlink to the website for electronic versions of the prospectus.[265] In addition, the website must: (1) be specific enough to lead investors directly to the current limits on index gains, rather than to the home page or other section of the website on which the limits are posted; (2) reflect current limits that are available for all contract investors, including variations in limits (*e.g.,* due to distribution channel, State requirements, optional benefits, date of contract purchase, etc.); and (3) only include limits on index gains that are currently available for the index-linked options offered under the contract.[266] These requirements are meant to provide the same information the investor would have received through the proposed approach where current upside rates would appear directly in the prospectus.

We received mixed comments about the proposed requirement to disclose current limits on index gains (or ''current [upside] rates'') in the prospectus.[267] One commenter supported disclosing current rates, observing that the current rate is one of the most important terms of the offering.[268] Conversely, several commenters opposed our proposal to require current upside rates in the prospectus.[269] These commenters asserted that because current upside rates for new crediting periods change so frequently—daily, or in most cases, weekly or monthly—a prospectus that includes these current rates would quickly become stale, necessitating frequent updates to the prospectus. One of the commenters stated that RILA issuers routinely change current upside rates for new crediting periods in response to market conditions to help them manage their risks and provide competitive upside exposure to investors on an ongoing basis.[270] The other commenter observed that not only do current upside rates for RILAs change frequently, but rates can also differ depending on when the contract was purchased, the distribution channel

[256] Final Form N–4, Item 6(d)(1)(ii).

[257] *See supra* Section II.C.3 and *infra* Section II.C.5.

[258] *See* proposed Form N–4, Instructions to Item 6(d)(1)(ii) and (iii).

[259] Final Form N–4, Items 6(d)(2)(i) and (ii).

[260] Final Form N–4, Items 6(d)(2)(i)(A) and 6(d)(2)(ii)(A).

[261] Final Form N–4, Item 6(d)(2)(i)(A).

[262] Final Form N–4, Item 6(d)(2)(ii)(A).

[263] Final Form N–4, Items 6(d)(2)(i)(B) and 6(d)(2)(ii)(B).

[264] Final Form N–4, Instruction 1 to Item 6(d)(2)(ii)(B); *see also* final Form N–4, General Instruction D and Item 17(b). The website address required by Item 6 is the same website that is required to be included in the Item 17(b) legend, and must conform to Item 17(b)'s website posting requirements.

[265] Final Form N–4, Instruction 1 to Item 6(d)(2)(ii)(B); Final Form N–4, General Instruction C.3.(i).

[266] Final Form N–4, Instruction 2 to Item 6(d)(2)(ii)(B).

[267] *See, e.g.,* CAI Comment Letter; VIP Working Group Comment Letter. We did not receive comments opposing the proposed requirement to disclose current limits on index losses in the prospectus. We understand that current limits on index losses do not change as frequently as current limits on index gains. *See infra* footnote 754 and accompanying text.

[268] Johnson Comment Letter.

[269] CAI Comment Letter; VIP Working Group Comment Letter; Comment Letter of Ronald Coenen, Jr. (Apr. 5, 2024) (''Coenen Comment Letter'').

[270] CAI Comment Letter.

through which the contract was sold, the contract class, and the optional benefits available.[271] This commenter also raised questions regarding the timing of when current upside rates must be provided.[272]

The proposal was designed to address concerns about frequently changing upside rates by contemplating that insurance companies could update upside rate information using a prospectus supplement filed pursuant to rule 497 under the Securities Act, rather than being required to update the registration statement to reflect each change.[273] The two commenters opposing the proposed requirement to disclose current upside rates in the prospectus raised concerns about this approach, however, stating that it would be a significant change to current practice, and would require RILA issuers to file rule 497 prospectus supplements frequently to update current rate information.[274] They also stated that disclosing new rates by filing a rule 497 prospectus supplement frequently (*e.g.,* every few days) would be confusing to investors. One of the commenters observed that insurance companies could change current rates less frequently to avoid the need for frequent prospectus supplements, but this would mean that to offset the risks associated with more constant rates, insurance companies would offer less favorable rates to investors.[275]

Commenters urged the Commission to permit insurance companies to follow their current practice of disclosing current upside rates on a dedicated web page on the insurer's website.[276] One of these commenters asserted that the current approach provides the investor with the same information in the same timeframe as the proposed rule 497 process ''without any of the significant costs, human resource burdens, and investor confusion'' that would arise from an ''overwhelming'' number of rule 497 filings.[277] The commenter stated that RILAs have been offered for more than a decade absent the inclusion of current rates in the prospectus, and the RILA rate-setting and communication process is well-established and functions without any apparent investor confusion or complaint. This commenter also noted that we proposed to require a website address with current upside rates in the index-linked option appendix and asked that rather than having to file numerous rule 497 prospectus supplements and post those supplements online pursuant to rule 498A, RILA issuers be allowed to incorporate by reference the web page that would already include the same information.[278]

Commenters who suggested that current upside rates should be posted online instead of included directly in the prospectus recommended additional measures to effectuate the suggested approach. One commenter suggested that as a condition to allowing insurers to post current upside rates to the insurer's website, we could impose a recordkeeping requirement and require the issuer to consent to subjecting the posted rate information to prospectus or registration statement liability.[279] Another commenter similarly asked that we permit RILA issuers to include the current upside rates in the prospectus by expressly incorporating by reference into the prospectus the website page where current rates would be posted, asserting this would have the same legal significance as a rule 497 prospectus supplement with respect to disclosure liability.[280] This commenter further stated that allowing information to be incorporated by reference into the prospectus would be consistent with the Commission's prior approach to the treatment of websites that are identified or incorporated by reference into the registration statement.[281] The commenter also suggested that if we were to adopt the website approach for posting current upside rates as an alternative to the rule 497 approach, it would be willing either to support a requirement to include historical upside rates as part of the website that is incorporated by reference into the prospectus, or to file an annual report disclosing the upside rates offered during the previous one-year period.[282]

After considering comments, we have determined to permit insurance companies to disclose current upside rates in the prospectus either by disclosing the information directly in the prospectus, as proposed, or by including a website address where the current rates can be found and incorporating by reference the information on the website into the prospectus.[283] Investors likely will find it more efficient to obtain current upside rates on the insurer's website identified in the prospectus than to review a potentially high number of prospectus supplements. It also will be familiar to many investors because this is the approach that many RILA investors currently use to obtain information about current upside rates. Moreover, allowing insurance companies to disclose current upside rates on a website and to incorporate this information by reference into the prospectus also will retain prospectus and registration statement liability, and ready accessibility of information that is a core aspect of the RILA offering. It will also accommodate RILA issuers' practice of changing current upside rates in response to market conditions. Because the approach we are adopting is consistent with current practice, we anticipate that the vast majority of RILA issuers will choose to use the website posting approach to disclose current upside rates instead of disclosing them directly in the prospectus.

In addition, in response to comments and to provide a longer and lasting historical record of recent upside rate information, which investors may wish to consider, and which Commission staff, third-party market participants, and others could use to analyze RILA offerings individually and the RILA market as a whole, all upside rate information for the prior calendar year

[271] VIP Working Group Comment Letter.

[272] *Id.* (asking how far in advance must the rates be filed, whether investors get the rates at the time the application is signed or the date the insurance company received the money or transfer request; also noting that today, some products do not disclose current rates in advance and instead use thresholds or bail-out features, and asking if this approach would no longer be permissible, and can existing products continue to operate with these features).

[273] Proposing Release at nn.134.

[274] CAI Comment Letter (stating that ''one member estimated that if they change each upside rate at the start of each crediting period for each share class of each RILA contract they offer . . . it would need to file 432 supplements each year, covering 25,680 rates''); VIP Working Group Comment Letter.

[275] VIP Working Group Comment Letter.

[276] CAI Comment Letter; VIP Working Group Comment Letter.

[277] CAI Comment Letter.

[278] *Id.* (citing to proposed Form N–4, Item 17(b)).

[279] VIP Working Group Comment Letter.

[280] CAI Comment Letter.

[281] *Id.* (citing to proposed Form N–4, Item 17(b); also stating that by expressly incorporating by reference the web page with the current upside rates, the information on that web page would be legally part of the prospectus, and prospectus disclosure liability would attach).

[282] Coenen Comment Letter.

[283] Final Form N–4, Instruction 1 to Item 6(d)(2)(ii)(B). With respect to the timing questions raised by one commenter, *see supra* footnote 272, we understand that it is common practice for insurance companies to disclose current rates in advance of the start of the crediting period of an index-linked option (with the specific timing for disclosing these current rates ahead of the start of the crediting period varying by product), although in limited historical cases insurance companies have not disclosed current rates in advance and instead used thresholds or bail-out features. The amended form requirements do not prescribe how far in advance of the start of the crediting period of an index-linked options current rates must be set. We understand that there are variations in practice within the industry on when rates are set before the start of the crediting period, based on market conditions and other factors, and our disclosure approach does not necessitate standardizing these practices.

must be filed annually with the Commission in a structured data format in response to Item 31A of Form N–4, as described below in Section II.C.7.[284] Including this information together with the other census-type information RILAs will be required to provide in response to Item 31A is preferable to the recordkeeping requirement one commenter suggested because it avoids the need for the Commission to access insurance company records in order to obtain the historical information while also relieving insurers of an additional recordkeeping obligation. Moreover, requiring an annual filing on EDGAR not only creates a historical record of the information, as would have been the case if insurers filed a rule 497 prospectus supplement to disclose each upside rate change, but also has the benefit of being a single filing, instead of the potentially overwhelming number of rule 497 filings to which commenters objected. This requirement also supports commenters' recommendation to allow insurance companies to incorporate by reference current upside rates from a website because, absent some filing with the Commission, it would be difficult to determine what information had been incorporated. We are adopting the annual filing approach instead of the alternative approach of requiring historical rate information to be posted on insurers' websites, as one commenter suggested, because a single annual filing (1) would create a permanent historical record of past rates, unlike website disclosure that is continually updated, and (2) would be more efficient for interested parties to review and analyze than continually-updated website information.

Minimum limits on index losses and gains: In addition, insurers will have to include prominent statements regarding minimum limits on index losses and gains that will always be available under the contract, subject to certain modifications from the proposal.[285] As discussed above, we have modified the wording of the requirement on minimum limits on losses to require an insurer to prominently disclose any minimum limits on index losses that will always be available under the contract, or alternatively, to prominently state that it does not guarantee that the contract will always offer index-linked options that limit index losses.[286] Similarly, we have modified the wording of the proposal, as discussed above, to require an insurer to prominently state, for each type of upside limit offered (*e.g.,* cap, participation rate, etc.), the lowest limit on index gains that may be established under the contract.[287] We are requiring similar disclosure on the cover page, in the Overview, and in the KIT, and we discuss the comments received concerning the proposed requirement to disclose information about guaranteed minimums, and our corresponding modifications, above.[288] We are also retaining this disclosure requirement in Item 6, in the context of other disclosure regarding index-linked options, because it should be included in the section of the prospectus that provides the greatest amount of detail about such options. An investor reviewing the detailed disclosure about each index-linked option required by Item 6 will therefore have information about the key terms of each index-linked option and information about limits on gains and losses that may be available in future crediting periods.

Factors considered in determining current limits on index losses and gains: Substantially as proposed, we are requiring the insurance company to describe the factors it considers in determining the current limits on losses and gains for an index-linked option and how that choice may impact other features of the option set by the insurance company, along with an explanation of the factors an investor should consider regarding limits on index losses or gains before selecting an index-linked option for investment.[289]

As discussed in the Proposing Release, we are requiring the insurance company to explain how it selects rates for limiting index losses and gains to help investors understand how the features of a particular index-linked option will impact that option's risk/return profile. Giving investors information about the factors the insurance company considers in determining current limits—which are key features of an index-linked option—may help manage their expectations regarding how the product operates.[290] The disclosure about how the current limits on index gains or losses may impact other aspects of the index-linked option is designed to explain the inverse relationship between various features of the index-linked option.[291] The requirement to provide an explanation of the factors an investor should consider regarding limits on index losses or gains before selecting an index-linked option is designed to assist an investor in choosing among the index-linked options available under the contract, such as by explaining the difference between a floor and a buffer, or by highlighting index-linked options with features that assume more risk in return for higher potential return, or vice versa. We received no comments on this aspect of the proposal and are adopting as proposed.

Crediting Period

As proposed, we are requiring insurers to generally describe the crediting periods of the index-linked options available under the contract (*e.g.,* 1, 3, and 6 years), along with the factors an investor should consider regarding different crediting period lengths before selecting an index-linked option.[292] The final amendments, substantially as proposed, will require the insurance company to prominently state that amounts must remain in an index-linked option until the end of its crediting period to be credited with all

[284] Final Form N–4, Item 31A; *see also* Coenen Comment Letter.

[285] Final Form N–4, Items 6(d)(2)(i)(B) and 6(d)(2)(ii)(B).

[286] Final Form N–4, Item 6(d)(2)(i)(B); s*ee supra* Section II.C.1.

[287] Final Form N–4, Item 6(d)(2)(ii)(B).

[288] *See supra* Sections II.C.1, 2, and 3.

[289] Final Form N–4, Items 6(d)(2)(i)(C) and 6(d)(2)(ii)(C). Such factors could include, for example, long-term interest rates, market volatility, or the cost of option contracts supporting the index-linked option guarantees. Similar disclosure is required in other contexts. *See, e.g.,* final Form N–4, Item 9(a) (requiring disclosure of material factors that determine the level of annuity benefits); *see also* Form N–6, Instruction 2 to Item 7(a) (requiring the identification of factors that determine the applicable cost of insurance rate).

[290] For example, an insurer might disclose that caps and participation rates may vary depending on factors such as market volatility, hedging strategies and investment performance, the investor's index effective date, or interest rates, among others. If an insurer discloses that it takes various specified factors into consideration, but ultimately sets rates at its own discretion, the investor should know that as well.

[291] For example, the insurance company could include an explanation regarding how the limit on index losses for an index-linked option could impact the current limit on index gains. This could help an investor understand, for example, that if the insurance company determines to increase the extent to which the index-linked option will protect against loss, the insurance company may then reduce the amount of upside index participation the investor could receive.

[292] *See* final Form N–4, Item 6(d)(2)(iii)(A). An example of one such factor could be that crediting periods introduce timing risk that forces investors to take losses at the end of a crediting period, and shorter crediting periods might increase this risk. *See* OIAD Investor Testing Report at Section 2, RILAs: Structure of Contracts and Investment Options, Investment Terms (''The role of [crediting periods] also creates a situation that may be unique for RILA purchasers relative to other investments they hold. In particular, RILA investors periodically realize gains or losses at the end of each [crediting period]. In contrast, a mutual fund investor (for example) could wait to sell the fund during down markets, avoiding realizing those losses. Thus, the [crediting period] feature adds a 'timing risk' for RILA investors relative to certain other investments.'').

or partial interest, as applicable, and to avoid a possible contract adjustment in addition to potential surrender charges and tax consequences.[293] This discussion must also include a description of the transactions subject to a contract adjustment (*e.g.,* partial withdrawals), with appropriate cross-references to related disclosures in the prospectus.[294] These disclosures collectively are designed to help an investor make an informed investment decision when selecting an index-linked option, taking into account that withdrawing money before the end of the applicable crediting period can have adverse consequences. We received no comments on this aspect of the proposal and are adopting it as proposed.

Methodology and Examples

Each index-linked option has an ''index crediting methodology'' that explains how interest is calculated and credited to the contract. The final amendments will, as proposed, require insurance companies to explain the index crediting methodologies used for index-linked options and provide numeric examples reflecting how these methodologies work.[295] The final amendments also will require insurance companies to provide a bar chart that illustrates the annual return of each index along with hypothetical examples of index return after applying standardized limitations on index gains and losses, subject to minor modifications from the proposal, discussed below.[296]

Specifically, we are requiring insurance companies to describe, for each index crediting methodology, how interest is calculated and credited at the end of a crediting period based on the interest crediting formula or performance measure (*e.g.,* point-to-point, step-up calculations, and enhanced performance).[297] We received no comments on this aspect of the proposal and are adopting it as proposed.

We are also requiring, as proposed, the prospectus for contracts that offer index-linked options to include a bar chart for each index showing the index's annual return for each of the last 10 calendar years (or for the life of the index, if less than 10 years), with the corresponding numeric performance adjacent to each bar.[298] Specifically, insurance companies must provide a hypothetical example alongside each index return that reflects the return after applying a 5% cap and a −10% buffer. If there are no caps or buffers offered under the contract (if, for example, the contract includes a floor rather than a buffer), insurance companies may reflect a rate or measure used to limit index gains or losses under the contract that is comparable.[299] Insurance companies will not be permitted to include additional index performance presentations, or historical index performance that precedes the inception of the index.[300] Further, similar to the proposal but with modifications to address comments as discussed below, insurance companies will be required to provide two footnotes to this table, if applicable, that disclose (1) that the index is a price return index, not a total return index, and therefore does not reflect dividends paid on the assets in the index, which will reduce the index return and cause the index to underperform a direct investment in the securities composing the index, and (2) that the index provider deducts fees and costs when calculating index return, which will reduce the index return and will cause the index to underperform a direct investment in the securities composing the index.[301]

As proposed, these bar charts must also be accompanied by the following legend in the format specified in the form:

The bar chart shown below provides the Index's annual returns for the last 10 calendar years (or for the life of the Index if less than 10 years), as well as the Index returns after applying a hypothetical 5% cap and a hypothetical −10% buffer. The chart illustrates the variability of the returns from year to year and shows how hypothetical limits on Index gains and losses may affect these returns. Past performance is not necessarily an indication of future performance.

The performance below is NOT the performance of any Index-Linked Option. Your performance under the Contract will differ, perhaps significantly. The performance below may reflect a different return calculation, time period, and limit on Index gains and losses than the Index-Linked Options, and does not reflect Contract fees and charges, including surrender charges and the Contract Adjustment, which reduce performance.

This requirement is designed to provide context for the index-linked options that the RILA contract offers to help inform an investor deciding whether to invest in a RILA.[302] As discussed in the Proposing Release, presenting historical index information alone, without the addition of hypothetical caps and buffers, could mislead investors into thinking that these historical rates of index performance are what they would have received under the contract had they invested in a particular index-linked option.[303] Providing historical index information with an overlay of hypothetical caps and buffers will help investors understand better how those limits can cause RILA performance to differ from that of the index, while the legends will put investors on notice that the presented performance is not the RILA's performance.

Commenters generally supported, or did not oppose, the proposed inclusion of bar charts showing annual index returns. One commenter stated that the proposed bar chart ''is a helpful disclosure that will provide information about historical index performance, while also providing another tool to help investors understand bounded return structures.'' [304] Several other commenters, though not opposed to the inclusion of a bar chart showing index returns, objected to the proposed 5% cap rate on the grounds that ''caps have never been that low,'' with one commenter suggesting that using these

[293] Final Form N–4, Item 6(d)(2)(iii)(B).

[294] Final Form N–4, Item 6(d)(2)(iii)(B).

[295] Final Form N–4, Item 6(d)(2)(iv)(A) and (C).

[296] Final Form N–4, Item 6(d)(2)(iv)(B).

[297] Final Form N–4, Item 6(d)(2)(iv)(A). We understand that many index-linked options use the same crediting methodology. If all index-linked options offered by a RILA contract use the same crediting methodology, the prospectus will only include one example of that crediting methodology. If, however, the index-linked options in a RILA contract offer more than one crediting method, or if different index-linked options in a RILA contract offer different crediting methods, this would affect the number of examples to be provided. The number of examples to be provided depends on the number of crediting methodologies, not the number of index-linked options. A point-to-point crediting methodology compares the index's performance at two points in time (such as at the beginning and end of the crediting period). Step-up calculations guarantee a given rate if the index's returns are positive, regardless of the index's actual performance, subject to certain conditions. ''Enhanced performance'' increases a positive index return, such as by offering a participation rate of more than 100%.

[298] Final Form N–4, Item 6(d)(2)(iv)(B).

[299] Final Form N–4, Instruction 3 to Item 6(d)(2)(iv)(B).

[300] Final Form N–4, Instruction 6 to Item 6(d)(2)(iv)(B).

[301] Final Form N–4, Instructions 4–5 to Item 6(d)(2)(iv)(B). We are making conforming changes in final Form N–4, Instruction 1(d) to Item 17(b).

[302] For example, if an index-linked option provides that the investor will experience at least 5% of the upside performance of an index, investors may view the tradeoffs of this investment differently if the index historically has returned, for example, 10% per year (thus capping gains at 5% during those past periods) or 1% per year. Similarly, if an index-linked option offers a −10% buffer, the investor could compare that against the index performance in the bar chart and assess the extent to which the buffer would have provided downside protection against market losses in negative return years.

[303] *See* Proposing Release at n.144 and accompanying paragraph.

[304] CAI Comment Letter.

rates would be ''misleading.'' [305] One of these commenters suggested that instead of using the proposed standardized cap and buffer rates, we should require bar charts with an overlay of actual rates.[306] Another commenter suggested that Commission staff be authorized to consider requests on a case-by-case basis to use a different overlay than would be generally prescribed, offering as an example a case where an insurance company only offers −20% buffers and suggesting the company should be permitted to use a −20% buffer overlay.[307]

We are not modifying the standardized rates as commenters suggest. As discussed in the Proposing Release, we proposed the hypothetical 5% cap rate and −10% buffer rate, which are higher than typical minimum levels of caps and floors that will always be available under a contract, but lower than typical currently-offered levels, to help investors understand how caps and buffers affect the index return. The bar chart with the overlay of standardized rates is merely an example designed to convey to investors that by selecting a product with caps and buffers, their returns will differ from that of the index. As emphasized in the accompanying legend, the performance reflected in the bar chart is not the performance of any index-linked option, and an investor's returns will differ from that of the index, perhaps significantly. Its purpose is to help investors understand how the product's limit features operate; it is not designed to convey an index-linked option's actual returns.

In addition, while a standardized 5% cap may be lower than many current caps, on balance it is better to select a standardized cap that is too low than too high, as an illustration with a standardized cap that is higher than the cap that the index-linked option actually offers (or may offer in the future) could suggest that the index-linked option may credit more interest than the option actually does. Based on staff experience, the standardized 5% cap also is higher than most guaranteed minimum caps insurance companies currently disclosed in RILA prospectuses. Moreover, using current upside rates, which change frequently, or considering requests on a case-by-case basis to use a different overlay, would undermine comparability across products and require insurers to frequently update the prospectus. The same concerns about frequent updates to the registration statements that commenters identified in connection with the proposal to include current upside rates in the prospectus also would apply to the bar chart presentation if it were based on current upside rates. Accordingly, we are adopting, as proposed, the hypothetical 5% cap rate and −10% buffer rate to provide for a consistent presentation across products designed to help investors understand a RILA's bounded return structure.[308] For the same reason, the amendments we are adopting do not permit the inclusion of additional bar charts in addition to the required examples, as one commenter suggested.

Two commenters suggested that the proposed bar chart disclosures should more clearly convey to investors that a RILA tracks a price return index and not a total return index, and the resulting effects on performance.[309] We agree, for the reasons described in conjunction with a parallel disclosure requirement in the KIT, that disclosure should alert investors to the fact that a price return index does not assume the reinvestment of dividends and thus will underperform a total return index and direct investment in securities underlying the index.[310] Accordingly, and in a conforming change, we are modifying the footnotes to provide, if applicable, that the index in the bar chart is a ''price return index,'' not a ''total return index'' and therefore does not reflect the dividends paid on the assets composing the index, which will reduce the index return and cause the index to underperform a direct investment in the securities composing the index.[311]

To help investors understand how these crediting methods work, we are also requiring, as proposed, an insurance company to include a numeric example to illustrate the mechanics of each index crediting methodology.[312] The examples will be required to show, in a clear, concise, and understandable manner, how each crediting method functions when the index has positive as well as negative returns. Specifically, we will require for each index methodology numeric examples that reflect a positive return above the limit on index gains, and a negative return below the limit on index losses.[313] The examples also will be required to assume hypothetical returns and limits that are reasonable based on current and anticipated market conditions and sales of the contract, and to reflect any charges subtracted from interest credited to or deducted from contract value in the index-linked option to allow investors to understand the impact of these charges on their return.[314] Additional examples, charts, graphs, or other presentations will be permitted if they are clear, concise, and understandable.[315] We are also requiring insurance companies to include a legend stating that: (1) these examples illustrate how the insurance company calculates and credits interest under each index crediting methodology assuming hypothetical index returns and hypothetical limits on index gains and losses; and (2) the examples assume no withdrawals.

We received one comment on this aspect of the proposal that sought clarification regarding what assumptions, such as fees, product features elected, the age of the contract, and/or interim value adjustments should be made when calculating the examples.[316] The instructions state that any charges that are subtracted from interest credited or that are deducted from contract value in an index option should be reflected in the example.[317] Because the legend states that the example assumes no withdrawals, insurers need not take into account the age of the contract, surrender charges, or any interim value adjustments. The instructions provide flexibility in terms of other assumptions that form the basis

[305] VIP Working Group Comment Letter (suggesting that, based upon OIAD's analysis in the OIAD Investor Testing Report, an 18% cap rate with a one-year crediting period and 10% buffer was more common); Datop Comment Letter; Johnson Comment Letter.

[306] VIP Working Group Comment Letter.

[307] CAI Comment Letter.

[308] In contrast to the bar chart, which requires fixed hypothetical cap and buffer rates, the index methodology examples required by Item 6(d)(2)(iv)(C) allow insurers to use rates that are based on current and anticipated market conditions. *See infra* footnote 315 and accompanying text.

[309] Johnson Comment Letter; Lee Comment Letter; *see supra* discussion at Section II.C.5.(b) (stating that the performance of a RILA is based on the performance of an index (such as the S&P 500) or another benchmark, in contrast to the performance of a ''price return index,'' which is typically lower than that of a ''total return'' index because a price return index does not reflect dividends).

[310] *See supra* footnote 227 and accompanying paragraph; *see* final Form N–4, Instruction 3(c)(C) to Item 3.

[311] Final Form N–4, Instruction 4 to Item 6(d)(2)(iv)(B). For consistency, we are making a similar change in final Form N–4, Instruction 5 to Item 6(d)(2)(iv)(B) and Instruction 1(d) to Item 17(b).

[312] Final Form N–4, Item 6(d)(2)(iv)(C).

[313] Final Form N–4, Instruction 2 to Item 6(d)(2)(iv)(C).

[314] Final Form N–4, Instructions 1 and 3 to Item 6(d)(2)(iv)(C).

[315] Final Form N–4, Instruction 4 to Item 6(d)(2)(iv)(C). As with the required numeric examples, any additional presentations that assume hypothetical returns and limits also should assume hypothetical returns and limits that are reasonable based on current and anticipated market conditions and sales of the contract.

[316] VIP Working Group Comment Letter.

[317] Final Form N–4, Instruction 3 to Item 6(d)(2)(iv)(C).

of the examples. Like all other registration statement disclosure, the examples may not be inaccurate or misleading, and we anticipate that insurers offering index-linked options (and that also offer variable options) will draw on prior experience developing performance examples for variable options in developing appropriate examples for index-linked options. We received no comments on our proposal to require a numeric example for each index crediting methodology and are adopting it as proposed.

Indexes

The index underlying an index-linked option is a central feature of the investment, as the investor's return will be based on the index's performance, subject to applicable limits on gains and losses. We therefore are requiring the insurance company to provide for each index a brief description of the types of investments that compose the index and where the investor can find additional information about the index.[318] We received no comments on these aspects of the proposal and are adopting them as proposed, subject to a conforming change to one of the proposed instructions related to differences between a price return index and a total return index.[319]

The form includes three instructions to this general requirement under the final amendments.[320] First, where there is more than one version of an index (for example a total return version and a price return version), the disclosure must clearly state which version of the index relates to the index-linked option.

Second, if the index is an exchange-traded fund (''ETF''), the disclosure must clarify whether the index's performance (for purposes of determining the amounts credited in the index-linked option) is based on the ETF's net asset value or closing value. If the performance is based on the ETF's share price, the disclosure must clarify the impact of using the share price as opposed to total return.

Third, the disclosure must also state, if applicable, that the index is a price return index, not a total return index, and therefore does not reflect dividends paid on the index's underlying securities. The disclosure also must state, if applicable, that the index deducts fees and costs when calculating index performance. In these cases, the disclosure must explain that this will reduce index return and cause the index to underperform a direct investment in the securities composing the index. This is important disclosure because an index that does not reflect dividends paid on underlying securities, or that deducts fees and costs, will have a lower return, all else equal, than an index that includes dividends and does not deduct fees and costs.

The insurance company also must state that it reserves the right to substitute an index prior to the end of the crediting period.[321] This will put investors on notice that the index associated with a particular index-linked option—which is a key driver of the investor's return—could change in the middle of a crediting period. In addition, the insurance company will be required to disclose: all circumstances that could necessitate a substitution; how the insurance company would choose a replacement index; when and how investors would be notified of any such change; how index return will be calculated at the end of the crediting period; and what would happen if a suitable replacement index were not found, including whether the index-linked option will be discontinued prior to the end of the crediting period. This information will allow an investor to better understand the likelihood of the insurance company making a substitution and its potential effects.

Maturity and Other Material Features

To help investors anticipate what may happen at the end of an index-linked option's crediting period, the final amendments will require the insurance company to state whether an investor will receive advanced notice of a maturing index-linked option, how an investor may provide instructions on reallocating contract value at the end of the crediting period, and any automatic default allocation in the absence of such instructions.[322] In describing these matters, the prospectus must also explain how investors will be informed of the index-linked option available for allocation at the end of a crediting period, including any changes to the currently-offered index-linked options and the discontinuance or addition of index-linked options.[323] We received no comments on this aspect of the proposal and are adopting it as proposed.

Finally, we are requiring the insurance company to describe any other material aspects of the index-linked option to ensure that any other item not discussed above that could inform an investment decision is disclosed.[324] This will include disclosure related to limitations on transfers to or from index-linked options, rate holds, ''bail-out'' provisions, start dates, and holding accounts.[325] We are also requiring a brief description of how charges may impact the index-linked option's value, if applicable, as part of this discussion. We received no comments regarding the proposed disclosures regarding other material features and are adopting it as proposed.

Fixed Options, Including MVA Options

In addition to variable options and index-linked options, annuity contracts commonly include fixed investment options, such as traditional, unregistered fixed options, unregistered index options, and MVA options.[326] In the variable annuity context, a fixed option provides an alternative for investors who wish to avoid the market risk of investing in a variable option. A fixed option can also serve as the holding account for amounts that are pending allocation to a particular investment option. In addition, a fixed option may be the default allocation vehicle at the end of an index-linked option's crediting period. As discussed above, annuity contracts also may offer fixed options standing alone (without also including variable options or index-

[318] Final Form N–4, Item 6(d)(2)(v)(A).

[319] Final Form N–4, Instruction 3 to Item 6(d)(2)(v)(A) (modified to clarify differences between a price return index and a total return index, similar to clarifying changes to Instruction 5 to Item 6(d)(2)(iv)(B), discussed above).

[320] Final Form N–4, Instructions 1–3 to Item 6(d)(v)(A).

[321] Final Form N–4, Item 6(d)(2)(v)(B). Insurers generally reserve the right to change the index in the middle of the crediting period if the index is discontinued or there is a substantial change in the calculation of the index. Based on staff experience, such changes are exceedingly rare.

[322] Final Form N–4, Item 6(d)(2)(vi).

[323] Final Form N–4, Instruction 3 to Item 6(d)(2)(vi).

[324] Final Form N–4, Item 6(d)(2)(vii).

[325] A ''rate hold'' locks in interest at the current cap (or other rate limiting index gains) for the period between which the insurance company receives the investor's annuity application and the time the investor's premium payment is allocated to the index-linked option. A bail-out provision is a contract provision that provides if a current cap (or other rate limiting index gains) is set below a specified value, the investor may withdraw value from that index-linked option or RILA without a contract adjustment (and in some cases without a surrender charge) during a specified period after the start of the crediting period. *See* additional discussion of bail-out provisions at *supra* footnote 283. A holding account is typically a conservative investment option (typically a money market fund or a fixed option) where amounts allocated to the index-linked option are held until the next index-linked option start date. This is used for index-linked options that start on a particular day each month (*e.g.,* the 15th of the month).

[326] *See* Final Form N–4, Item 6(e). Interests in fixed account options that are not subject to a contract adjustment are generally exempt securities under section 3(a)(8) of the Securities Act and rule 151 under the Securities Act.

linked options), including MVA options.

Form N–4 generally requires registrants to describe the fundamental features and risks of an annuity contract, including those, like fixed options, that are distinct from the variable options offered through the registered separate account.[327] The current form also requires specific disclosure about fixed options in the KIT and the Overview.[328] Because we are requiring insurers to include disclosures relating to index-linked options in Item 6, we are also, as proposed, requiring disclosures about fixed options so annuity contract investors have a complete understanding of all the investment options in which they may invest through that contract, either actively, or by default. This approach is designed to increase investor comprehension by ensuring that substantive information about all available investment options is presented in the same location in the prospectus and reflects the inclusion of registered MVA annuities on Form N–4.

The final amendments will, with modifications from the proposal, require insurance companies to disclose basic information about fixed options, generally covering the same areas as for index-linked options but tailored for the specifics of a fixed option. Specifically, as proposed, registrants will be required to describe the fixed options currently offered under the contract and state that information regarding the features of each currently-offered fixed option, including its name, term, and minimum guaranteed interest rate is available in an appendix with cross-references.[329] Further, as proposed, registrants will be required to describe how interest is calculated and when it is credited for each fixed option as well as the length of the term and minimum guaranteed interest rate (stated as a numeric rate, rather than referring to any minimums permitted under State law).

In a change from the proposal and to address the inclusion of registered MVA annuities on Form N–4, under the final amendments the prospectus must state, if applicable, that an investor could lose a significant amount of money due to a contract adjustment if amounts are removed from a fixed option prior to the end of its term, describe the transactions subject to a contract adjustment, and provide cross references to related disclosure in the prospectus.[330] The investment risk created by an MVA is a material consideration for an investor considering a registered MVA annuity. As with index-linked options and as proposed, the registrant also will be required to state whether an investor will receive advance notice of a maturing fixed option, including what steps an investor may take to provide instructions regarding the reallocation of contract value at the end of the term, and any automatic default allocation in the absence of such instructions. In describing these matters, as proposed, the registrant must also explain how investors will be informed of the fixed options available for allocation at the end of a term, including any changes to the currently-offered fixed options and the discontinuance or addition of fixed options.[331] In a modification from the proposal, this disclosure must also include an explanation of how current fixed rates may be obtained. This could include, for example, a phone number, website address, and/or instruction to contact the investor's financial professional to obtain current fixed rates. This aspect of the required explanation represents an addition to the proposed requirements to explain how investors will be informed of available fixed options and disclose changes to currently offered fixed options to provide additional context so that investors can better understand those disclosures.[332] Also as with index-linked options, we are requiring disclosure of any other material aspect of the fixed options, including limitations on transfers to or from the fixed options, rate holds, start dates and holding accounts.

One commenter opposed requiring insurers to provide specific disclosures about fixed options in the prospectus on the grounds that the Commission lacks the authority pursuant to section 10(a) of the Securities Act to prescribe the specific content, format, and location of any prospectus disclosures about unregistered fixed options.[333] Although the commenter acknowledged that most issuers choose to provide information about fixed options in the prospectus—and that any statements made in a prospectus about unregistered fixed options are subject to the Securities Act's provisions concerning liability for the accuracy and completeness of statements made in a prospectus—it asserted that such disclosures should not be required by the Commission. Instead, the commenter stated that a variable annuity or RILA issuer should be able to choose whether to provide information about fixed options in the prospectus or instead in a separate document used with the prospectus and/or in marketing material or on its website. The commenter also stated that, to the extent it does include such information in the prospectus, the issuer should have the flexibility to determine the location, format, and specific content of any fixed option disclosures in the prospectus, so long as the disclosures are accurate in all material respects and do not obscure or impede the disclosures about the security being registered. Accordingly, the commenter recommended that the Commission make optional the proposed disclosures about fixed options and clarify that issuers can instead make disclosures about unregistered fixed options or accounts in any location and manner that does not obscure the disclosures about the registered options. No other commenter addressed the proposed disclosures for fixed options.

All material aspects of the contract should be described in the prospectus, and a fixed option is a material aspect of a RILA or variable contract. Therefore including this information in a registration statement for the offering of these contract securities is necessary and appropriate in the public interest or for the protection of investors.[334] Consistent with this view, Form N–4 currently requires insurance companies to disclose certain basic information about fixed options when they are investment options in a variable contract.[335] We are therefore adopting the disclosure requirements for fixed options, to be provided in the broader context of detailed disclosure regarding the investment options available under the contract, largely as proposed with modifications to reflect the inclusion of registered MVA annuities on Form N–4.[336] The required disclosure about fixed options includes substantively the same information that insurers currently disclose about other investment options, such as variable annuities, and encompasses core information about fixed options. This basic information

[327] Current Form N–4, General Instruction C.1.(a) (stating that ''[a] Registrant's prospectus should clearly disclose the fundamental features and risks of the [Contracts], using concise, straightforward, and easy to understand language.'').

[328] Current Form N–4, Items 2 and 3.

[329] As discussed below, we are also requiring disclosure relating to any fixed options currently offered under the contract in the Item 17 (Appendix).

[330] Final Form N–4, Item 6(e)(2)(i); *see also* Proposing Release at Section II.H (discussing changes to Form N–4 that would be necessary to accommodate MVAs).

[331] Final Form N–4, Instruction to Item 6(e)(2)(ii).

[332] *Id.*

[333] CAI Comment Letter.

[334] *See, e.g.,* Investment Company Act section 8; Securities Act section 10(c).

[335] *See* current Form N–4, Item 3(b)(1) and Instruction 3(c)–(d) to Item 2.

[336] We are likewise requiring fixed option disclosures in the appendix. *See infra* footnote 374 and accompanying text.

about fixed options available under a RILA or variable annuity is necessary to provide investors material information about the securities offering registered on Form N–4.

We therefore do not agree, as a commenter suggests, that the provision of such information should be voluntary. This approach would deprive investors of material information regarding an investment decision in an annuity contract. In addition, requiring this basic information about fixed options will provide increased efficiencies now that we also are requiring registered MVA annuities to register on Form N–4 (since this information is a necessary component of registered MVA annuity disclosure).[337] Under Form N–4 as amended, an insurance company will provide the same information about all fixed options in this part of the prospectus, with additional disclosure about contract adjustments in connection with registered MVA annuities.

We received one comment regarding the proposed instruction that would require insurers to disclose the minimum guaranteed interest rate as a numeric rate, rather than referring to any minimums permitted under State law.[338] This commenter objected, stating that minimum rates for contracts are determined by the standard nonforfeiture laws of each State in which the contract is offered, which are not uniform across all jurisdictions, and can change, sometimes frequently, due to changes in prevailing interest rates. This commenter suggested that instead of requiring insurers to provide numeric rates, they should be allowed to state, if applicable, that the minimum guaranteed rate is a rate required to comply with standard nonforfeiture law in the State in which the contract is issued, with a reference in the prospectus directing investors to the policy form, website, or other material where the specific minimum guaranteed rate applicable at the time the contract is issued may be found.

After considering this comment, we are adopting the proposed approach—requiring disclosure of the minimum guaranteed interest rate as a numeric rate—in the final amendments.[339] We are not departing from the proposed approach given that the standard nonforfeiture laws of most states follow the National Association of Insurance (''NAIC'')'s model Nonforfeiture Law for Individual Deferred Annuities, which specifies the range of numeric minimum interest rates from which insurers may choose for inclusion in the contract.[340] As a result, insurers have the flexibility to select a numeric minimum interest rate that will comply with minimum requirements in most states. Further, it is our understanding that while current interest rates may frequently change, that is not the case with minimum interest rates, which must be within NAIC's specified range of numeric interest rates. Accordingly, including the guaranteed minimum interest rate in the prospectus should not necessitate frequent updates to the prospectus. In addition, based on staff experience, we understand that some insurers already disclose the minimum guaranteed interest rate as a numeric rate in their prospectuses. Because providing such information in the prospectus is consistent with industry practice (at least for some insurers) and avoids the need for the investor to refer to another source for information about a material term of the offering, we are requiring minimum guaranteed interest rates to be stated as numeric rates, as proposed.

b. Appendix: Investment Options Available Under the Contract (Item 17)

We are amending the requirements for the required appendix of investment options available under the contract, largely as proposed, to include a discussion of the index-linked options and fixed options available under the contract. This item currently requires a variable annuity issuer to include in an appendix to the prospectus a table that consolidates certain summary information about each portfolio company offered under the contract. The current appendix is designed to provide investors with an overview of variable options available under the contract in a uniform, tabular presentation that promotes comparison, because the investment experience of an investor in a variable annuity will largely depend on the underlying investments available under the contract.[341] Similarly, we anticipate that an overview of available index-linked options, as well as available fixed options, will help investors in all annuities whose offerings will be registered on Form N–4 to understand and compare the various investment options offered under the contract. Consolidating this summary information about the contract's investment options—equivalent to what is currently provided for variable options—into a concise, easy to read tabular presentation will enhance the ability of investors to understand, evaluate, and compare all the investment options available under the contract.

To reflect the expanded scope of the appendix, and as proposed, we are amending the current heading to ''Investment Options Available Under the Contract.'' [342] We are adopting a new instruction that explains that issuers may modify this new heading as appropriate under the contract. For example, if there are only variable options offered under the contract, an issuer could change the heading to ''Portfolio Companies Available Under the Contract,'' consistent with the current requirements of the form.

The current appendix requires a separate table indicating what portfolio companies are available or restricted under the benefits offered under a variable contract. Because fixed options and index-linked options—like variable options—can vary by benefit offered under the contract, we are adopting amendments, as proposed, that would require this table for all investment options (not only variable options), with no other changes.[343] We received no comments regarding these aspects of the proposal and are adopting as proposed.

We received one comment regarding the disclosures for variable options in the required appendix.[344] This commenter stated that the instructions to the table for variable options should permit variable annuity issuers to include additional rows that visually separate and group underlying funds belonging to the same fund complex, provided that the presentation does not obscure or impede understanding of the information that is required to be included, or substantially otherwise alter the required format of the table. The commenter asserted this approach would improve the organization and readability of the appendix, while also maintaining standardization and comparability. We agree. In a change from the proposal, we are therefore adding a new instruction that will provide flexibility to permit the

[337] The commenter that opposed requiring insurers to provide specific disclosures about fixed options in the prospectus supported the inclusion of registered MVA annuities on Form N–4. *See* CAI Comment Letter.

[338] CAI Comment Letter; *see also* proposed Form N–4, Instruction to Item 6(e)(2).

[339] Final Form N–4, Instruction to Item 6(e)(2); Instruction 3 to Item 17(c).

[340] *See* NAIC Standard Nonforfeiture Law for Individual Deferred Annuities (Model 805–4) at Sec. 4.B (describing requirement to disclose minimum rate under nonforfeiture law), *available at https://content.naic.org/sites/default/files/model-law-805.pdf.*

[341] VASP Adopting Release at n.267 and accompanying text.

[342] ''Investment options'' are defined as any variable option, index-linked option, or fixed option available under the contract. *See infra* Section II.C.8.b.

[343] Final Form N–4, Item 17(d).

[344] CAI Comment Letter.

presentation of information the commenter suggested, subject to existing requirements (by virtue of the table template in the form) to provide a standardized tabular presentation.[345] The current tabular presentation was designed to promote ease of comparison between products, and we do not anticipate that the new instruction we are adopting will detract from this goal.[346]

Index-Linked Options

To accommodate the inclusion of index-linked options in the appendix, we are adding a new table titled ''Index-Linked Options,'' as proposed.[347] As part of our layered disclosure approach, the information to be supplied in the table for index-linked options will summarize certain prospectus disclosures required elsewhere in the prospectus.[348] The one commenter to address this aspect of the proposal broadly supported the proposed expansion of the required appendix to include a table for index-linked options, as well as the table's general design, stating that the proposed Index-Linked Options Table ''will aggregate all index-linked options currently available under the contract in one location to facilitate investor understanding and comparison of investment options and contracts.'' [349] We are adopting the table for index-linked options largely as proposed, with certain additions and modifications as discussed below.

Legends

Similar to the requirements for variable annuities, the table for index-linked options will be prefaced with a legend, largely as proposed. Specifically, the legend will state that the table lists index-linked options currently available under the contract. Further, because insurance companies typically change the index-linked options available over time, the legend will specify that the insurance company may change the features of the index-linked options listed in the table, offer new index-linked options, or terminate existing index-linked options, and that the insurance company will provide the investor with written notice before making any changes, other than changes to current limits on index gains.[350] We received no comments on the legend, and are adopting it largely as proposed, with conforming changes corresponding to other changes we are adopting to the index-linked options table and other modifications designed to clarify the legend language.[351]

In addition, to help ensure that investors have convenient access to current upside rates, the legend will require insurance companies to state that information about current limits on index gains are available at a specified website address, if such information is incorporated by reference into the prospectus from a website, as described above.[352] We are adopting this requirement substantially as proposed, with a change to the related instructions to specify that the website address must be provided only if the current upside rates do not appear directly in the prospectus.[353] This is a conforming change to address the final amendments' permissible incorporation by reference of current rates on index gains into the prospectus, under Item 6 of final Form N–4.[354]

We are also adopting, in a modification from the proposal, instructions to specify that the website included in the legend must be the same website that includes information about current rates on index gains that an insurance company may choose to incorporate by reference into the prospectus under Item 6.[355] This ensures that where an insurance company provides this information via a website, investors receive the same information and in the same format, whether they are directed to a website in disclosure required by Item 6 or this legend. As proposed, this website address must be specific enough to lead investors directly to current upside rates, rather than to the home page or other section of the website on which such rates are posted.[356] Requiring RILA issuers to include information about current limits on index gains on their websites will benefit investors by making this information easier to find and understand. Furthermore, because websites may be updated quickly, website disclosure will be efficient for compiling index-linked options' current limits on gains, given our understanding that current upside rates can change often and that insurance companies currently disclose this information on their websites.

We anticipate that insurance companies generally will rely on the incorporation by reference approach because insurers generally disclose current limits on index gains on their websites today and based on commenter feedback about the challenges in providing this information directly in the prospectus. We therefore assume that all insurance companies will include a website address with current limits on index gains in this legend. However, to accommodate the possibility that an insurance company may not choose to incorporate by reference current upside rate information from a website, we are, in a change from the proposal, adding an instruction directing such an insurer to provide in (in lieu of the website address) a cross-reference to the current limits on index gains disclosed elsewhere in the prospectus.[357]

Lastly, set off from the rest of the legend and with emphasis, we are, largely as proposed, adopting the requirement to include a statement that if amounts are removed from an index-linked option before the end of its crediting period, the insurance company may apply a contract adjustment (or will apply a contract adjustment, as appropriate).[358] The required legend also includes a statement that this may result in a significant reduction in the investor's contract value that could exceed any protection from the index's loss that would be in place if an investor held the option until the end of the term. This statement is designed to highlight the potential impact on an investor's returns if amounts are removed prior to the end of a crediting period. The one comment we received concerning the proposed statement addressed the use of the term

[345] Final Form N–4, Instruction 1(f) to Item 17(a).

[346] *See* Proposing Release at n.156 and accompanying text.

[347] Final Form N–4, Item 17(b).

[348] *See, e.g.,* final Form N–4, Item 6(d).

[349] CAI Comment Letter.

[350] Final Form N–4, Item 17(b)(1).

[351] In a change from the proposal, we are revising the legend to clarify that written notice will not be provided before changes to current limits on index gains.

[352] *See* final Form N–4, Item 17(b)(1), and final Form N–4, Instruction 1(e) to Item 17(b). Consistent with the current instructions to the form, any website address, including this one, that is included in an electronic version of the statutory prospectus will be required to include an active hyperlink or other means of facilitating access that leads directly to the relevant website address. However, this requirement will not apply to an electronic summary prospectus that is filed on EDGAR. *See* final Form N–4, General Instruction C.3.i.

[353] Final Form N–4, Instruction 1(e) to Item 17(b).

[354] *See supra* Section II.C.4.a.

[355] *See* final Form N–4, Instruction 1(e) to Item 17(b).

[356] Final Form N–4, Instruction 2 to Item 6(d)(2)(ii)(B). We originally proposed this requirement as proposed Form N–4, Instruction 1(e) to Item 17(b), but in final Form N–4 this requirement will be included with the other requirements for current rates that are incorporated by reference from a website, collectively set forth in Item 6.

[357] Final Form N–4, Instruction 1(f) to Item 17(b).

[358] The proposed legend required a statement that included the phrase ''we may apply a Contract Adjustment.'' The final amendments instead include the phrase ''we [may/will] apply a Contract Adjustment'' in the legend. This provides flexibility to make a definitive statement to the extent that removing amounts from the index-linked option before the end of the crediting period will always result in the application of a contract adjustment.

''withdrawn'' and suggested adding the phrase ''or deducted'' to reflect that deductions other than withdrawals may result in a contract adjustment.[359] We agree that referring solely to amounts being ''withdrawn'' from an index-linked option may not be understood to cover all of the circumstances in which a contract adjustment may apply. Accordingly, and consistent with wording used elsewhere in the form, we are modifying the first sentence of the required statement to state that ''if amounts are *removed* from an Index-Linked Option before the end of its Crediting Period, we [may/will] apply a Contract Adjustment.'' [360] As proposed, we are also requiring the statement to include appropriate cross-references to the section(s) of the prospectus that describe the features of the index-linked options as well as contract adjustments.[361] This approach is designed to help investors that are interested in more detail about key aspects of the index-linked options to locate that information quickly.

Table

As proposed, the legend will be followed by a table that lists and highlights key elements of each index-linked option available under the contract. Specifically, the table will, largely as proposed, require, in sequential columns, the identification of (1) each index by name; (2) type of index; (3) crediting period, indicating the duration of the index-linked option in years; (4) index crediting methodology; (5) current limits on index loss if held to the end of the crediting period; and (6) minimum limit on index gain for each index-linked option.[362] In a change from the proposal, we are modifying the last two column headings in the table to more clearly specify the information required. Specifically, we are adding to the fifth column heading the word ''Current'' so it now reads ''Current Limits on Index Loss (if held until end of Crediting Period),'' and removing from the sixth column heading the word ''Guaranteed'' and adding the parenthetical ''(for the life of the Index-Linked Option)'' to clarify that the minimum limits to be disclosed are for the life of the index option (not for the life of the contract).[363] These column heading changes are not intended to change the substance of the information that will be provided under each of these headings.

As proposed, the description of the type of index will be a brief statement of the type of index (*e.g.,* market index, exchange-traded fund, etc.), or a brief statement describing the assets that the index seeks to track (*e.g.,* U.S. large-cap equities).[364] The column indicating the type of index crediting methodology used for each index-linked option will only be required if the RILA utilizes multiple index crediting methodologies under the contract (*e.g.,* point-to-point, step-up, enhanced upside, etc.), as proposed.[365] The disclosures regarding current limits on index loss will require an issuer to: (1) state the current percentage used in the insurance company's interest crediting methodology to limit the amount of negative index return credited to the index-linked option; and (2) identify in the table whether this limit is a buffer, floor, or some other rate or measure.[366] In the last column, issuers will be required to state the minimum percentage that may be used to limit the amount of positive index return credited to an index-linked option (for the life of the index-linked option) and to identify in the table whether this limit is a cap, participation rate, or some other rate or measure.[367] The additional parenthetical is designed to distinguish the disclosure that will be provided in this column (minimum limits guaranteed for the life of the index-linked option) from the new disclosure item that we are adding in a change from the proposal discussed in more detail below, providing information about guaranteed minimum limits that will always be available under the contract.[368] We understand that it is common for a RILA to offer guaranteed minimums on index gains associated with specific index-linked options, as well as guaranteed minimums for the life of the contract. The proposed approach, which only included a column heading for ''guaranteed minimum limit on index gain,'' therefore could be confusing, and the final amendments' approach will specify separate disclosure for each type of guaranteed minimum limit.

As proposed, to ensure investors only receive disclosure relevant to them, RILAs will only be permitted to include in the table those index-linked options that are available under the contract, and must indicate if any of the options are restricted (*e.g.,* because of a ''hard'' or ''soft'' close), consistent with the current disclosure requirements for variable options.[369] Further, to promote disclosure in a consistent format to facilitate comparisons, issuers will be allowed to add, modify, or exclude table headings only as necessary to describe the material features of an index-linked option.[370]

We are also adopting instructions, largely as proposed, stating that if the index's return does not reflect the full investment performance of the assets tracked by the index, the table must include a footnote that states the index is a price return index, not a total return index, and does not reflect dividends paid on the securities composing the index, and/or that the index deducts fees and costs when calculating index performance, as applicable. In these cases, the footnote must state that this will reduce the index's return and cause the index to underperform a direct investment in the securities composing the index.[371] Investors evaluating index-linked options may be more familiar with a version of a given index that reflects the full performance of the index constituents, and this disclosure will alert investors that the index associated with a particular index-linked option will have relatively lower returns.

In a change from the proposal, we are requiring a new disclosure item immediately below the index-linked options table to provide investors information about minimum limits on index losses and gains that will always be available under the contract.[372] Although we did not propose to require this disclosure in the appendix, this requirement reflects the approach taken elsewhere in Form N–4, where information about current rates for

[359] CAI Comment Letter (discussing the proposed statement ''If amounts are withdrawn from an Index-Linked Option before the end of its Crediting Period, we may apply a Contract Adjustment.'').

[360] Final Form N–4, Item 17(b)(1).

[361] Final Form N–4, Instruction 1(a) to Item 17(b).

[362] Final Form N–4, Item 17(b)(1).

[363] *See also infra* footnote 372 and accompanying text (discussing separate disclosure describing guaranteed minimum limits for the life of the contract).

[364] Final Form N–4, Instruction 3 to Item 17(b)(1).

[365] Final Form N–4, Instruction 5 to Item 17(b)(1). If all index-linked options offered by a RILA contract use the same crediting methodology, the table will not include the column. *See, e.g., supra* footnote 297.

[366] Final Form N–4, Instruction 6 to Item 17(b)(1). In contrast to current limits on index gain, we understand that the current limits on index loss typically do not change frequently. In a change from the proposal, we added ''Current'' to the column heading ''Current Limits on Index Loss (if held until end of Crediting Period)'' to clarify the limits to be disclosed in that column.

[367] Final Form N–4, Instruction 7 to Item 17(b)(1).

[368] *See infra* paragraph accompanying footnotes 372–373.

[369] Final Form N–4, Instruction 1(b) to Item 17(b)(1).

[370] Final Form N–4, Instruction 1(c) to Item 17(b)(1).

[371] Final Form N–4, Instruction 1(d) to Item 17(b). We are making conforming changes to the proposed instruction to mirror parallel instructions in other sections of Form N–4. *See, e.g., supra* footnote 311.

[372] Final Form N–4, Item 17(b)(2).

index-linked options is accompanied by information about minimum guaranteed limits on downside protection and current upside rates, so an investor evaluating information about the terms of an index-linked option can consider both the terms currently being offered as well as information about terms that may be available in future crediting periods.[373]

Fixed Options

Consistent with the approach we are adopting with respect to the Item 6 disclosure requirements (Description of the Insurance Company, Registered Separate Account, and Investment Options), we are requiring in the appendix summary information about fixed options currently available under the contract.[374] These disclosure requirements are similar to the legend and table we are adopting for index-linked options, adjusted to reflect fixed option details. Under the final amendments, the fixed option legend, in addition to identifying that what follows is a list of fixed options currently available under the contract, will indicate that the insurance company (1) may change the features of the fixed options identified, offer new ones, and terminate existing ones; and (2) will provide the investor written notice before doing so.

In a change from the proposal to accommodate the inclusion of registered MVA annuities on Form N–4, we are requiring a legend stating that if amounts are withdrawn from a fixed option before the end of its term, the insurer may (or, as appropriate, will) apply a contract adjustment, which may result in a significant reduction in contract value.[375] The other requirements for the fixed option table, which will apply to registered MVA annuities as applicable without the need for any further changes, are being adopted as proposed. As proposed, the fixed option table will include columns identifying (1) the name of the fixed option, (2) the term, and (3) the minimum guaranteed interest rate.[376] Insurance companies will be instructed to include appropriate cross-references in the legend to the sections of the prospectus that describe the features of fixed options as well as the contract adjustment.[377] As with index-linked options, insurance companies may add, modify, or exclude table headings only as necessary to describe material features of a fixed option.

One commenter opposed our proposal to include specific information about fixed options in the appendix altogether, consistent with its objections regarding our proposal to include fixed option disclosures in Item 6, and instead suggested that any disclosure regarding fixed options be voluntary and not subject to a specified disclosure format.[378] For the reasons discussed above in connection with fixed option disclosure requirements in Item 6, we are requiring insurers to provide summary information about fixed options in the appendix, as proposed and with conforming modifications to reflect the inclusion of registered MVA annuities.

5. Principal Risks of Investing in the Contract (Item 5)

An investment in a contract offering index-linked options exposes investors to unique risks that may be different from those that are common to other investment products, including contracts that solely offer variable options. We are amending Item 5 to address certain principal risks that are particularly relevant to investors in RILAs. We are adopting these requirements largely as proposed, with conforming changes to ensure consistency with other prospectus disclosure requirements as discussed below. It is not necessary to include any changes from the proposal to address the inclusion of registered MVA annuities on Form N–4, because the proposed risk disclosure requirements addressed risks associated with negative contract adjustments.

In addition to restructuring the current item to incorporate the proposed risk disclosure requirements addressing index-linked options, we are adopting certain structural changes that are designed to clarify existing requirements but are not anticipated to result in substantively different disclosure requirements for contracts offering variable options. These changes also will consolidate certain risk disclosures insurance companies currently provide for variable annuities in other sections of the prospectus. We are requiring these risk disclosures in a single location to communicate risks more consistently and effectively to investors. As the Commission has previously explained, the requirements for principal risk disclosure in the prospectus are designed to provide a consolidated presentation of principal risks.[379]

One commenter addressed the proposed amendments to Item 5. This commenter stated that it did not oppose our proposal to require registrants to provide index-linked option risk of loss disclosures in Item 5, stating that this section of the prospectus is intended for readers who want more detailed information about risks, and the Item 5 disclosure requirements provide registrants with the ability to give appropriate context that an investor may need to better understand those risks.[380] No commenter specifically addressed risk disclosure for registered MVA annuities, although as discussed above commenters generally supported registering offerings of registered MVA annuities on Form N–4 and did not distinguish whether these offerings should be subject to different risk disclosure requirements than those that were proposed.[381] We received no other comments on this aspect of the proposal.

As proposed, the principal risk disclosure item of Form N–4 will be restructured into separate sub-items while also making certain changes from the current version designed to clarify existing disclosure obligations.[382] The new sub-items are designed to be non-exclusive examples of the principal risks of investing in the contract being registered. In addition to existing disclosure requirements, these sub-items will also include new risk disclosures specific to index-linked options, as applicable. We are adopting parallel changes to the risk disclosures most applicable to variable annuities to avoid any implication that risk disclosure addressing variable annuities should be provided at a different level of detail than the disclosures for RILAs.

The approach we are adopting will retain the current requirement for registrants to explain the principal risks of purchasing a contract but will also require, largely as proposed, an explanation of the principal risks associated with market risk, including the risks of negative investment performance.[383] Additionally, for index-

[373] *See, e.g.,* final Form N–4, Item 6(d)(2)(i)(B) and (ii)(B).

[374] Final Form N–4, Item 17(c).

[375] Final Form N–4, Item 17(c); *see also, e.g.,* Proposing Release at n.362 (describing potential changes to the appendix to accommodate registered MVA annuities).

[376] Consistent with the approach in Item 6, the minimum guaranteed interest rate will be required to be stated as a numeric rate rather than referring to any minimums permitted under State law.

[377] The requirement to cross-reference the sections of the prospectus that describe the contract adjustment is a conforming change to the proposed requirements to reflect the inclusion of registered MVA annuities on Form N–4.

[378] CAI Comment Letter.

[379] *See* VASP Adopting Release at n.690 and accompanying text.

[380] CAI Comment Letter.

[381] *See supra* Section II.B.

[382] Final Form N–4, Item 5(a)–(b), (d)–(f).

[383] Final Form N–4, Item 5(a). In a change from the proposal, the heading for this disclosure item in final Form N–4 is ''Market Risk'' (instead of

linked options, we are requiring prominent disclosure of the maximum amount of loss an investor could experience from negative index performance, as a percentage, after taking into account the current limits on index loss provided under the contract.[384] We are adopting this requirement largely as proposed, with conforming changes to reflect parallel disclosure we are requiring in other locations in the form.[385] Moreover, in a change from the proposal, the insurer may provide a range of the maximum amount of loss if the contract offers different limits on index loss. In addition, in a change from the proposal, an insurer must prominently disclose any minimum limits on index losses that will always be available under the contract, or, alternatively prominently state that it does not guarantee that the contract will always offer index-linked options that limit index loss (which would mean risk of loss of the entire amount invested). These changes from the proposal mirror parallel disclosure requirements for index-linked options that we are adopting in other parts of the form.[386]

Although disclosures that address certain risks of index-linked options will be required in other locations in the prospectus, we are requiring that RILA issuers include certain risk factors, such as disclosures related to maximum potential loss from index performance, in the consolidated summary of principal risks associated with the contract. Including this statement and others in Item 5 will help investors assess the particular risks associated with RILAs in the context of the other required principal risk disclosures, a premise to which a commenter agreed.[387] This approach also will help ensure that an investor who reviews principal risk disclosure will be able to review all principal risks in one place in the prospectus, as the Commission stated as a goal when redesigning Form N–4 in connection with updating disclosure for variable contracts and implementing a summary prospectus framework.[388]

Under the final amendments, the next sub-item, which concerns the risks of early withdrawal, will require the prospectus to disclose that contracts are unsuitable as short-term savings vehicles and explain the limitations on access to cash value through withdrawals, including surrender charges, negative contract adjustments, and loss of interest.[389] The disclosure must also explain the possibility of adverse tax consequences. We are adopting this sub-item as proposed. These are features of annuity contracts that implicate why they are not short-term saving vehicles. In addition, insurance companies that offer contracts with contract adjustments will be required to state the maximum potential loss resulting from a negative contract adjustment, as a percentage. Although this last statement will be required to be provided in other locations in the prospectus, we are including this risk disclosure in the consolidated summary of principal risks because contract adjustments can significantly affect contract value.

The next sub-item, which concerns the principal risks associated with index-linked options, will, substantially as proposed, include new risk disclosure requirements tailored to address unique risks associated with these investment options.[390] Under these requirements, a registrant will (in addition to the risks of potential loss from negative index performance, as discussed above) describe the principal risks of investing in any index-linked options offered under the contract. The sub-item will, as proposed, require the prospectus to include a statement that an investor in an index-linked options is not invested in the index or in the securities tracked by the index. This reflects our concern, based on the results of qualitative investor interviews, that investors may be confused about whether an investment in an index-linked option is a direct investment in the index.

To help ensure that RILA prospectuses address certain key risks, the instructions to this disclosure requirement will, as proposed, specify that discussion of the principal risks related to index-linked options must include the principal risks relating to: (1) limiting positive index returns; (2) the possibility of losses despite limits on negative index returns; (3) interest crediting methodologies; (4) the impact of contract fees on the amount of interest credited; and (5) the reallocation of contract value at the end of an index-linked option's crediting period.[391] We are also adopting, as proposed, instructions specifying that this discussion will be required to include principal index risks relating to: (1) the type of index (*e.g.,* market risk, small-cap risk, foreign securities risk, emerging market risk, etc.); (2) the exclusion of dividends from index return; and (3) market volatility.[392] These instructions require RILA issuers to specify which risks relate to each index offered under the contract, and to describe the principal risks related to the possible substitution of the index before the end of an index-linked option's crediting period.

An additional new sub-item will require, as proposed, a description of the principal risks associated with any contract benefits (*e.g.,* death benefits, living benefits), including the impact of excess withdrawals, if applicable.[393] These risks include, for example, investment restrictions associated with a living benefit, which may limit investment performance. Because these risks could impact the expected performance of the annuity, or in some cases could even terminate the annuity, we are requiring issuers to disclose them in the prospectus. These risks could be applicable to variable annuities, RILAs, or registered MVA annuities.

Another new sub-item will require, as proposed, an explanation of the principal risks associated with the insurance company's ability to meet its guarantees under the contract, including risks relating to its financial strength and claims-paying ability, which as described below may be of particular concern for investors who allocate contract value to index-linked options.[394] We are requiring this disclosure to be included in the consolidated principal risks section of the prospectus for completeness, and to help ensure that a prospectus discloses

"Investment Option Risk," as proposed) to clarify the focus of this disclosure item and distinguish it from Item 5(c), which specifically addresses Index-Linked Option Risk.

[384] *Id.*

[385] *See, e.g.,* final Form N–4, Item 1(a)(6) (for example, in the first sentence of Item 5(a), we are replacing "poor" investment performance, as proposed, with "negative" investment performance to conform with similar cover page disclosure requirements).

[386] The changes to Item 5(a) parallel changes to risk disclosures in final Form N–4, Item 1(a)(6) and Instruction 3(a) to Item 3. *See supra* discussion at Section II.C.3 and II.C.4.(b).

[387] *See supra* footnote 380 and accompanying text. As discussed above, we are changing our calculation method for maximum risk of loss from index performance throughout the form to account for changes being adopted to minimum contract guarantees. *See supra* Section II.C.1.

[388] VASP Adopting Release at text following n.689 ("The principal risks section is designed to provide a consolidated presentation of principal risks which can be cross-referenced by registrants to reduce repetition that might otherwise occur if the same principal risks are repeated in different sections of the prospectus.").

[389] Final Form N–4, Item 5(b).

[390] Final Form N–4, Item 5(c). In a change from the proposal, we are relocating "as applicable" from the text of Instructions 1 and 2 to Item 5(c) to the Instruction preamble to streamline.

[391] Final Form N–4, Instruction 1 to Item 5(c).

[392] Final Form N–4, Instruction 2 to Item 5(c).

[393] Final Form N–4, Item 5(d).

[394] Final Form N–4, Item 5(e).

the insurance company's claims-paying ability with regard to its contractual guarantees.

Lastly, we are adopting as proposed a final new sub-item, which will require a description of the principal risks relating to any material reservation of rights under the contract, including if applicable the right to: (1) remove or substitute portfolio companies; (2) add or remove index-linked options and change the features of an index-linked option from one crediting period to the next; (3) stop accepting additional purchase payments; and (4) impose investment restrictions or limitations on transfers.[395] We are requiring this disclosure because the ability to discontinue contract features, alter an investor's ability to participate in an index's upside performance, and otherwise change features is important information for investors when making an investment decision.

6. Addition of Contract Adjustments and Other Amendments to Fee and Expense Disclosures (Items 4, 7, and 22)

We are adopting amendments to Form N–4, largely as proposed, to require specific disclosures regarding contract adjustments and other implicit RILA-specific costs that can result in a significant erosion of investment principal. The required disclosures, set forth in Items 4, 7, and 22(d) of Form N–4, are designed to provide investors with a better understanding of the mechanics of these costs and the associated potential for loss. We are also adopting revisions to the existing provisions of these items, applicable to all issuers registering offerings on Form N–4, to clarify certain terminology.

a. Amendments to Fee Table Disclosure Requirements (Item 4)

The fee table of Form N–4 provides detailed information on the fees and expenses investors will pay when buying, owning, and surrendering or making withdrawals from the contract, as well as those paid each year during the time the investor owns the contract. We are amending the fee table to require specific disclosures regarding contract adjustments and other costs to investors specific to RILAs, including a detailed description of contract adjustments in the prospectus that will be proximate and similar to other disclosures regarding fees and expenses. We are adopting amendments to the fee table largely as proposed, with certain modifications after considering comments discussed below.[396]

Transaction Expenses and Adjustments Tables

Insurance companies currently must include a transaction expenses table in their prospectuses, describing fees and expenses investors must pay when buying, owning, and surrendering or making withdrawals in connection with a contract. To provide proximate and similar disclosure for non-variable annuity-specific costs, we are adopting, with some changes to the proposal, a requirement that insurance companies additionally include the maximum negative contract adjustment that may be imposed, to be expressed as a percentage of contract value at the start of the crediting period or the amount withdrawn, as applicable. The proposal would have required this disclosure to appear in the transaction expenses table that Form N–4 issuers currently include in their prospectuses. In response to comments questioning the disclosure of contract adjustments in the transaction expenses table, and in a change from the proposal, we are adding a separate adjustments table, which will follow the transaction expenses table. Finally, to provide investors notice of the circumstances where they might be subject to this cost, we are also adopting, as proposed, a requirement that insurance companies include a footnote describing all transactions potentially subject to a contract adjustment.[397]

The commenters who addressed the proposed amendments to the transaction expenses table opposed including the maximum negative contract adjustment, asserting that contract adjustments are a product feature based on market risk rather than a type of fee or expense.[398] One commenter further stated that characterizing contract adjustments as fees penalizes insurance companies for allowing investors to make early withdrawals.[399] Another commenter opposed disclosing the maximum negative contract adjustment here because, although contract adjustments may result in losses to investors, the commenter believed this maximum potential loss disclosure ultimately is risk disclosure, and not an explicit fee or charge, and because contract adjustments can result in a gain as well as a loss.[400] The commenter also asserted that it grossly mischaracterizes the risk of loss because the risk of suffering such a maximum loss is remote.

The transaction expenses table discloses all transaction expenses paid directly by the investor, such as sales loads or surrender charges, including when those transaction expenses are fees or expenses paid due to an investor withdrawal.[401] A negative contract adjustment, although not an explicit fee or expense, could have a similar impact on an investor as an explicit fee or expense because a negative contract adjustment can reduce an investor's investment just like a surrender charge, for example, and has the potential to reduce it significantly. By disclosing the maximum negative contract adjustment, in addition to any transaction expenses, investors are alerted to the potential costs they will bear when amounts are withdrawn prematurely. These costs could result in the loss of a significant amount of money. This is true even if, in the context of a RILA, the index has experienced a positive gain at the time of withdrawal or the RILA includes a loss protection feature.

For these reasons, the maximum negative contract adjustment should be disclosed proximate to the transaction expenses currently disclosed in the transaction expenses table, including sales loads imposed on purchases, deferred sales loads, surrender charges, and transfer fees. Including the maximum negative contract adjustment disclosure proximate to the transaction expense disclosure helps ensure that investors have access, in one place, to full disclosure regarding the economic consequences of withdrawing money from an index option or the contract. Nonetheless, we appreciate that maximum negative contract adjustments may not be as clearly identified by investors as transaction ''expenses'' per se as other items in this table. To address this concern, we have added a separate adjustments table, which will follow the transaction expenses table. The table will be preceded by an

[395] Final Form N–4, Item 5(f).

[396] In order to eliminate unnecessary information in the prospectus, we are amending instruction 1 to Item 4 to specify that registrants may omit a narrative explanation that is not applicable under the contract. *See* final Form N–4, Instruction 1 to Item 4. We are also amending instruction 5 to Item 4 regarding the preparation of the transaction expenses and adjustments and annual contract expenses tables, specifying that the instruction to disclose the maximum guaranteed charge as a single number where a fee is calculated based on a benchmark does not apply to a contract adjustment. *See* final Form N–4, Instruction 5 to Item 4. We received no comments on these changes and are adopting them as proposed.

[397] *See* final Form N–4, Instruction 12 to Item 4.

[398] VIP Working Group Comment Letter; CAI Comment Letter.

[399] VIP Working Group Comment Letter.

[400] CAI Comment Letter.

[401] *See* current and final Form N–4, Item 4.

''Adjustments'' heading and describe the adjustments, in addition to any transaction expenses, that apply if all or a portion of the contract value is removed from an investment option or from the contract before the expiration of a specified period. This new table is designed to highlight the effect of contract adjustments for investors, consistent with the proposal, while conveying that the contract adjustment is not itself an explicit fee.

The transaction expenses table also currently requires registrants to describe the maximum exchange fee that investors could incur for any exchange or transfer of contract value from the registrant to another investment company, or between sub-accounts or to the insurance company's general account. In a change relevant to all Form N–4 issuers, we are adopting, as proposed, a terminology change, replacing the term ''exchange fee'' with ''transfer fee,'' as this term better reflects that, in the staff's experience, the vast majority of such fees are imposed on transfers of contract value among investment options under the contract.[402] We received no comments on this aspect of the proposal.

Annual Contract Expenses

Form N–4 issuers currently must include an annual contract expenses table in their prospectuses, detailing the fees and expenses that investors pay each year in administrative expenses, base contract expenses, and optional benefit expenses. Currently, base contract expenses must be expressed as a percentage of average account value. In a change relevant to all Form N–4 issuers, we are adopting, as proposed, an amendment that will also allow base contract expenses to be expressed as a percentage of average account value or contract value. Index-linked and fixed MVA options do not generally use the concept of average account values (as variable annuities do), but they do have a concept of contract value. Making this change will therefore facilitate including those investment options on the form as it allows them to accurately express base contract expenses. We do not anticipate that this change will substantively affect variable annuities' existing disclosure and we received no comments on this aspect of the proposal.[403]

Additionally, to place investors on notice of the unique and ongoing trade-off costs associated with RILAs that may not be captured by this table, we are requiring, in part as proposed, insurance companies to include the following statement in the table with respect to index-linked options:

In addition to the fees described above, we limit the amount you can earn on [certain of] the Index-Linked Options. This means your returns may be lower than the Index's returns. In return for accepting this limit on Index gains, you will receive some protection from Index losses.

As proposed, the disclosure included a sentence stating that ''Imposing this limit helps us make a profit on the Index-Linked Option.'' Some commenters were opposed to including the statement that an insurance company limits gains on an index-linked option in order to help the insurer make a profit.[404] These commenters stated that the disclosure is an oversimplification of an insurance company's business model and that it would provide investors with a false understanding about RILA profitability for the issuers. In particular, commenters stated that the disclosure suggested that an insurance company applies cap rates and participation rates as a means of capturing for itself any increases in index value above the cap rate.[405] Some commenters explained that cap rates and participation rates are among the investment parameters that a RILA issuer can use to design index linked options and that the effectiveness of the options in hedging the performance of the reference index is only one of the factors that determines the profitability for a RILA issuer.[406] One commenter stated that an explanation of an insurance company's business model or the profitability of issuing RILAs would not be helpful to investors.[407]

In a change from the proposal, after considering the comments discussed above, insurance companies will not be required to state that limits on index earnings help insurance companies make a profit on index-linked options. Instead, insurance companies will be required to include a sentence stating that ''This means your returns may be lower than the Index's returns.'' [408] The purpose of this disclosure is to put investors on notice that although there are typically not explicit fees charged for these products, and in exchange for that lack of a fee, investors generally will accept some limit on their ability to participate in index gains. This disclosure is appropriate to address the results of our investor testing, which demonstrated that participants may not understand that limits on index earnings reduce an investor's potential gains from the market.[409] This disclosure is also necessary to alert investors to the implicit fees inherent in limiting upside index participation. Without the disclosure, which will follow the other expenses relevant to investors, including administrative expenses, base contract expenses, and optional benefit expenses in the annual contract expenses table, an annual contract expenses table showing no explicit ongoing fees could itself mislead investors.

In another change from the proposal, the disclosure referring to limits on ''an Index-Linked Option'' was revised to ''[certain of] the Index-Linked Options.'' Because the disclosure related to the entire contract whose offering is being registered, this phrasing did not account for variances between index-linked options offered in that contract where, for example, some index-linked options have limits on upside participation but others do not. One commenter stated that cap rates and participation rates do not limit the amount an investor can earn in all scenarios, such as when an issuer does not impose a limit on an

[402] *See* final Form N–4, Instruction 10 to Item 4. As defined, ''transfer fee'' will encompass both the maximum fee charged for any exchange or transfer of contract value between investment options as well as the maximum fee charged for any exchange or transfer of contract value from the registered separate account to another investment company or from the registered separate account to the insurance company's general account. Thus, the amended definition and terminology regarding transfer fees will not result in any substantive change for existing Form N–4 issuers.

[403] We are adopting, as proposed, two related, non-substantive amendments to the instructions relating to annual contract expenses relevant to all issuers. These changes will broaden terminology given the expanded scope of securities offerings registered on Form N–4 as amended. Currently, the instruction for describing administrative expenses references ''any Contract, account, or similar fee *on all Investor Accounts;*'' however, as noted below, we are removing the term ''Investor Account,'' and amending this instruction to conform to that change. *See* final Form N–4, Instruction 13 to Item 4. Relatedly, we are amending the instruction regarding base contract expenses to remove a reference to fees and expenses deducted ''from separate account assets or charged to all Investor Accounts,'' and replacing it with an instruction to consider fees and expenses ''charged to any Investment Option.'' *See* final Form N–4, Instruction 14 to Item 4. We received no comments on this aspect of the proposal.

[404] *See* ACLI Comment Letter; Gainbridge Comment Letter; CAI Comment Letter.

[405] Gainbridge Comment Letter; CAI Comment Letter.

[406] ACLI Comment Letter; Gainbridge Comment Letter.

[407] ACLI Comment Letter.

[408] Final Form N–4, Item 4. Specifically, this disclosure at proposal read: ''In addition to the fees described above, we limit the amount you can earn on an Index-Linked Option. Imposing this limit helps us make a profit on the Index-Linked Option. In return for accepting this limit on Index gains, you will receive some protection from Index losses.'' *See* Proposing Release at Section II.B.5.a).

[409] *See* OIAD Investor Testing Report at 39 and 59.

index-linked option or an investor earns the full index performance because the actual index gain is less than the index limit.[410] We appreciate that a RILA may offer both index-linked options with and without limits on the amounts investors can earn.[411] To account for this, we have changed the language of the final disclosure to refer to ''[certain of]'' the index-linked options in these limited circumstances. We are not amending the form to address cases where there are limits but the actual index performance is below those limits because that cannot be known at the time of the disclosure.

Annual Portfolio Company Expenses

Form N–4 currently requires issuers to include in the prospectus an annual portfolio company expenses table, disclosing the minimum and maximum total operating expenses charged by the portfolio companies offered by variable annuity contracts that may be periodically charged to investors during the time they own the contract. This includes costs incurred by portfolio companies directly and, if the portfolio company invests in other mutual funds, the fees and expenses the portfolio company indirectly incurs from these investments. In a change that will apply to variable annuity prospectuses, we are adopting, as proposed, a requirement that registrants disclose that expenses shown in this table may change over time and may be higher or lower in the future. This modification will help to ensure that investors understand that these charges may increase over time, notwithstanding that these charges are described as maximum expenses. Additionally, this disclosure is similar to disclosures we are requiring of non-variable annuities that are also subject to change, specifically disclosures related to changing upside and downside limits.[412] We received no comments on this aspect of the proposal.

Example

Form N–4 issuers currently must provide an example in their prospectuses that is designed to allow variable annuity investors to compare the cost of investing in the contract with the cost of investing in other variable annuity contracts. We are amending, as proposed, the example requirements to clarify, in relation to variable annuities and combination contracts that have variable options, that the example is designed to permit investors to compare costs of investing solely in *variable* options under the contract with costs associated with variable options offered under other annuity contracts. The example will be preceded with a legend specifically stating that: the example assumes that all contract value is allocated to variable options, the example does not reflect contract adjustments, and costs would likely differ if an investor selects index-linked options or fixed options. The one commenter that spoke to this aspect of the proposal supported it and agreed that it served the intended purpose.[413]

b. Charges and Adjustments (Item 7)

Item 7 currently requires registrants to provide a brief description in their prospectuses of all current charges deducted from purchase payments, investor accounts, assets of the registrant, or any other source.[414] For the reasons described above and given the potentially significant economic consequences contract adjustments can have on investors in non-variable annuities, we are also adopting additional specific requirements to incorporate contract adjustments into the prospectus's disclosure of charges, which will consist of a description in simple terms of any contract adjustments under the contract. These disclosures are designed to be comparable and proximate to existing disclosures about contract charges applicable to variable annuities.[415] These disclosures are adopted as proposed, except that we are changing the title of Item 7 from ''Charges'' to ''Charges and Adjustments'' in response to comments, as discussed in more detail below.[416]

Specifically, we are adopting a requirement that insurance companies must: (1) disclose (as a percentage) the maximum potential loss that could result from a negative contract adjustment; (2) define the period during which any contract adjustment would apply; and (3) describe all transactions subject to a contract adjustment.[417] Insurance companies will also be required to include a description of how the contract adjustment will affect the contract value, surrender value, death benefit, and any living benefits, and disclose that a negative adjustment could reduce the values under the contract in an amount greater than the value withdrawn.[418] They will also need to describe, in simple terms, how the contract adjustment is determined under the contract, and the relationship between the contract adjustment and any other charges, fees, or adjustments applied under the contract, including, for example, the sequence in which charges, fees, and adjustments are applied.[419] The required disclosure will

[410] *See* ACLI Comment Letter.

[411] An insurance company would not include this disclosure if none of the index-linked options offered in the prospectus limit the amount of an investor's gains. *See, e.g.,* final Form N–4, General Instruction C.1(d).

[412] *See, e.g.,* final Form N–4, Item 17(b)(1).

[413] CAI Comment Letter.

[414] In addition to the changes discussed below, we are adopting as proposed a few clarifying changes to Item 7. Specifically, consistent with the adopted changes to the fee table, we are adopting proposed changes in terminology that will affect all Form N–4 issuers, replacing references in Item 7 to ''investor accounts'' and the assets of ''registrants'' with the terms ''contract value'' and ''investment option'' assets, respectively. Therefore, in responding to Item 7, issuers will describe charges deducted from purchase payments, contract value, investment option assets, or any other source. Additionally, we are adopting as proposed two non-substantive terminology changes in Instruction 3 to Item 7(a) regarding how registrants must describe the sources that will be used to cover shortfalls where proceeds from sales loads will not cover expected costs. First, we are replacing the term ''depositor'' with the term ''insurance company.'' Second, where shortfalls are to be made from an insurance company's general account, this instruction currently requires a disclosure that amounts paid by the insurance company may consist of proceeds derived from base contract expenses *deducted from the registered separate account.* We are striking the italicized language referring to assets of the registered separate account because it is superfluous given the definition of ''base contract expenses'' in amended Instruction 14 to Item 4, discussed above. We received no comments on these aspects of the proposal.

[415] *See* final Form N–4, Item 7(a)–(d).

[416] We proposed to amend Instruction 6 to Item 7 to require a description of the relationship between the contract adjustment and any other charges or fees applied under the contract, including, for example, the sequences in which charges and adjustments are applied. In a modification from the proposal, we are amending Instruction 6 to Item 7 to require a description of the relationship between the contract adjustment and any other charges, fees, or *adjustments* applied under the contract, including, for example, the sequences in which charges, *fees,* and adjustments are applied. Fees and adjustments were added in respective places in the instruction for clarity and completeness compared to the proposal. *See* final Form N–4, Instruction 6 to Item 7. These disclosures apply to both RILAs and registered MVA annuities.

[417] *See* final Form N–4, Instructions 1 through 3 to Item 7(e). In describing the transactions subject to a contract adjustment, the insurance company will need to describe, for example, whether adjustments apply if amounts are transferred or withdrawn from an index-linked or MVA option, or from the contract, due to a partial withdrawal, surrender, election of an annuity option, or payment of death benefit proceeds, or where a particular optional benefit (*e.g.,* a withdrawal under a guaranteed living benefit) is utilized, and to describe any circumstances under which the adjustment will be waived.

[418] *See* final Form N–4, Instruction 5 to Item 7(e). If applicable, the insurance company will also be required to state the impact of the contract adjustment on interest to be credited to an index-linked option at the end of its crediting period.

[419] *See* final Form N–4, Instructions 4 and 6 to Item 7(e). The description of how the contract adjustment is determined will have to provide a meaningful explanation of all the material features of the contract adjustment's application, including: (1) information about any formula applied (*e.g.,* a change in value of hypothetical derivative

also require the issuer to briefly describe the purpose of the contract adjustment, including, for example, that the contract adjustment transfers risk from the insurance company to the investor to protect the insurance company from losses on its own investments supporting contract guarantees if amounts are withdrawn prematurely.[420] Finally, issuers will be required to disclose how an investor can obtain information about the current value of the contract adjustment, while stating that this value can fluctuate daily, and that the quoted value may differ from the actual value at the time of adjustment.[421]

The detailed disclosure on the method of calculating the contract adjustment will, as proposed, appear in the SAI, as opposed to the prospectus.[422] Item 7(e) will include a cross-reference to Item 22(d) of Form N–4, which will require more detailed disclosure on the contract adjustment's calculation (including illustrative examples as to adjustment's operation) to appear in the SAI. The more detailed SAI discussion will not be, however, a substitute for the Item 7 requirements. Thus, for example, an insurance company will not be permitted to include the formula underlying the contract adjustment calculation in the SAI in lieu of the required discussion of the contract adjustment in the prospectus. Rather, in addition to stating the formula in the SAI, the insurance company will need to include in the prospectus a brief description, in simple terms, of how the contract adjustment is determined.

Some commenters stated that the proposal generally mischaracterizes contract adjustments as charges.[423] One of these commenters stated that, as a result, Item 7 should not include any contract adjustment disclosures.[424] The other of these commenters instead recommended that Item 7 be renamed from ''Charges'' to ''Charges and Adjustments.''[425] This commenter stated that ''Charges and Adjustments'' would more accurately describe the disclosures in amended Item 7, which would include disclosures related to contract adjustments.[426] This commenter also stated that this disclosure should focus on describing the mechanics of contract adjustments and exclude any maximum potential loss disclosures, which are already included elsewhere in the prospectus.

Given that Item 7, as amended, includes significant disclosure related to contract adjustments, we agree, as one commenter recommended, that changing Item 7 from ''Charges'' to ''Charges and Adjustments'' is appropriate and provides a clear and accurate description of the specific disclosure that investors will find in disclosure provided in response to Item 7. However, similar to the inclusion of limits on upside gains as a ''fee'' or ''expense,'' as discussed above,[427] a contract adjustment could potentially affect an investor the same way as other charges currently disclosed in Item 7, such as sales loads, administrative and transaction charges, risk charges, contract loan charges, and optional benefit charges. By including contract adjustment disclosure in the disclosure required by Item 7, including the maximum potential loss that could result from a negative contract adjustment, investors are provided with the necessary scope and level of detail about contract adjustments, together with information about charges that may apply upon a withdrawal, that could negatively affect an investor's contract value or the amounts an investor could withdraw from the contract. These disclosures specifically address areas of confusion identified by investor testing, which showed that participants were confused about contract adjustments, their purpose, the situations in which they could arise, their potential magnitude, and their relationship to other fees and charges (*e.g.,* surrender fees).[428]

c. Purchase of Securities Being Offered (Item 22)

We are adopting, as proposed, amendments to Item 22, which addresses the purchase of securities being offered, to require specific, detailed contract adjustment disclosures to appear in insurance companies' SAIs. As discussed above, insurance companies will be required to provide in simple terms an explanation of the manner in which contract adjustments are determined in their prospectuses, while noting that further detail is available in the SAI and providing a cross reference to that information. To complement the discussion required in the prospectus by Item 7, Item 22(d) will require issuers to explain fully the operation of any contract adjustment that can be applied under the contract. This more detailed explanation will not take the place of the prospectus discussion, but will describe the technical, detailed aspects of the operation of the adjustment, including any formulas and an explanation of such formulas used to calculate the adjustment, and at least one numeric example to illustrate the application of the contract adjustment. This numeric example will be required to include a negative adjustment, reflect surrender charges (if applicable), and disclose the percentage change in contract value as a result of the adjustment.

The one commenter who addressed these amendments supported them as an effective use of layered disclosure.[429] Specifically, the commenter stated that the detailed disclosure on the method of calculating the contract adjustment, including examples, should be included in the SAI and a cross-reference to the detailed disclosure should be included in Item 7(e).

The mechanics of contract adjustments under a non-variable annuity are typically complex, and often involve factors or formulas that can be difficult for many investors to understand.[430] Because the application of a negative contract adjustment can substantially affect an investor's contract value, it is important that information on negative contract adjustments is available in the SAI for investors who want to learn more about the calculation. In addition to promoting transparency generally, the required disclosure will also ensure that liability attaches under section 11 of the Securities Act for any material misrepresentations regarding the application of a contract adjustment.[431]

instruments); (2) the factors that may cause a positive or negative adjustment (*e.g.,* timing of withdrawal, index volatility, increase in external interest rates); (3) a description of any proportionate withdrawal calculations; and (4) how adjustments are applied (*e.g.,* allocated among the investment options, applied to a withdrawal amount).

[420] *See* final Form N–4, Instruction 7 to Item 7(e).

[421] *See* final Form N–4, Instruction 8 to Item 7(e).

[422] *See* final Form N–4, Instruction 4 to Item 7(e).

[423] VIP Working Group Comment Letter; CAI Comment Letter.

[424] VIP Working Group Comment Letter.

[425] CAI Comment Letter.

[426] The commenter also suggested that we delete the word ''other'' from the following proposed instruction: ''Describe the relationship between the Contract Adjustment and any *other* charges or fees applied under the Contract . . .'' because it suggests that contract adjustments are charges or fees. *See* Proposed Form N–4, Instruction 6 to Item 7(e). We decline to make this change for the reasons stated in the next paragraph.

[427] *See supra* Section II.C.6.a (discussing a similar change made to the proposed transaction expenses table).

[428] *See, e.g.,* OIAD Investor Testing Report at Section 5, Qualitative Testing, Results From Round 2 and Section 7, Conclusions.

[429] CAI Comment Letter.

[430] Proposing Release at Section II.B.5.c.

[431] *See also* VASP Adopting Release at n.700 (stating that summary prospectus disclosure requirements are designed to substantively track parallel disclosure requirements in the statutory prospectuses to ensure that the summary prospectus disclosures are subject to liability under Section 11 of the Securities Act).

We are also, as proposed, applying certain existing SAI disclosure requirements to insurance companies about the purchase of non-variable annuity securities being offered. Specifically, we are requiring insurance companies to describe the manner in which the securities are offered to the public by addressing any exchange privileges between investment options not described in the prospectus.[432] Additionally, we are requiring RILA and registered MVA annuity issuers to describe the method used to determine the sales load.[433] We are not applying the existing disclosure requirement dealing with frequent transfer arrangements to non-variable annuity issuers, as its provisions are relevant only to variable options.[434] We received no comments on this aspect of the proposal.

7. Information About Contracts With Index-Linked and/or MVA Options (Item 31A)

We are adopting new Item 31A to Form N–4 to require census-type information regarding non-variable annuities offered in connection with the registration statement. Item 31A will require an insurance company to provide the following information regarding any non-variable annuity offered through the registration statement, as of the most recent calendar year-end in a tabular format: (1) the name of each contract; (2) the number of contracts outstanding; (3) the total value of investor allocations attributable to index-linked and/or MVA options; (4) the number of contracts sold during the prior calendar year; (5) the gross premiums received during the prior calendar year; (6) the amount of contract value redeemed during the prior calendar year; and (7) whether the contract is a ''combination contract,'' that is, a contract that offers variable options in addition to index-linked or MVA options.[435] We are adopting Item 31A largely are as proposed, with certain changes designed to include registered MVA annuities in this item.[436] In a change from the proposal, we also are requiring insurance companies that incorporate current limits on index gains into the prospectus by reference to a website to provide in response to Item 31A all of the then-current limits on index gains that were in effect during the twelve months ending on December 31 of the prior year for each index-linked option. One commenter supported a similar approach.[437] Because this information will be required as of the most recent calendar year-end, insurance companies generally will need to update this information through a post-effective amendment to a registration statement on Form N–4.[438] Accordingly, under the final amendments, insurance companies will file with the Commission information on current upside rates either via prospectus supplements (if the insurance company discloses these rates directly in the prospectus) or annually in response to Item 31A (if the insurance company incorporates current upside rates into the prospectus by reference to a website). We anticipate most insurance companies will incorporate this information by reference to a website and therefore file it in response to Item 31A.[439] One commenter opposed the proposed census-type disclosures in Item 31A, asserting that they would require insurance companies to publicly reveal private and confidential information that could be used by competitors and that would not be useful to investors in making investment decisions.[440] The commenter stated that the Commission could obtain the census-type information from insurance companies individually, if needed, upon request.

We are adopting the proposed requirements for census-type information to provide improved transparency to investors and others by supplementing the information available in the marketplace for the non-variable annuity contracts registered on Form N–4. The information will help us carry out regulatory responsibilities, including monitoring risk and trends, formulating policy and guidance, and reviewing registration statements. Moreover, third parties, including data aggregators, academics, and the press, as well as financial professionals who recommend or provide advice on non-variable annuities, are also likely users of this data which may ultimately help inform investor decisions. Requiring this high-level reporting will permit the Commission to identify trends occurring in this market segment over time and assist with allocating the Commission's resources in administering Form N–4. Also, because providing this information on Form N–4 will result in having information provided to the Commission as of a uniform date for all offerings of non-variable annuities registered on this form, regardless of the date the annual amendment is filed, this information will provide for increased comparability across issuers and contracts and give data points over time with which to compare.[441]

We disagree with the comment suggesting that requiring this information to be disclosed will result in private and confidential information being disclosed that will aid competitors. The information that will be reported will complement the parallel census-type information that is currently required to be reported annually on Form N–CEN by registered unit investment trusts offering variable annuities.[442] Moreover, information that insurance companies will report in response to Item 31A will be aggregated at the contract level, which reduces the possibility that any confidential or private information would be disclosed. Requiring individual insurance companies to produce the census-type information to the Commission upon request, as suggested by the commenter who opposed the proposed approach, would not facilitate the ability of the Commission and staff to observe and study relevant trends in the market for these products in the same manner as an annual filing requirement for all insurance companies. The information also would not be available to investors or analysts and others who analyze data for the benefit of investors.

In addition to the information discussed above, and in a change from the proposal, Item 31A of final Form N–4 also requires that insurance companies provide, for any contract with index-linked options offered through the registration statement, the current limits on index gains in effect for each index-linked option during the

[432] *See* final Form N–4, Item 22(a).

[433] *See* final Form N–4, Item 22(b).

[434] *See* final Form N–4, Item 22(c).

[435] *See* final Form N–4, Item 31A.

[436] *See supra* Section II.B.

[437] Coenen Comment Letter (supporting an approach in which insurance companies would file annual reports disclosing the upside rates offered during the previous one-year period or a range of such rates).

[438] *See* final Form N–4, Item 31A(a). The information required for Item 31A will need to be updated as part of an issuer's annual update to its registration statement for such contracts. *See* 15 U.S.C. 77j(a)(3). An issuer transitioning from an existing registration statement on Form S–1 or S–3 to Form N–4 through a post-effective amendment will be required to report this information as of the most recently completed calendar year in its first post-effective amendment transitioning onto final Form N–4.

[439] *See supra* paragraph accompanying footnote 284.

[440] *See* CAI Comment Letter.

[441] We understand that insurance companies offering RILAs have a December 31 fiscal year end which, in practice, means a distinction between calendar year and fiscal year will result in limited effect on the reporting.

[442] Issuers registering combination contracts on Form N–4 will be required to exclude amounts allocated to a variable option when providing information in response to Item 31A as these allocations will be separately reported by registered separate accounts on Form N–CEN. *See* final Form N–4, Instruction 2 to Item 31A(a).

twelve months ending on December 31 of the prior year as provided on a website in accordance with the requirements of Item 6. As discussed above, we proposed to require that the current limits on index gains be provided in the statutory prospectus, but after considering comments, are permitting insurance companies to disclose these current upside rates by posting them to a website and incorporating this website disclosure by reference into the prospectus.[443] Requiring insurance companies to disclose the current limits on index gains that were in effect over the course of the prior year preserves one of the benefits of the proposal, which would have ensured that all rates used over time remained available on EDGAR, while addressing concerns insurance companies raised by otherwise allowing them to supply the information on a website. This historical record will allow investors and analysts and others analyzing the data on investors' behalf to consider the frequency and magnitude of changes in upside rates. This is an important consideration because RILAs are long-term investments, and an investor's ultimate returns therefore depend on future upside rates set by the insurance company and not just the current rates at the time of investment. Two commenters recognized the value in maintaining historical rates used by an insurance company in suggesting that the Commission permit insurance companies to disclose the rates on a website, subject to a recordkeeping requirement.[444]

Given the potentially large volume of this information, insurance companies will be permitted to file this information as an exhibit to, rather than directly in, the registration statement itself.[445] As with the other information required by this item, insurance companies must structure this information regardless of whether it is filed as an exhibit to, or provided directly in, the registration statement.

We are adopting a disclosure requirement, rather than a recordkeeping requirement as one commenter suggested, because disclosing this information in the registration statement will integrate this information more seamlessly into the existing methods of data collection required by the form. Furthermore, requiring filers to submit this information on EDGAR also will make it more accessible to the Commission and the public than a recordkeeping requirement. Under the final rule, historical current rate information filed on EDGAR will also be structured, consistent with the requirement to tag current rate information disclosed directly in the prospectus.[446] As discussed in more detail below, there is value in having this information available in a structured data format.[447]

8. Other Amendments and Provisions

We are adopting, largely as proposed, amendments to include certain other modifications to Form N–4 and related rules designed to accommodate the inclusion of offerings of non-variable annuities on the form. These include amendments to Form N–4's facing sheet, definitions, exhibit list, and required representations, as well as amendments to certain Securities Act rules that help to implement the registration of non-variable annuities on Form N–4. These amendments are discussed below.

a. Facing Sheet

We are adopting, largely as proposed, amendments to include a new check box section on the facing sheet. Specifically, an issuer will be required to identify in this new section: (1) if it is a new registrant, defined, as applicable, as a registered separate account or insurance company that has not filed a Securities Act registration statement or amendment thereto within 3 years preceding this filing; [448] (2) if it is an emerging growth company (''EGC''), as defined by Rule 12b–2 under the Exchange Act; [449] (3) if it is an EGC, whether it has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act; (4) if it is an insurance company relying on an exemption from Exchange Act reporting requirements in reliance on rule 12h–7 (''12h–7 check box''); and (5) if it is a smaller reporting company as defined by rule 12b–2 under the Exchange Act.[450] These check boxes will help the Commission better understand the types of registration statements being filed on Form N–4 and, in the case of the EGC information, mirror similar facing sheet requirements found in Form S–1. In addition, we are amending the descriptions of the types of entities that use Form N–4 to include insurance companies that offer index-linked or MVA options, either as stand-alone or combination products.[451]

One commenter provided several specific suggestions on the proposed amendments to the facing sheet.[452] The commenter stated that the rule 12h–7 check box could create confusion without clarification because that check box is directed towards the status of the registrant. In the case of variable options, there are two ''registrants,'' the registered separate account and the insurance company, and it was unclear which entity the check box was intended to apply. The rule 12h–7 check box was intended to refer to an insurance company's reliance on that rule because registered separate accounts satisfy their Exchange Act reporting requirements with the filing of Form N–CEN and therefore do not rely on rule 12h–7.[453] Thus, in a change from the proposal, the final form has been updated accordingly to specify that the box should be checked if the insurance company is relying on rule 12h–7.[454]

The commenter also suggested that the new check-the-box section include a box for smaller reporting companies, as is the case with Form S–1 and Form S–

[443] *See supra* Section II.C.4.a.

[444] *See* VIP Working Group Comment Letter; Coenen Comment Letter.

[445] In a modification from the proposal, we have added this exhibit to the exhibit list in Item 27 of the final form. This will standardize the location of this exhibit and make it easier to find in EDGAR.

[446] *See* final Form N–4, Instruction C.3(h)(i).

[447] *See infra* Section II.C.10. As discussed below, the final amendments incorporate structured data requirements for certain of the disclosures that insurance companies will include in their Form N–4 registration statements.

[448] For example, a variable annuity separate account that has not previously filed a Securities Act registration statement will identify itself as a new registrant, regardless of whether the sponsoring insurance company filed a recent Securities Act registration statement or amendment thereto as the amended requirements request information on the registrant. In the same manner, an insurance company filing on Form N–4 will determine whether it is a new registrant solely with respect to its own Securities Act registration statement filings.

[449] The term ''EGC'' is defined as an issuer that had total annual gross revenues of less than $1,235,000,000 during its most recently completed fiscal year. 17 CFR 240.12b–2.

[450] These five check boxes will be new to final Form N–4 as they are not on the current form.

[451] *See supra* Sections II.A and II.B. The final form updates the language on the facing sheet that explains what Form N–4 is to be used for by, among other things, adding references to RILAs and registered MVA annuities.

[452] CAI Comment Letter.

[453] *See, e.g.,* 12h–7 Adopting Release at n.146.

[454] The commenter further stated their view that the registration of variable contracts without registered non-variable options generally has not triggered a requirement to file Exchange Act reports for either the registered separate account or the depositor, and thus neither entity needs to rely on rule 12h–7. CAI Comment Letter. As a result, this commenter suggested that the check box be clarified to not be applicable to those entities. The overall application of rule 12h–7 is beyond the scope of this rulemaking. However, this requirement mirrors a similar disclosure requirement in Item 6(a) where, as noted above, insurance companies can add additional details as to which securities they are relying upon rule 12h–7 for if they so choose in response to that item. *See supra* footnotes 238–242 and accompanying text; *see also* final Form N–4, Item 6(a).

3. The commenter stated that a box for smaller reporting companies would be helpful because there could be RILA registrants that are smaller reporting companies that qualify for scaled financial statement requirements under Article 8 of Regulation S–X.[455] Insurance companies offering non-variable annuities could, where applicable, qualify for smaller reporting company status, and we agree that a check box would help provide specificity to insurance companies while assisting Commission staff in tracking the extent to which insurance companies offering non-variable annuities are smaller reporting companies. Therefore, in a change from the proposal, we are adding a check box on the facing sheet for smaller reporting company status.

b. Definitions (General Instruction A)

We are adopting, largely as proposed, amendments to General Instruction A to update the existing definitions in Form N–4 and to add new definitions to accommodate the inclusion of non-variable annuities on Form N–4. We are implementing these proposed definitions throughout the form. However, unless otherwise stated, the proposed amendments to the definitions in General Instruction A do not alter the existing obligations under Form N–4 for offerings of variable annuities. These changes provide a standard set of definitions to convey form provisions in a consistent and efficient manner without the need for lengthy descriptions in each instance and clarify which form provisions apply to which categories of issuers and investment products.[456]

For a number of these definitions, we did not receive any comments and are adopting them as proposed. These are the definitions of the terms contract, crediting period, index, insurance company, investment option, portfolio company, registrant, and registered separate account.[457] These definitions are designed to help refine which provisions of the form apply to the different types of annuities. We also proposed to eliminate the previously defined term ''investor account'' from General Instruction A and to make related amendments throughout Form N–4 to help implement the proposed new definitions.[458] We did not receive comments on these points either and are adopting them as proposed.[459] We retained the definition of ''fixed option,'' but, in a change from the proposal to accommodate the requirement that registered MVA annuities also use Form N–4, added a sentence explaining that the term includes fixed options that are subject to contract adjustments.

We did, however, receive comments on other definitions. Specifically, we proposed a new definition for ''index-linked option'' to General Instruction A. The definition was proposed to cover RILAs and index-linked options offered in combination contracts, as an investment option offered under any contract, pursuant to which the value of the contract, either during an accumulation period or after annuitization, or both, will earn positive or negative interest based, in part, on the performance of a specified index.[460] This is a functional definition focused on the key features of a RILA and covers RILAs as defined in the RILA Act. Some commenters asked that we clarify that the definition of ''index-linked option'' is only intended to address RILAs or otherwise clarify that RILA disclosures are not required in connection with unregistered indexed options.[461] The definition is limited to RILAs as it expressly refers to the potential to earn negative interest which is limited to RILAs. The definition for index-linked option would not include MVA or unregistered indexed options, which, because they earn interest at a rate specified by the insurance company, fall under the definition of ''fixed option'' under the form.

We proposed definitions of ''contract adjustment'' and ''crediting period'' to refer to these non-variable annuity-centric concepts in the form and to help clarify when the relevant disclosures would be required.[462] One commenter stated that our proposed definition of ''contract adjustment'' is ambiguous and could be construed as covering types of transactions that we do not intend, such as a change in investment base for an index-linked option that occurs upon withdrawal, surrender charges deducted from remaining contract value, or reset features under guaranteed living benefits. This commenter suggested that we specify that the term only refers to (1) interim value adjustments applied when withdrawals and other deductions are made from an index-linked option before the end of a crediting period; (2) market value adjustments applied to amounts withdrawn or otherwise deducted from a contract; and (3) similar adjustments that may be imposed under a contract.[463]

We are adopting these definitions, including that of the term ''contract adjustment,'' as proposed. The definition is sufficiently specific to adjustments ''to the value of the Contract'' that are ''positive or negative'' and applied to withdrawals ''before the end of a specified period,'' which would not cover the examples that concerned the commenter. For example, while the investment base for an index-linked option reflects a positive or negative contract adjustment resulting from that option's daily interim valuation, any change in the investment base as a result of a withdrawal is a *reduction* in the investment base, not an adjustment, and would be described separately from, although perhaps in conjunction with, the contract adjustment. Moreover, we do not anticipate there would be any misunderstanding by insurance companies preparing the disclosure that a surrender charge or a living benefit reset feature is a contract adjustment under the form. Although a surrender charge, like a contract adjustment, is imposed if a withdrawal is taken before the end of a specified period, a surrender charge always results in a *decrease* rather than a positive or negative *adjustment.* More importantly, Form N–4 as amended is clear throughout in distinguishing between surrender charges and contract adjustments. For example, the fee table provides for disclosure of deferred sales loads separate from disclosure of the maximum potential loss from a contract adjustment.[464] Indeed, many of the form items and instructions that require disclosure of contract adjustments separately require disclosure of surrender charges. Lastly, while a contract adjustment is a positive or negative adjustment to the contract's

[455] Regardless of whether an issuer's financial statements are prepared in accordance with GAAP or SAP, the number of periods shown in the financial statements must follow the requirements of Regulation S–X. *See* Articles 3 and 8 of Regulation S–X, 17 CFR part 210.

[456] We also are amending Form N–4 throughout to use the gender-neutral reference of ''investor'' where appropriate. *See, e.g.,* final Form N–4, Instruction 6 to Item 2.

[457] Proposing Release at Section II.B.7.b.

[458] *See id.*

[459] *See, e.g.,* final Form N–4, Items 3, 7, 8, 11, 24, 32, and 34(a); *see also* definitions for ''class'' (clarifying applies to all contracts) and ''platform charge'' (clarifying only applies if there is a variable option). For example, on the latter point, we refined the applicability of certain variable annuity or Investment Company Act-specific disclosure to limit those requirements to ''registered separate accounts'' or ''variable options'' when appropriate.

[460] Because RILA returns may not be one for one with the index, we indicate that positive or negative interest is only based ''in part'' on the index's performance.

[461] CAI Comment Letter; Comment Letter of Holly J. (Nov. 22, 2023) (''Holly J. Comment Letter'').

[462] Proposing Release at Section II.B.7.

[463] CAI Comment Letter.

[464] *See, e.g.,* final Form N–4, Item 1(a)(7), Instructions 2(a), 2(b), 2(c)(ii)(A), 3(b) to Item 3, Item 4, Item 5(b), Item 6(d)(2)(ii)(B), Item 6(d)(2)(iii)(B), Items 7(a) and (e), and Instruction to Item 22(d).

value if amounts are withdrawn before the end of a specified period, a reset feature under a guaranteed living benefit rider results in an *increase* in the rider's *benefit base* on a recurring basis, such as on each contract anniversary, and without regard to whether a withdrawal is occurring.

One commenter suggested the Commission provide guidance that registrants would generally not be required to use the defined terms in the form so long as the terminology used by the insurance company clearly conveys the meaning of, or provides comparable information to, the terminology included in the form.[465] Both currently and as amended, Form N–4 permits the use of alternative terminology so long as that alternative conveys the same meaning of, or provides comparable information as, the terminology called for in the form.[466] Given the results of investor testing, which found that investors were confused by some of the terminology used in RILAs, we encourage insurance companies to consider if their prospectuses are using terminology that investors will be able to understand.[467]

c. Rules 405, 480, 481, 483, and 484

We are amending, as proposed, rule 405 under the Securities Act to add the new defined terms ''form available solely to investment companies registered under the Investment Company Act of 1940'' and ''registered index-linked annuity'' for purposes of Securities Act rules. We did not receive any comments on this part of our proposal. We are also, as discussed above, adding a defined term ''registered market value adjustment annuity'' to rule 405 in order to apply the appropriate Securities Act rules to registered MVA annuities.[468] Finally, because the final amendments extend the Form N–4 offering framework to both RILAs and registered MVA annuities, we are adopting the new defined term in rule 405 ''registered non-variable annuity,'' which means a ''registered index-linked annuity'' or ''registered market value adjustment annuity.''

The amendments to rule 405 are designed to apply specific Securities Act rules to insurance companies issuing non-variable annuities to ensure consistency across Form N–4 filers. Certain Securities Act rules apply only to registration statements that are prepared on a form available solely to a registered investment company or a business development company. These rules are 17 CFR 230.480 (''rule 480''), 17 CFR 230.481 (''rule 481''), 17 CFR 230.483 (''rule 483''), and 17 CFR 230.484 (''rule 484'') under the Securities Act, and include forms such as Forms N–1A, N–2, N–3, N–4, N–5, and N–6. These rules prescribe requirements relating to: information given with the title of securities; information contained in registration statements; exhibits filed as part of the registration statement; and undertakings required with respect to requests for acceleration.

By virtue of moving non-variable annuities, which are not issued by a registered investment company, onto Form N–4, Form N–4 would be outside the scope of this description absent these amendments that we are adopting. As such, the new defined term ''form available solely to investment companies registered under the Investment Company Act of 1940'' specifies that these rules apply to registration statements filed on Form N–4. Specifically, we are amending rule 405 to state that ''a form available solely to investment companies registered under the Investment Company Act of 1940'' includes the form used to register the offering of securities of a registered non-variable annuity for purposes of the Securities Act of 1933. By operation of this amendment, registration statements relating to the offering of non-variable annuities on Form N–4 are subject to rules 480, 481, 483, and 484.[469]

We also are adding a definition of ''registered index-linked annuity'' to rule 405, which provides consistent definitions for select terms used throughout the Securities Act rules, to simplify references to RILAs in the proposed Securities Act rule amendments.[470] Specifically, as proposed, we are defining ''registered index-linked annuity'' as an annuity or an option available under an annuity (1) that is deemed a security; (2) that is offered or sold in a registered offering; (3) that is issued by an insurance company that is the subject to the supervision of either the insurance commissioner or bank commissioner of any state or any agency or officer performing like functions as such commissioner; (4) that is not issued by an investment company; and (5) whose contract value, either during the accumulation period or after annuitization or both, will earn positive or negative interest based, in part, on the performance of any index, rate, or benchmark. As discussed in the Proposing Release, this definition is designed to cover all of the offerings addressed by the RILA Act.[471]

d. Exhibits and Undertakings (Items 27 and 34)

As discussed in the Proposing Release,[472] the exhibits required in a registration statement differ between filers using Forms S–1 or S–3 on one hand and Form N–4 on the other. As a function of moving non-variable annuities onto Form N–4, we are requiring insurance companies to continue filing various exhibits as part of registration statements relating to offerings of non-variable annuities.[473] These requirements are similar to those to which currently apply to insurance companies offering non-variable annuities on Forms S–1 and S–3. We are also standardizing the location in Form N–4 of exhibits containing any power of attorney included pursuant to rule 483(b) to assist the public in comparing these exhibits.[474]

Further, in addition to the requirements of rule 484, we are amending Form N–4 to include certain

[465] CAI Comment Letter.

[466] *See* final Form N–4, General Instruction C.3.(d)(ii); *see also* final Form N–4, General Instruction C.1(d) (stating that the requirements for prospectuses filed on Form N–4 will be administered by the Commission in a way that will allow variances in disclosure or presentation if appropriate for the circumstances involved while remaining consistent with the objectives of the form).

[467] *See* OIAD Investor Testing Report at Section 5, Qualitative Testing, Results from Round 2. For example, investor testing suggested that the use of the phrase ''term'' in conjunction with the concept of crediting periods could cause some confusion to the extent it is not clear from the disclosure that ''term'' refers to the length of the index-linked option rather than to the length of the contract.

[468] *See supra* footnote 85 and accompanying text; *see also* Proposing Release at Section II.H. (discussing a similar change).

[469] These rules apply to registration statements on Form N–4. Rule 480 prescribes requirements relating to information given with the title of securities. Rule 481 prescribes certain information to be required in the registration statement (*e.g.,* certain legends to appear on the front and back cover pages of prospectuses). Rule 483 prescribes certain requirements relating to exhibits filed as part of the registration statement. Rule 484 prescribes certain required undertakings with respect to requests for acceleration under 17 CFR 230.461 when certain arrangements exist with respect to indemnification of specified persons against liability under the Securities Act.

[470] *See also supra* footnote 85 and accompanying text (discussing other changes to rule 405 to accommodate the addition of offerings of registered MVA annuities to the form).

[471] Proposing Release at Section II.B.7.c.

[472] *See* Proposing Release at Section II.B.7.

[473] *See* final Form N–4, Item 27 (adding sub-items (p) Power of Attorney and (q) Letter Regarding Change in Certifying Accountant); *see also* Form S–1, Item 16; Form S–3, Item 16; Regulation S–K, Item 601.

[474] Non-variable annuity registration statements on Forms S–1 and S–3 similarly include a power of attorney, when applicable, to be filed as part of the registration statement. *See* 17 CFR 229.601(b)(24); *see also infra* Section II.E (discussing the addition of a new exhibit relating to changes in accountants).

undertakings that were required of insurance companies as part of their non-variable annuity Form S–1 and S–3 registration statements.[475] Specifically, we proposed to require insurance companies to furnish, in connection with offerings of RILAs, undertakings (1) to file, during any period in which offers or sales are being made, through a post-effective amendment to their registration statement, any prospectus required by section 10(a)(3) of the Securities Act and (2) that, for the purposes of determining liability under the Securities Act, each post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. These undertakings are the same as two undertakings insurance companies are required to provide in registration statements when they register offerings of non-variable annuities on Forms S–1 or S–3,[476] and mirror the effect of similar provisions of section 24(e) of the Investment Company Act, which applies to amendments to Form N–4 registration statements by registered separate accounts.[477] We did not receive any comments on the proposed amendments and are adopting them as proposed, except that we also are extending them to MVA annuities and including in the exhibit list any exhibit that contains the information called for in Item 31A(b) as discussed above.[478]

9. Remaining Form N–4 Items

We are adopting amendments, largely as proposed, to make the remaining requirements and disclosure items on the existing Form N–4 applicable to non-variable annuities without substantive changes to the current requirements and disclosure items.[479] These are: (1) general instructions to the final form including both organizational requirements along with substantive requirements for the preparation of the registration statement; (2) information about the annuity contract and how it operates; and (3) items that provide basic information about the insurance company or the securities offering itself, consistent with some of the disclosures provided currently in Forms S–1 or S–3.

a. General Instructions

Largely as proposed, non-variable annuity offerings registered on Form N–4 will need to comply with the general instructions of that form. These general instructions are structured to include four parts: (A) Definitions; (B) Filing and Use of Form; (C) Preparation of the Registration Statement; and (D) Incorporation by Reference.[480] As discussed in more detail in the Proposing Release, these instructions relate to the use of plain English; organization of the registration statement; information not otherwise required; terminology; offering multiple contracts in a prospectus and including multiple prospectuses in a registration statement; timing; websites included in electronic versions of the prospectus; and incorporation by reference (*e.g.,* addressing when information may be incorporated by reference into the prospectus).[481]

Collectively, the general instructions, as they existed prior to the amendments to Form N–4, are designed to require clear disclosure to investors about the variable annuity contracts currently registered on the form and to make clear how issuers must prepare and file their registration statements. Requiring insurance companies to prepare registration statements relating to the offering of non-variable annuities in accordance with these instructions will likewise facilitate the provision of clear disclosure to investors and provide clear direction to these issuers on how to prepare and file their registration statements. Further, applying these requirements to non-variable annuities will help ensure the comparability of different annuity offerings, for example, by ensuring that the filings are held to the same plain English, multiple contract disclosure, timing, website, and incorporation by reference standards.

We received one comment on the proposed general instructions.[482] The commenter requested clarification regarding the ability of insurance companies to file required financial statements using the N–VPFS EDGAR submission type for incorporation by reference into the SAI.[483] This commenter stated that this or a similar EDGAR submission type would streamline preparing and filing registration statements on Form N–4 and would be consistent with the manner in which registered separate accounts are permitted to incorporate financial statements of the insurance company and the separate account into the SAI for variable annuity contracts and variable life insurance policies. All Form N–4 filers currently can use N–VPFS instead of refiling their financial statements in every registration statement and many active variable contracts use N–VPFS for their financial statements.[484] For example, if a separate account funds 20 variable contracts with 20 Securities Act registration statements, instead of filing the identical information 20 times, the separate account can file it just once. Based on staff experience, we understand that doing so may reduce the costs of auditor consents as well because the auditor can focus its review

[475] *See* final Form N–4, Item 34. The disclosure currently required in Item 34, the fee representation mandated of registered separate accounts under the Investment Company Act, will be retained as paragraph (a) of this item, limited in application to variable options, and the new undertakings added as new paragraph (b) and limited to index-linked options and/or MVA options. *See also* 15 U.S.C. 80a–26(f)(2)(A). We have renamed this item ''Fee Representation and Undertakings.''

[476] *See* rule 415(a)(3) and 17 CFR 229.512(a). Under the final amendments, non-variable annuities are exempt from the conditions of rule 415, including furnishing the required undertakings pursuant to Item 512(a) of Regulation S–K. *See infra* footnote 625. For example, non-variable annuity registration statements no longer need to include a statement that the issuer undertakes to file a post-effective amendment to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. This requirement is not necessary for non-variable annuity registration statements on Form N–4 in light of the other amendments we are making to the prospectus and registration statement filing process for non-variable annuities. *See infra* Section II.F.2. (discussing amendments to rules 485 and 497 under the Securities Act).

[477] *See* Section 24(e) of the Investment Company Act [15 U.S.C. 80a–24(e)]. Section 24(e) generally requires a registered separate account to amend its registration statement annually to update its prospectus for the purposes of section 10(a)(3). Section 24(e) also provides that, for the purposes of liability under Securities Act, the effective date of the latest amendment is deemed to be the effective date of the registration statement with respect to securities sold after the effectiveness of amendment.

[478] *See supra* footnote 445.

[479] As noted above, some of these items have been amended to account for changes in defined terms and to use gender-neutral terminology. *See supra* Section II.C.8.b. Also as discussed above, in a modification from the proposal these items extend to registered MVA annuities, as applicable.

[480] *See supra* Section II.C.8.b (discussing amendments to the definitions used in the form).

[481] *See* Proposing Release at Section II.B.2.b. We are also, as proposed, correcting a typographical error in General Instruction B.2(b) regarding items that can be omitted for registration statements or amendments filed only under the Investment Company Act. Currently, the instructions state that issuers can omit from Part C Items 26(c), (k), (l), and (m), but those items do not exist in the form and Item 26 (Financial Statements) is in the SAI, not Part C. This will now refer to Item 27 (Exhibits), which does exist, and is in Part C. We received no comments on this aspect of the proposal.

[482] *See* CAI Comment Letter.

[483] *See* VASP Adopting Release at n.954 and accompanying text (discussing the submission via EDGAR of financial statements with respect to certain variable annuities).

[484] *See* Chapter 3 (Index to Forms) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' (March 2024), available at *https://www.sec.gov/files/edgar/filermanual/efmvol2.pdf.*

on the one N–VPFS instead of the 20 registration statements. Similarly, the availability of N–VPFS may facilitate the registration of RILAs and registered MVA annuities. We confirm that insurance companies can use N–VPFS for all offerings registered on Form N–4, including with respect to non-variable annuities on Form N–4, as amended. However, the insurance company should file its own N–VPFS and not reference the N–VPFS of a separate account, which might also include lengthy and irrelevant separate account financials.[485]

b. Contract Disclosures

The table below summarizes disclosures in the existing Form N–4 about the annuity contract, how it operates, and how it is serviced by the insurance company. We are amending Form N–4 to apply these requirements to the registration statements of offerings of non-variable annuities with a minor change to the existing form—insurance companies will be required to indicate in Item 12 whether charges or contract adjustments will apply in the event of a contract surrender or withdrawal.[486] Currently, Item 12 refers only to charges. We received no comments on this part of the proposal and are adopting these changes largely as proposed. Because offerings of registered MVA annuities will be registered on Form N–4, as amended, these amendments also apply to disclosure regarding registered MVA annuities, as applicable, in a modification from the proposal.

TABLE 5—CONTRACT DISCLOSURES

Item	Description
Prospectus (Part A)	
General Description of the Contracts (Item 8)	A general description of the contract, including disclosure of the parties' material rights under the contract; relevant contract provisions and limitations; contract obligations funded by the insurance company's general account; class of purchasers, and material changes that can be made to the contract by the insurance company.
Annuity Period (Item 9)	A brief description of the annuity options available, including a discussion of material factors that determine the benefits; annuity commencement date; frequency and duration of annuity payments, and the effect of these on the level of payment; the effect of assumed investment return; any minimum amount necessary for an annuity option and the consequences of an insufficient amount; rights to change annuity options; and, if applicable, a disclosure that the investor will be unable to withdraw any contract value amounts after the annuity commencement date.
Benefits Available Under the Contract (Item 10)	A tabular summary overview of the benefits available under the contract (*e.g.,* standard or optional death benefits, standard or optional living benefits, etc.), briefly discussing, among other things: whether the benefit is optional; current and maximum fees associated with the benefit; how the benefit amount is calculated; and any associated restrictions or limitations.
Purchases and Contract Value (Item 11)	A brief description of the procedures for purchasing a contract, including concise explanations of minimum initial and subsequent purchase payment required, when these payments are credited, and how they are allocated to investment options. Issuers should also identify each principal underwriter (other than the insurance company) of the contracts and other information about that underwriter such as any affiliations.
Surrenders and Withdrawals (Item 12)	A brief description of how surrenders and withdrawals can be made from a contract, including limits on the ability to surrender, how proceeds are calculated, and when surrenders and withdrawals are payable. Issuers must also describe potential effect of surrenders and withdrawals, including how they could affect a contract's value or benefits, and whether any charges will apply.[1] Issuers should also describe any involuntary redemption provisions and any revocation rights, disclosing the calculation methodology and any associated limitations to investment options.
Loans (Item 13)	A brief description of the loan provisions of the contract, including, for example, loan availability and related restrictions, interest mechanics, the effect of a loan on the contract's value and death benefit, other effects that a loan could have on a contract; and loan procedures.
Taxes (Item 14)	A description of the material tax consequences to the investor and beneficiary of buying, holding, exchanging, or exercising rights under the contract. The description should include a discussion of the taxation of annuity payments, death benefit proceeds, periodic and non-periodic withdrawals, loans, and any other distribution that may be received under the contact, as well as the tax benefits accorded the contract and other material tax consequences. Issuers must identify the types of qualified plans for which the contracts are intended to be used and describe any effect of taxation on the determination of contract values.
Statement of Additional Information (Part B)	
Cover Page and Table of Contents (Item 18)	A statement of the name of the insurance company, the contract, and related class or classes. This item also requires a table of contents, a statement that the SAI is not a prospectus, information about how to obtain the prospectus, and a discussion of information the SAI incorporates by reference.
Non-principal Risks of Investing in the Contract (Item 20).	A summary of the non-principal risks of purchasing a contract to the extent not disclosed in the prospectus.

[485] Conversely, a separate account can reference the insurance company's financial statements in the insurance company's N–VPFS because the insurance company's N–VPFS would not contain information that is irrelevant to the separate account.

[486] *See* final Form N–4, Item 12(c).

TABLE 5—CONTRACT DISCLOSURES—Continued

Item	Description
Services (Item 21)	Information on certain services provided to the registrant in connection with the contract. If not disclosed elsewhere, this requires a summary of the substantive provisions of certain significant administrative or management-related service contracts. The registrant must also provide the name and address of its independent public accountant. Where affiliates of the insurance company act as agents for the registrant in connection with the contract, issuers are required to provide specific information about the services performed and remuneration paid for the services. Issuers must also disclose if the insurance company is the principal underwriter of the contract.
Annuity Payments (Item 25)	A description of the method for determining the amount of annuity payments if not described in the prospectus and how any change in the amount of a payment after the first payment is determined.
Other Information (Part C)	
Management Services (Item 33)	A summary of the substantive provisions of any management-related service contract not discussed in Parts A or B, including the parties to the contract, and the total paid and by whom for the registrant's last three year fiscal years.

Note to Table 5
[1] In addition to charges, the final amendments will require issuers to describe any contract adjustments that will apply.

These requirements apply to existing Form N–4 issuers because these disclosures provide investors in these products with a concise presentation of material information about the annuity contract they would be purchasing, as well as other information that provides necessary context about the contracts such as management service disclosures.[487] We are applying these requirements to non-variable annuities because this information is equally fundamental to the ability of investors to make informed investment decisions about non-variable annuities. For example, existing Form N–4 issuers are required to summarize standard and optional benefits available to the investor under the contract because these benefits are primary features of variable contracts and are also often key differentiators between competing products.[488] Insurance companies also offer these benefits in connection with non-variable annuities.

c. Issuer and Offering Disclosures

In addition to disclosures about the contract, we are adopting amendments to Form N–4 that will require that insurance companies make certain disclosures relating to the issuer and offering consistent with the form's current requirements. The table below summarizes these items, omitting items in Form N–4 that, by their terms, will not apply to non-variable annuities. We received no comments on these proposed amendments and are adopting them as proposed. However, in a modification from the proposal, because offerings of registered MVA annuities will be registered on Form N–4, as amended, these amendments also apply to disclosure regarding registered MVA annuities, as applicable.

TABLE 6—ISSUER AND OFFERING DISCLOSURES

Item	Description	Similar Form S–1 disclosure
Prospectus (Part A)		
Legal Proceedings (Item 15)	A description of material pending legal proceedings to which the registered separate account, the principal underwriter, or the insurance company is a party, including similar information regarding any proceedings instituted or known to be contemplated by a governmental authority.	Item 11(c) (legal proceedings).
Statement of Additional Information (Part B)		
General Information and History (Item 19).	Basic information regarding the background and organization of the insurance company, including the jurisdiction in which it is organized and a short description of its business.	Item 11(a) (description of business).
Underwriters (Item 23)	Identification of the principal underwriters (other than the insurance company), and for affiliated underwriters, a description of the nature of the affiliation. For each principal underwriter distributing the registrants' contracts, the insurance company must provide information about the offering and related commissions. If the registrant made payments to an underwriter of or dealer in the contracts during its last fiscal year over a threshold amount, the registrant must disclose certain information about those payments.	Item 8 (plan of distribution).

[487] *See* Forms N–3 and N–4 Adopting Release.

[488] *See* VASP Adopting Release at n.26 and accompanying text.

TABLE 6—ISSUER AND OFFERING DISCLOSURES—Continued

Item	Description	Similar Form S–1 disclosure
Other Information (Part C)		
Directors and Officers of the Insurance Company (Item 28).	A statement of the name, principal business address, position, and office held for each director or officer of the insurance company.	Item 11(k) (directors and executive officers).
Persons Controlled by or Under Common Control with the Insurance Company or the Registrant (Item 29).	Disclosure of persons directly or indirectly controlled by or under common control with the registrant or the insurance company.	Item 11(k) (directors and executive officers).
Indemnification (Item 30)	Information about the general effect of relevant indemnification agreements, arrangements, or statutory provisions through which underwriters or affiliates are insured or indemnified against any liability incurred in their official capacity.	Item 14 (indemnification of directors and officers).
Principal Underwriters (Item 31)	A statement of investment companies, other than any registered separate account related to the filing, for which each principal underwriter is also acting as a principal underwriter. More detailed information about principal underwriters identified in Item 23, such as recent information about commissions and other compensation received from the registrant by each principal underwriter.	Item 8 (plan of distribution).

Information about the issuer and the offering process are relevant when purchasing an annuity contract, including in the context of a non-variable annuity.[489] These items, which largely correspond to items currently required to be disclosed by insurance companies on Forms S–1 and S–3 when registering the offering of non-variable annuities as detailed in the table above, provide the appropriate amount of information about the issuing insurance company and the offering of securities in a way tailored to annuity contract investors. For example, because an investor's rights under non-variable annuities are dependent on the insurance company's claim-paying ability, purchasers of those securities also share an interest in disclosures of material pending legal proceedings involving the insurance company or related parties. On the other hand, where Form S–1 disclosures have less relevance to non-variable annuities, we have not included those disclosures in the final Form N–4.

10. Inline XBRL

Under the final amendments, Form N–4 filers will be required to tag in Inline XBRL certain specified disclosures.[490] Specifically, these issuers will be required to tag selected information in Inline XBRL in accordance with Rule 405 of Regulation S–T and the EDGAR Filer Manual.[491]

Certain of the final amendments' new structured data requirements will apply, as proposed, to issuers of non-variable annuities that register on Form N–4. Specifically, these include, as applicable, requirements to tag specified portions of the overview and the more in-depth descriptions of index-linked options and contract adjustments that issuers include in their prospectuses, the disclosure of census-type information regarding contracts with index-linked options and MVA options, and information disclosed about changes in and disagreements with accountants.[492]

Certain of the final amendments' new tagging requirements will apply to all Form N–4 filers as applicable. All Form N–4 filers must tag the descriptions of fixed options available under the contract, including any fixed options subject to contract adjustments.[493] All Form N–4 filers also must tag the new disclosures indicating that the insurance company is relying on the exemption provided by rule 12h–7.[494] This approach is generally as proposed, with conforming changes to reflect the registration of the offerings of registered MVA annuities on Form N–4. In response to comments, we are not adopting the proposed requirement to structure the statement regarding the risk of loss of the entire amount invested associated with an investment in a variable option, as discussed below.[495]

Comments regarding our proposal to require RILA registration statements to be tagged using Inline XBRL were mixed. One commenter supported extending Inline XBRL requirements to RILAs, suggesting that all investors would benefit from tagging as it would facilitate access to data about RILAs through a structured, machine-readable format.[496] Two commenters supported tagging some but not all of the proposed new disclosures, suggesting that only disclosures that would aid the investor in comparing products should be tagged.[497] One commenter suggested that XBRL has little value as it relates to investment companies and insurance products.[498] No commenter specifically addressed the tagging of registered MVA annuity specific disclosures, although as discussed above, commenters generally supported registering offerings of registered MVA annuities on Form N–4

[489] *See* Forms N–3 and N–4 Adopting Release.

[490] *See* final Form N–4, Items 2(b)(2), 2(d), 3, 4, 5, 6(a) (instruction), 6(d), 6(e), 7(e), 10, 17, 26(c) and 31A.

[491] We are amending General Instruction C.3(h) of Form N–4 and making conforming changes to rule 405(b) of Regulation S–T to implement the non-variable annuity specific disclosure tagging requirements. Pursuant to rule 301 of Regulation S–T, the EDGAR Filer Manual is incorporated by reference into the Commission's rules. In conjunction with the EDGAR Filer Manual, Regulation S–T governs the electronic submission of documents filed with the Commission. Rule 405 of Regulation S–T specifically governs the scope and manner of disclosure tagging requirements for operating companies and investment companies, including the requirement in rule 405(a)(3) to use Inline XBRL as the specific structured data language to use for tagging the disclosures.

[492] *See* final Form N–4, General Instruction C.3(h); *see also* final Form N–4, Items 2(b)(2), 2(d), 6(d), 7(e), 26(c), and 31A.

[493] *See* final Form N–4, General Instruction C.3(h); *see also* final Form N–4, Item 6(e).

[494] *See* final Form N–4, General Instruction C.3(h); *see also* final Form N–4, Instruction to Item 6(a).

[495] *See infra* footnotes 506–508 and accompanying text.

[496] Comment Letter of XBRL US (Nov. 28, 2023) (''XBRL US Comment Letter'').

[497] *See* XBRL US Comment Letter (suggesting that disclosures that are boilerplate in nature not be tagged as they would not help an investor differentiate between products); *see also* CAI Comment Letter (generally not objecting to extending Inline XBRL requirements to RILAs, but suggesting a new disclosure regarding the risks of investing in variable options not be tagged as the disclosure would call for generally standardized statements applicable to all variable annuities).

[498] Johnson Comment Letter.

and did not distinguish whether these annuities should be subject to different tagging requirements than RILAs and variable annuities.[499]

After considering these comments, we are adopting these requirements largely as proposed, with certain conforming and other changes described below. As a result, non-variable annuity issuers must tag those prospectus disclosures that Form N–4 currently requires to be tagged in Inline XBRL.[500] These include the following disclosure items: the Key Information Table, Fee Table, Principal Risks of Investing in the Contract, Benefits Available Under the Contract, and Investment Options Available Under the Contract in the statutory prospectus. In addition to these existing items, we are requiring Inline XBRL tagging of selected new, non-variable annuity-specific disclosures to benefit investors, other market participants, and the Commission by making the disclosures more readily available and easily accessible for aggregation, comparison, filtering, and other analysis.[501] We chose these items to be structured—including those that issuers of variable annuities will newly have to structure—because they are well-suited to being tagged in a structured format and are of significant utility for investors and other data users that seek structured data to analyze and compare contracts. For example, this tagging enables automated extraction and analysis of descriptions of index-linked options available under a contract, information regarding the features of each currently offered index-linked option, and information regarding contract adjustments. This allows investors and other market participants more efficiently to perform large-scale analysis and comparison across non-variable annuities (including the index-linked options that different RILAs offer) and time periods. Similarly, the requirement to tag information about fixed options, including fixed options subject to contract adjustments, permits the same type of analysis with respect to these investment options offered under RILA and variable contracts, as well as with respect to registered MVA annuities. This analysis could include comparing fixed options across contracts, as well as index-linked options, variable options, and fixed options offered under the same contract.

Census-type information about variable annuity contracts, which parallels the SAI disclosure we are adopting to require for contracts with index-linked options and/or MVA options, is currently reported in structured data format.[502] Requiring census-type information about contracts with index-linked options and/or MVA options to be tagged in Inline XBRL will help the Commission and staff identify trends in insurance companies' offerings of the contracts, similar to the tools the Commission and staff currently have to identify trends in the offering of variable annuity contracts. An Inline XBRL tagging requirement will also provide other benefits, such as the ability to more easily analyze disclosures about annuity contracts with index-linked options and/or MVA options, and automatically compare these disclosures against prior periods.

The benefits of structured data as a general matter are supported by empirical data of public usage of similar structured data.[503] In addition, Inline XBRL tagging requirements within the context of public operating company financial statement disclosures have been observed to improve investor understanding of the disclosed information.[504] Inline XBRL tagging requirements for Form N–4 non-variable annuity disclosures could similarly provide investors with increased understanding or insight into key features of contracts with index-linked options and/or MVA options. This could provide value to investors by, for example, facilitating the ease with which investors could compare contract features of different products, and thereby helping investors to determine which non-variable annuities may be appropriate for their particular investment goals.[505]

In a change from the proposal and in response to comments, the Inline XBRL requirements we are adopting will not require insurance companies to tag the new statement regarding the risk of loss of the entire amount invested associated with an investment in a variable option.[506] Even a commenter that supported the proposed structuring requirements generally suggested that the Commission not require tagging of ''boilerplate'' disclosures and disclosures that would be the same across entities.[507] Another commenter suggested that this disclosure item in particular would not differ substantively on a contract-by-contract basis and therefore should not be structured.[508] In response to those comments, the Commission reviewed each of the proposed new disclosure items to be tagged and determined that only one of those proposed new disclosure items—the new statement regarding the risk of loss of the entire amount invested associated with an investment in a variable option—generally would not differ substantively on a contract-by contract basis. We are not requiring structuring for this disclosure item.

As proposed, the new Inline XBRL tagging requirements will only apply to contracts being sold to new investors. The result of this approach is that prospectus disclosure for contracts that are no longer being sold to new investors do not need to be tagged, as this disclosure has less utility for current investors and other market participants. This is consistent with the existing approach for Form N–4 issuers.[509] Commenters supported this aspect of the proposal.[510]

We are requiring non-variable annuity issuers to submit Interactive Data Files as follows, consistent with the approach for issuers of variable annuities registered on Form N–4:

- For most post-effective amendments, Interactive Data Files must be filed either concurrently with the filing, or in a subsequent amendment that is filed on or before the date that the post-effective amendment that contains the related information becomes effective; [511]
- For initial registration statements (and post-effective amendments other than as described in the bullet

[499] *See supra* Section II.B.

[500] *See* final Form N–4, General Instruction C.3(h), and Items 3, 4, 5, 10, and 17; *see also* final rule 405(b)(2)(iii) of Regulation S–T.

[501] *See infra* footnotes 511–512. These primarily include the new disclosure items that are specific to non-variable annuities, as opposed to extant Form N–4 disclosure items to which we are adopting incremental amendments to address non-variable annuities along with variable annuities.

[502] *See supra* Section II.C.7; *see also* Form N–CEN, Item F.14.

[503] There is some empirical evidence of public usage of this data. *See* Semi-Annual Report to Congress Regarding Public and Internal Use of Machine-Readable Data for Corporate Disclosures, U.S. Securities and Exchange Commission (Dec. 2023), at n.63, *available at https://www.sec.gov/files/fdta-report-12-2023.pdf* (providing that, for example, the Commission's quarterly XBRL datasets for mutual fund summary prospectus risk/return summaries garnered over 13,000 page views from September 2022 to September 2023, according to a Google Analytics query of the Commission's XBRL dataset web page).

[504] Proposing Release at n.452 and accompanying paragraph.

[505] *See infra* Section IV.C.1.b. (discussing how improved investor understanding of non-variable annuity disclosures could benefit Form N–4 filers directly or indirectly).

[506] *See* final Form N–4, Item 6(c)(1).

[507] *See* XBRL US Comment Letter.

[508] *See* CAI Comment Letter; *see also* IRI Comment Letter (expressing agreement with and supporting the CAI Comment Letter).

[509] *See* VASP Adopting Release at paragraph accompanying n.904.

[510] *See* CAI Comment Letter; XBRL US Comment Letter.

[511] *See* final Form N–4, General Instruction C.3(h)(i)(B). This instruction relates to post-effective amendments filed pursuant to paragraph (b)(1)(i), (ii), (v), (vi), or (vii) of rule 485.

immediately above), Interactive Data Files must be filed in a subsequent amendment on or before the date the registration statement or post-effective amendment that contains the related information becomes effective; [512] and

• For any form of prospectus filed pursuant to rule 497(c) or (e), Interactive Data Files must be submitted concurrently with the filing.[513]

This approach facilitates the timely availability of important information in a structured format for investors, investment professionals, and other data users yielding substantial benefits. For data aggregators responding to investor demand for the data, the availability of the required disclosures in the Inline XBRL format concurrent with filing or before the date of effectiveness allows them to quickly process and share the data and related analysis with investors. Like other issuers, non-variable annuity issuers could request temporary and continuing hardship exemptions for the inability to timely file electronically the Interactive Data File.[514]

D. Option To Use a Summary Prospectus

We are adopting, largely as proposed, amendments to rule 498A to permit RILA issuers, as well as issuers of ''combination contracts'' offering a combination of index-linked options and variable options, to use a summary prospectus to satisfy their statutory prospectus delivery obligations.[515] In a modification from the proposal, we also are adopting amendments to rule 498A to permit issuers of registered MVA annuities or ''combination contracts'' offering MVA options with variable options and/or index-linked options to use summary prospectuses under the amendments to rule 498A.[516] As a result, all annuities both variable annuities and non-variable annuities—registered on Form N–4 are permitted to use summary prospectuses under the final amendments. Likewise, all investors in those annuities may benefit from the layered disclosure approach offered by a summary prospectus: an approach, in the context of financial products other than non-variable annuities that investors have generally indicated that they prefer.[517]

Rule 498A uses a layered disclosure approach designed to provide investors directly with key information relating to the contract's terms, benefits, and risks in a concise and reader-friendly presentation, with more detailed information available elsewhere. Investors will continue to have access to the statutory prospectus of non-variable annuities and other information about these non-variable annuities online, with paper or electronic copies of this information upon request.[518] This approach provides parity between non-variable annuity issuers and issuers of variable annuities registered on Form N–4, which are permitted to use summary prospectuses to satisfy their prospectus delivery obligations, and builds on the Commission's decades of experience with layered disclosure and rules permitting the use of summary prospectuses.[519] The approach also recognizes investors' expressed preferences for concise and engaging disclosure of key information. Accordingly, the approach is consistent with the RILA Act's mandate of designing disclosure requirements with the goal of ensuring that key information is conveyed in terms that a purchaser is able to understand. We anticipate that the summary prospectus framework will improve investor understanding of non-variable annuities, as the Commission similarly expressed when it adopted the summary prospectus rule for variable contracts.[520]

Commenters that spoke to this issue largely supported the extension of rule 498A to RILAs as proposed, stating that a summary prospectus framework for RILAs would be as successful for those products as it has been for variable insurance products and that investors and registrants alike would benefit from the rule's layered disclosure framework that would align RILAs with the treatment of variable annuities.[521] Other commenters addressed the inclusion of minimum guaranteed rates in the summary prospectus, and this topic is discussed in detail above.[522] No commenter specifically addressed the use of summary prospectuses for registered MVA annuity registration statements, although as discussed above, commenters generally supported including offerings of registered MVA annuities on Form N–4 and did not address whether these offerings should be subject to different summary prospectus requirements than RILAs and variable annuities.[523] Except as discussed below, no commenters discussed the contents of summary prospectuses in a manner that was distinct from their discussion of the Form N–4 content requirements generally, which are discussed above.

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[512] *See* final Form N–4, General Instruction C.3(h)(i)(A). This instruction relates to initial registration statements and post-effective amendments other than those filed pursuant to paragraph (b)(1)(i), (ii), (v), (vi), or (vii) of rule 485.

[513] *See* final Form N–4, General Instruction C.3(h)(ii).

[514] *See* rule 201 Regulation S–T (temporary hardship exemption) and rule 202 of Regulation S–T (continuing hardship exemption).

[515] Section 5(b)(2) of the Securities Act makes it unlawful to carry or cause to be carried a security for purposes of sale or for delivery after sale ''unless accompanied or preceded'' by a prospectus that meets the requirements of section 10(a) of the Act. *See* section 10(a) of the Securities Act (generally requiring a prospectus relating to a security to contain the information contained in the registration statement). For purposes of this Release, a prospectus meeting the requirements of a section 10(a) prospectus is referred to as a ''statutory prospectus.'' For purposes of this section, we refer to RILA contracts and combination contracts together as ''RILA contracts.''

[516] *See* Proposing Release at section II.H (discussing registered MVA annuities and requesting comment on whether to require insurance companies to register offerings of registered MVA annuities on Form N–4; and—to the extent registered MVA annuities were required to register on Form N–4—the Commission's anticipation that it would extend the same functional changes that it was proposing for RILAs to registered MVA annuities, including the ability to use a summary prospectus).

[517] *See* Investor Advocate Comment Letter.

[518] To further effectuate the changes we are adopting, we are excluding non-variable annuity offerings from the provisions of rule 172, which provides that a final prospectus will be deemed to precede or accompany a security for sale for purposes of Securities Act section 5(b)(2) as long as the final prospectus meeting the requirements of Securities Act section 10(a) is filed or the issuer will make a good faith and reasonable effort to file it with the Commission as part of the registration statement within the required rule 424 prospectus filing timeframe. Consistent with registered investment companies and business development companies, non-variable offerings are subject to a separate framework governing communications with investors. *See infra* Section II.G; *see also* Securities Offering Reform for Closed-End Investment Companies, Investment Company Act Release No. 33836 (Apr. 8, 2020) [85 FR 33290 (June 1, 2020)] (''Closed-End Fund Offering Reform Adopting Release'') at Section VI.B.1.b.

[519] *See* VASP Adopting Release at n.21 and accompanying text; *see also* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4545 (Jan. 26, 2009)] (''2009 Summary Prospectus Adopting Release''); Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Release No. 34731 (Oct. 26, 2022) [87 FR 72758 (Nov. 25, 2022)] (''Tailored Shareholder Reports Adopting Release'') (adopting rules incorporating a layered disclosure approach to open-end funds' annual and semi-annual reports to shareholders).

[520] *See* VASP Adopting Release at n.21 and accompanying text.

[521] *See, e.g.,* CAI Comment Letter; Investor Advocate Comment Letter (stating that in the context of other financial products, investors have generally indicated that they prefer this type of layered disclosure approach); IRI Comment Letter. One commenter questioned whether there is a need to continue to have a statement of additional information section outside of the statutory prospectus. *See* Johnson Comment Letter. Wholesale changes to the arrangement of registration statements that would be necessary to accommodate this suggestion are outside the scope of this rulemaking.

[522] *See* Johnson Comment Letter; Datop Comment Letter; *see supra* Sections II.C.1 and II.C.2.

[523] *See supra* Section II.B.

Further, when discussing the proposed amendments to rule 498A, commenters generally did not differentiate between initial and updating summary prospectuses.

1. Overview—Use of Summary Prospectus for Non-Variable Annuities

The amendments to rule 498A broaden the scope of the rule to address non-variable annuities.[524] Under the final amendments, the rule's conditions for non-variable annuities relying on the rule to satisfy prospectus delivery obligations mirror the conditions applicable to variable contracts.[525] These conditions include the requirements to send or give a summary prospectus to an investor no later than the time of the ''carrying or delivery'' of the contract security, as well as: (1) requirements for the contents that must be included in a summary prospectus, (2) limitations on binding a summary prospectus with other materials, and (3) requirements that the summary prospectus, statutory prospectus, and contract statement of additional information must be publicly accessible, free of charge, and on a website in the manner that the rule specifies.

As with variable contracts, final rule 498A involves the use of two distinct types of summary prospectuses for non-variable annuity contracts. An ''initial summary prospectus,'' covering contracts offered to new investors, includes certain key information about the contract's most salient features, benefits, and risks, presented in plain English in a standardized order. The rule amendments also require ''updating summary prospectuses'' to be provided to existing investors in non-variable annuity contracts as a condition to relying on the rule. The updating summary prospectus includes a brief description of certain changes to the contract that occurred during the previous year, as well as a subset of the information required to appear in the initial summary prospectus. Certain key information about the investment options that the contract offers (including as applicable index-linked options and fixed options) must be provided in both the initial summary prospectus and updating summary prospectus.[526]

As under rule 498A for variable contracts, the use of summary prospectuses for non-variable annuity contracts is voluntary. This is appropriate to provide non-variable annuity issuers with sufficient time to transition to a summary prospectus regime, as well as to recognize that there could be different relative benefits of using a summary prospectus for certain non-variable annuity issuers and investors in these contracts.[527] Similar considerations informed the Commission's decision to adopt a voluntary summary prospectus regime for variable contracts.[528]

2. Initial Summary Prospectus

As with an initial summary prospectus for a variable annuity, an initial summary prospectus for a non-variable annuity contract must only describe a single contract that the insurance company currently offers for sale.[529] An initial summary prospectus may describe more than one class of a currently offered contract.[530] Aggregating disclosures for multiple contracts can hinder investors from distinguishing between contract features and options that apply to them and those that do not. As a result, an initial summary prospectus limited to a single contract currently offered for sale is designed to simplify and consolidate lengthy and complex disclosures. The content and ordering of items are designed to highlight aspects of a non-variable annuity that may not be emphasized in marketing materials and other disclosures.

Like other summary prospectuses that rule 498A for variable contracts addresses, we are adopting as proposed a standardized presentation for non-variable annuity initial summary prospectuses to require certain disclosure items that would be most relevant to investors to appear at the beginning of the initial summary prospectus, followed by supplemental information.[531] The required presentation also could facilitate comparisons of different non-variable annuities, as well as comparisons between non-variable annuities and variable annuities. An initial summary prospectus must contain the information required by the rule, and only that information, in the order specified by the rule.[532] The information is required to appear in the same order, and under relevant corresponding headings, as the rule specifies.

The chart in Table 7 below outlines the information that must appear in an initial summary prospectus for a non-variable annuity contract. These are the same content requirements for an initial summary prospectus for a variable contract, with the exception of the ordering of the Overview of the Contract and KIT disclosures. We are adopting these content requirements as proposed. The Commission has historically viewed these items as providing annuity

[524] To facilitate this change, and to make the terminology used in rule 498A more consistent with certain terms used in the final amendments to Form N–4, we are also adopting amendments to the rule's definitions. Specifically, we are (1) amending the definitions to ''Class,'' ''Contract,'' Investment Option,'' ''Registrant,'' ''Variable Annuity Contract,'' and ''Variable Life Insurance Contract'' to address non-variable annuities, and/or to make changes to these definitions that correspond with amendments to certain definitions in Form N–4 (either definitions of these same terms in Form N–4, or definitions of other terms in Form N–4 that will otherwise affect the way these terms are defined in rule 498A); (2) adding definitions for ''Contract Adjustment,'' ''Fixed Option,'' ''Index-Linked Option,'' ''Insurance Company,'' ''Registered Market Value Adjustment Annuity Contract,'' ''Registered Separate Account,'' ''RILA Contract,'' and ''Variable Option'' consistent with their counterparts in the Form N–4 amendments; and (3) deleting the definition of ''Depositor.'' These changes are necessary to implement the provisions of the rule that will be applicable to non-variable annuities and combination contracts.

[525] *See* final rule 498A(f). Rule 498A also provides that a communication relating to an offering registered on Form N–4 that a person sends or gives after the effective date of the registration statement (other than a prospectus that Section 10 of the Securities Act permits or requires) will not be deemed a prospectus under section 2(a)(10) of the Securities Act, under certain conditions. Final rule 498A extends this provision to non-variable annuities. *See* final rule 498A(g). Under the final amendments, the rule 498A provision addressing information that may be incorporated by reference into a summary prospectus also applies the same to non-variable annuities as it does to other contracts currently within the scope of the rule. *See* final rule 498A(d).

[526] This approach is consistent with the approach for information about variable options in variable contracts' summary prospectuses, in which certain key information about the portfolio companies offered as variable options appears in both the initial summary prospectus and updating summary prospectus. *See* final rule 498A(b)(5)(ix); final rule 498A(c)(6)(iv).

[527] The Commission similarly discussed the relative benefits to variable contract issuers of using a summary prospectus, based on the types of products that these issuers offer and the length of their current prospectuses, as well as the benefit of more concise disclosure to investors, in adopting rule 498A. *See, e.g.,* VASP Adopting Release at Section IV.E.1 (discussion in the Economic Analysis section of the release, addressing the Commission's consideration of mandating summary prospectuses for variable contracts).

[528] *See* VASP Adopting Release at discussion accompanying nn.41–45; *see also infra* Section IV.C.1.c (discussing that different issuers and investors could expect to benefit differently from this optional prospectus delivery regime, although we expect a majority of non-variable annuity issuers to choose to use summary prospectuses and that therefore the majority of non-variable annuity investors will have the option to use both summary prospectuses and statutory prospectuses in their decision-making, in whatever proportion investors think is best for their preferences).

[529] *See* final rule 498A(b)(1).

[530] The definition of the term ''class'' in the final amendments is the same as the definition in the current rule (that is, as a class of a contract that varies principally with respect to distribution-related fees and expenses). Final rule 498A(a).

[531] *See* VASP Adopting Release at paragraph accompanying nn.58–59.

[532] Final rule 498A(b)(5).

investors with key information relating to a contract's terms, benefits, and risks in a concise and reader-friendly presentation, and highlighting aspects of the contract that may not be emphasized in marketing materials and other disclosures.[533] This rationale is equally true in the context of non-variable annuity disclosure.

Further, as discussed above, the Overview of the Contract disclosures (previously Item 3 of Form N–4, but now re-numbered as Item 2) must precede the KIT (previously Item 2 of Form N–4, but now re-numbered as Item 3), due to the context that the Overview section provides and based upon our experience with the form and taking into account the results of investor testing.[534] This change is reflected in final rule 498A. Otherwise, the same order of disclosures under final rule 498A is provided as under the current rule.

TABLE 7—OUTLINE OF THE INITIAL SUMMARY PROSPECTUS

Heading in initial summary prospectus	Relevant paragraph in amendments to rule 498A	Item of Form N–4 (as amended)	Applicable to non-variable annuities?	Applicable to variable annuities registered on Form N–4?
Cover Page:				
Identifying Information (front cover page) [1].	Rule 498A(b)(2)(i) through (iv)		✓	✓
Legends (front cover page) [2]	Rule 498A(b)(2)(v) through (vi)		✓	✓
EDGAR Contract Identifier (back cover page).	Rule 498A(b)(3)(ii)		✓	✓
Table of Contents (optional)	Rule 498A(b)(4)		✓	✓
Content:				
Overview of the [Contract]	Rule 498A(b)(5)(ii)	2	✓ (each paragraph of Item 2, as applicable).	✓ (each paragraph of Item 2 except (b)(2) and (d), which are generally only applicable to non-variable annuity contracts).
Important Information You Should Consider About the [Contract].	Rule 498A(b)(5)(i)	3	✓ (with instructions appliable to non-variable annuities).	✓ (with instructions appliable to variable annuities).
Benefits Available Under the [Contract]	Rule 498A(b)(5)(iv)	10(a)	✓	✓
Buying the [Contract]	Rule 498A(b)(5)(v)	11(a)	✓	✓
Making Withdrawals: Accessing the Money in Your [Contract].	Rule 498A(b)(5)(vii)	12(a)	✓	✓
Additional Information About Fees	Rule 498A(b)(5)(viii)	4	✓	✓
Appendix: [Investment Options/Portfolio Companies] Available Under the Contract.	Rule 498A(b)(5)(ix)	17	✓ (Items 17(b), 17(c), and 17(d), as applicable).	✓ (Items 17(a), 17(c), and 17(d), as applicable).

Notes

[1] The beginning or front cover page of a non-variable annuity contract's initial summary prospectus, like the initial summary prospectus of a variable annuity registered on Form N–4, must include the following information: (1) the insurance company's name; (2) the name of the contract, and the class or classes if any, to which the initial summary prospectus relates; (3) a statement identifying the document as a ''Summary Prospectus for New Investors''; and (4) the approximate date of the first use of the initial summary prospectus.

[2] The required legends are the same for non-variable annuities and for variable annuities registered on Form N–4. These legends address the purpose of the summary prospectus, the availability of the statutory prospectus and other information, information regarding the permitted cancellation period for the contract, and a statement that additional information about certain investment products, including the type of contract has been prepared by Commission staff and is available at *investor.gov.* They also include, for RILAs and combination contracts that offer index-linked options along with other investment options, a legend that the Commission has not approved or disapproved of the securities being registered. The initial summary prospectuses for non-variable annuities as well as for variable annuities also must include additional statements that we require on the cover page of the prospectus for all Form N–4 issuers. *See supra* Section II.C.10; *see also* Item 1(a)(6) through (8) of final Form N–4. We also have updated the legends in the summary prospectus to reflect the final text of these items, including a statement that while an investor can cancel the contract within 10 days, contract adjustments may be applied.

A non-variable annuity initial summary prospectus is permitted to include a table of contents. A table of contents must show the page number of the various sections or subdivisions of the summary prospectus, and immediately follow the cover page in any initial summary prospectus delivered electronically.

The topics of the contents included in an initial summary prospectus—as well as the required headings under which these contents must appear—are the same for a non-variable annuity summary prospectus as they are for a summary prospectus of a variable annuity registered on Form N–4.[535] Nevertheless, certain of these required

[533] *See* VASP Adopting Release at nn.47–48 and accompanying text. To the extent that these content requirements are unchanged from the content requirements for variable annuity summary prospectuses, our rationale for these requirements has not changed from the rationale that is discussed throughout the sections of the VASP Adopting Release that address each of the content items discussed in Table 7 below. *See* VASP Adopting Release at Section II.A.1.c. Further, we provide our reasoning as to why these particular disclosures are important to investors in the non-variable annuity context as a general matter in Section II.C *supra.*

[534] *See supra* Sections II.C.2 and II.C.3. Prior to the final amendments, rule 498A required issuers to place ''Important Information You Should Consider About the [Contract]'' disclosures before ''Overview of the [Contract] disclosures.''

[535] Final rule 498A(b)(5).

contents vary in substance to reflect the unique aspects of non-variable annuities as compared to variable annuities. These are indicated in Table 7 above and include:

- Disclosure provided under the heading ''Overview of the Contract'' (Item 2 of Form N–4), where disclosure for RILA contracts must include specific information about index-linked options currently offered under the contract, and disclosure for RILAs and registered MVA annuities must include information about interim value adjustments or market value adjustments that could affect an investor's contract value;
- Disclosure provided under the heading ''Important Information You Should Consider About the Contract'' (Item 3 of Form N–4), where the instructions vary for non-variable annuities as opposed to variable annuities;
- Disclosure provided under the heading ''Additional Information About Fees'' (Item 4 of Form N–4), where the instructions vary for non-variable annuities as opposed to variable annuities; and
- Disclosure under the heading ''Appendix: Investment Options Available Under the Contract'' (Item 17 of Form N–4), where RILA contract disclosure includes a different summary table for index-linked options offered under the contract than the summary table of variable options offered under a variable annuity. In addition, the disclosure includes a summary table for fixed options offered under the contract (which could be applicable for RILAs, registered MVA annuities, or variable annuities, depending on the investment options the contract offers).

Each of these disclosure items, which also appears in a non-variable annuity statutory prospectus, is discussed in more detail in Section II.C. above.

One commenter suggested that because a RILA has the term ''registered'' in its name, the Commission should require the cover pages of both an initial summary prospectus and an updating summary prospectus to include the legend that is required to be on the cover pages of registration statements—namely, that the Commission has not approved or disapproved of the securities or passed upon adequacy of the disclosure of in the prospectus.[536]

After considering the commenter's suggestion, the Commission has determined to amend rule 498A to require the legend required by rule 481 under the Securities Act on the cover pages of initial and updating summary prospectuses for RILAs or combination contracts that offer index-linked options along with other investment options. Many RILAs whose offerings are registered with the Commission use the term ''registered'' in their names and, accordingly, clarification about the term ''registered'' is important to the extent that this term may cause confusion. The legend required by rule 481 on RILAs' and combination contracts' summary prospectus cover pages is anticipated to communicate important information to an investor about what ''registered'' means in this context. Further, the legend required by rule 481 will alert investors about the limits of the Commission's registration process. We do not anticipate that the disclosure required by the legend would be so lengthy as to dissuade an investor from reviewing the summary prospectus. We recognize that previously the Commission determined not to require the legend required by rule 481 under the Securities Act on initial and updating summary prospectus cover pages for variable annuities and mutual funds.[537] Those investment products, however, do not typically include the term ''registered'' in their names.[538]

3. Updating Summary Prospectus

As proposed and as under current rule 498A for variable contracts, insurance companies under final rule 498A will not send an updated initial summary prospectus to investors each year. Instead, insurance companies will send an updating summary prospectus, which will provide a brief description of certain changes with respect to the contract that occurred within the prior year.[539] This will allow investors to focus their attention on new or updated information relating to the contract. Additionally, the updating summary prospectus, as proposed and as required by final rule 498A, includes certain of the items required in the initial summary prospectus that are most likely to entail contract changes and where any such contract changes are most likely to be important to investors because they affect how investors evaluate non-variable annuity contracts and are relevant to investors when considering additional investment decisions or otherwise monitoring their contracts. This is consistent with the Commission's approach for variable annuity updating summary prospectuses.[540] All comments received about the proposed amendments to rule 498A, including updating summary prospectuses, are discussed above.[541]

Because the Commission designed the initial summary prospectus for someone making an initial investment decision, existing non-variable annuity investors will benefit more from receiving a shorter-form document including a brief summary of the changes to the contract, than from receiving the initial summary prospectus year after year.[542] This approach also takes into account the cost to maintain and update separate initial summary prospectuses for currently offered contracts and those no longer offered.

Unlike an initial summary prospectus, which only can describe a single contract that the insurance company currently offers for sale, an updating summary prospectus for a non-variable annuity may describe one or more contracts covered in the statutory prospectus to which the updating summary prospectus relates, as proposed and as under current rule 498A for variable contracts.[543] Similar to the initial summary prospectus, an updating summary prospectus may also describe more than one class of a contract.

[536] *See* VIP Working Group Comment Letter.

[537] *See* VASP Adopting Release at paragraph accompanying n.100; *see also* rule 498 under the Securities Act.

[538] Similarly, we are not including registered MVA annuities in this instruction because they also typically do not include the term ''registered'' in their name.

[539] A non-variable annuity issuer, like a variable annuity issuer, can only use an updating summary prospectus if it uses an initial summary prospectus for each currently offered contract described under the contract statutory prospectus to which the updating summary prospectus relates. Final rule 498A(c)(1). *See also* VASP Adopting Release at n.209 and accompanying text.

[540] *See* VASP Adopting Release at Section II.A.2.a. As discussed above, the policy rationale for the content of a non-variable annuity updating summary prospectus and the location of that required content is the same rationale that the Commission articulated in adopting rule 498A for a variable annuity updating summary prospectus. To the extent that these content requirements are unchanged from the content requirements for variable annuity summary prospectuses, our rationale for these requirements has not changed from the rationale that is discussed throughout the sections of the VASP Adopting Release that address each of the content items discussed in Table 8 below. *See* VASP Adopting Release at Section II.A.2.c. Further, we provide our reasoning as to why these particular disclosures are important to investors in the non-variable annuity context as a general matter in Section II.C. *supra.*

[541] *See supra* sections II.D.1. and 2. One commenter, as discussed above, specifically addressed an updating summary prospectus. That commenter suggested that the Commission include an additional legend on the cover pages of initial and updating summary prospectuses. *See* VIP Working Group Comment Letter.

[542] The Commission discussed this rationale when it initially adopted rule 498A. *See* VASP Adopting Release at Section II.A.2.a.

[543] Final rule 498A(c)(2); *see also* VASP Adopting Release at nn.342–343 and accompanying paragraph.

Updating summary prospectuses for non-variable annuities, like initial summary prospectuses, must include specific disclosure items appearing in a prescribed order, under relevant corresponding headings.[544] An updating summary prospectus for a non-variable annuity must contain the information required by the rule, and only that information, in the order specified by the rule. We are adopting these content requirements generally as proposed.[545] The chart in Table 8 below outlines the information that is required to appear in an updating summary prospectus for a non-variable annuity.

TABLE 8—OUTLINE OF THE UPDATING SUMMARY PROSPECTUS

Heading in updating summary prospectus	Relevant paragraph in amendments to rule 498A	Item of final Form N–4	Applicable to non-variable annuities?	Applicable to variable annuities registered on Form N–4?
Cover Page:				
Identifying Information (front cover page)[1].	Rule 498A(c)(3)(i) through (iv)		✓	✓
Legends (front cover page)[2]	Rule 498A(c)(3)(v) through (vi)		✓	✓
EDGAR Contract Identifier (back cover page).	Rule 498A(c)(4)		✓	✓
Table of Contents (optional)[3]	Rule 498A(c)(5)		✓	✓
Content:				
Updated Information About Your Contract.	Rule 498A(c)(6)(i) through (ii)		✓	✓
Important Information You Should Consider About the [Contract].	Rule 498A(c)(6)(iii)	3	✓ (with instructions appliable to non-variable annuities).	✓ (with instructions appliable to variable annuities)
Appendix: [Investment Options/Portfolio Companies] Available Under the Contract.	Rule 498A(c)(6)(iv)	17	✓ (Items 17(b), 17(c), and 17(d), as applicable).	✓ (Items 17(a), 17(c), and 17(d), as applicable)

Notes

[1] The beginning or front cover page of a non-variable annuity's updating summary prospectus, like the updating summary prospectus of a variable annuity registered on Form N–4, must include the following information: (1) the insurance company's name; (2) the name of the contract(s), and the class or classes if any, to which the updating summary prospectus relates; (3) a statement identifying the document as an ''Updating Summary Prospectus''; and (4) the approximate date of the first use of the updating summary prospectus.

[2] The required legends are the same for non-variable annuities and for variable annuities registered on Form N–4. These legends address the purpose of the summary prospectus, the availability of the statutory prospectus and other information, and a statement that additional information about certain products, including the type of contract, has been prepared by the SEC staff and is available at investor.gov. They also include, for RILAs and combination contracts that offer index-linked options along with other investment options, a legend that the Commission has not approved or disapproved of the securities being registered. Updating summary prospectus cover pages also must include additional statements that are required on the cover page of the prospectus for all Form N–4 issuers. *See supra* Section II.C.10; *see also* final Form N–4, Item 1(a)(6) through (8).

[3] The requirements for this optional table of contents are the same for an updating summary prospectus as for an initial summary prospectus. *See* final rule 498A(b)(4); final rule 498A(c)(5).

The updating summary prospectus for a non-variable annuity must include a concise description of certain changes to the contract made after the date of the most recent updating summary prospectus or statutory prospectus that was sent or given to investors. These changes appear under the heading ''Updated Information About Your Contract,'' with a required legend following the heading.[546] The changes that the rule requires a non-variable annuity issuer to describe include those that relate to: (1) the availability of investment options under the contract; (2) the overview of the contract; (3) the KIT; (4) certain information about fees; (5) benefits available under the contract; (6) purchases and contract value; and (7) surrenders and withdrawals. The updating summary prospectus also could include a concise description of any other changes that the non-variable annuity issuer wishes to disclose, provided they occurred within the same time period as the other changes the rule requires the issuer to describe. In providing a concise description of a contract-related change in the updating summary prospectus, non-variable annuity issuers must provide enough detail to allow investors to understand the change and how it will affect them.[547]

The topics for which a change necessitates a description in the updating summary prospectus, as proposed, are the same for non-variable annuities as for variable annuities registered on Form N–4. We do not anticipate that disclosures addressing these topics in a contract statutory prospectus will change frequently, and thus providing investors with a notice and a brief description of any changes that do occur may be more informative than repeating all the disclosures each year.[548] Despite the infrequency of changes, investors should be notified of any changes to these items given their importance to the investor's experience of investing in a non-variable annuity contract.[549]

[544] Final rule 498A(c)(6).

[545] In a change from the proposal, the cover page of an updating summary prospectus for a RILA or combination contract that offers index-linked options along with other investment options must contain the legend required by rule 481 under the Securities Act. *See supra* paragraph accompanying footnote 537.

[546] The legend is the same for non-variable annuities and variable annuities: ''The information in this Updating Summary Prospectus is a summary of certain [Contract] features that have changed since the Updating Summary Prospectus dated [date]. This may not reflect all of the changes that have occurred since you entered into your [Contract].'' Final rule 498A(c)(6)(i)(A).

[547] Final rule 498A(c)(6)(i)(B); *see also* VASP Adopting Release at paragraph accompanying n.374.

[548] *See* VASP Adopting Release at paragraph following n.372.

[549] *See id.* at paragraph accompanying nn.365–369.

Substantially as proposed, we are amending rule 498A to specify that, in the context of a RILA contract updating summary prospectus, the change of availability of investment options includes a change to any of the features of the index-linked options disclosed in the table that Item 17(b)(1) of Form N–4 requires (that is, the features that are disclosed in the table in the appendix of investment options that will appear in a RILA contract summary prospectus).[550] Similarly, in a change from the proposal, we are adopting a conforming change to rule 498A to specify that, for a contract that offers fixed options, the change of availability of investment options includes a change to any of the features of the fixed options disclosed in the table that Item 17(c) of Form N–4 requires.[551] When the Commission adopted rule 498A, it stated that a change that has affected availability of portfolio companies (or investment options) includes changes in the portfolio companies (or investment options) offered under the contract or available in connection with any optional benefit.[552] In the context of index-linked options, any change to the features of the index-linked options that the required table will describe—that is, the index, type of index, crediting period, index crediting methodology, and/or current limit on index loss—as well as the inclusion or exclusion of index options will meaningfully change the investor's experience of investing in a RILA contract. Similarly, in the context of fixed options, any change to the features of the fixed options that the required table will describe—that is, the term and the minimum guaranteed interest rate—will meaningfully change the investor's experience of investing in an annuity contract offering fixed options. For these reasons, under the final amendments a change to any of these features represents a change in the availability of the investment options that the contract offers.

The topics of the additional contents included in an updating summary prospectus—as well as the required headings under which these contents must appear—are, as proposed, the same for non-variable annuities and for variable annuities registered on Form N–4.[553] Certain of these required contents, however, as proposed vary in substance to reflect the unique aspects of non-variable annuities as compared to variable annuities. These are indicated in Table 8 above and include:

- Disclosure provided under the heading ''Important Information You Should Consider About the Contract'' (Item 3 of Form N–4), where instructions to the required table are specific to non-variable annuities as opposed to variable annuities; and
- Disclosure under the heading ''Appendix: Investment Options Available Under the Contract'' (Item 17 of Form N–4), where RILA contract disclosure will include a different summary table for index-linked options offered under the contract than the summary table of variable options offered under a variable annuity. In addition, the disclosure includes a summary table for fixed options offered under the contract (which could be applicable for RILAs, registered MVA annuities, or variable annuities, depending on the investment options the contract offers).

4. Online Accessibility of Contract Statutory Prospectus and Certain Other Documents Relating to the Contract

Investors who receive a non-variable annuity initial or updating summary prospectus will have access to more detailed information about the non-variable annuity, either by reviewing the information online, or by requesting the information to be sent in paper or electronically. In this respect, the final amendments include the same requirements for non-variable annuities as for variable contracts. These requirements further the layered disclosure framework that rule 498A creates for variable contracts and will, under the final amendments, similarly create for non-variable annuities. Those insurance companies that issue non-variable annuities, to the extent that they also issue variable annuity contracts that use summary prospectuses under rule 498A, therefore, should be generally familiar with the practice of making this information available online and be able to integrate it with existing processes for variable annuities. Similar to what the Commission expressed in the context of variable annuity summary prospectuses, permitting non-variable annuity investors to access the contract statutory prospectus in several ways (online and by physical or electronic delivery) maximizes the accessibility and usability of this information for all investors, including investors who continue to prefer to access information through paper resources.[554]

As discussed above, commenters stated that investors and registrants will benefit from rule 498A's layered disclosure framework, with access to more detailed information available online and electronically or in paper format on request.[555] No other commenters specifically addressed online accessibility to the statutory prospectus and certain other documents relating to the contract.

Under the final amendments and as proposed, an insurance company relying on rule 498A to satisfy prospectus delivery obligations with respect to non-variable annuities (like a variable annuity issuer relying on this rule before the final amendments), must make the contract's current initial summary prospectus, updating summary prospectus, statutory prospectus, and SAI (together, the ''required online contract documents'') available online.[556] These required online contract documents are required to be publicly accessible, free of charge, at the website address that the cover page of the summary prospectus specifies, on or before the time that the person relying on the rule provides the summary prospectus to investors.[557] The website address on which the required online contract documents appear must be specific enough to lead investors directly to the documents, although the website could be a central site with prominent links to each document.[558] The required online contract documents must be presented

[550] As the Item 17(b) table does not include current limits on index gains, changes in current limits on index gains are not changes in the features of index-linked options that would require discussion in the updating summary prospectus.

[551] Final rule 498A(c)(6)(i). The amendments reflect a conforming change from the proposal to address the inclusion of registered MVA annuities on Form N–4.

[552] VASP Adopting Release at n.361.

[553] Final rule 498A(c)(6).

[554] *See* VASP Adopting Release at n.417 and accompanying text; *see also* Office of Investor Education and Advocacy of the U.S. Securities and Exchange Commission, Study Regarding Financial Literacy Among Investors (Aug. 2012) at iv, xix, *available at https://www.sec.gov/news/studies/2012/917-financial-literacy-study-part1.pdf.* These requirements are unchanged from the requirements for variable annuity summary prospectuses, and our rationale for these requirements has not changed from the Commission's rationale that is discussed throughout the sections of the VASP Adopting Release that discuss online accessibility requirements. *See* VASP Adopting Release at Sections II.A.5 and II.A.6.

[555] *See supra* footnote 521 and accompanying text.

[556] For requirements relating to the required online contract documents, *see generally* final rule 498A(h).

[557] A current version of each of the required online contract documents must remain available for at least 90 days following either: (1) the time of the ''carrying or delivery'' of the contract security if a person is relying on the rule to satisfy its section 5(b)(2) prospectus delivery obligations; or (2) if a person is relying on the rule to send communications that will not be deemed to be prospectuses, the time that the person sends or gives the communication to investors. Final rule 498A(h)(1).

[558] Final rule 498A(b)(2)(v)(B).

in a manner that is human-readable and capable of being printed on paper in human-readable format, and persons accessing the documents must be able to permanently retain electronic versions of the documents. The final amendments require linking within the electronic versions of the contract statutory prospectus and SAI that are available online, and also for linking between electronic versions of contract summary and statutory prospectuses that are available online.

As proposed, both initial summary prospectuses and updating summary prospectuses for non-variable annuities, like variable annuity summary prospectuses, must define any ''special terms'' elected by the registrant, using any presentation that clearly conveys their meaning to investors.[559] In non-variable annuity summary prospectuses that are available online, the final amendments (like the current rule) as proposed require that investors be able either to view the definition of each special term upon command, or to move directly back and forth between each special term and the corresponding entry in any glossary or list of definitions the summary prospectus includes.

Satisfying each of these requirements regarding online accessibility of contract statutory prospectuses and certain other documents relating to the contract is, as proposed, a condition for an insurance company to rely on rule 498A to satisfy prospectus delivery obligations with respect to non-variable annuities.[560] Failure to comply with any of these conditions could result in a violation of section 5(b)(2) unless the contract statutory prospectus is delivered by means other than reliance on the rule. We recognize, however, that there may be times when, due to events beyond a person's control, the person may temporarily not be in compliance with the rule's conditions regarding the availability of the required online contract documents. The final amendments, like rule 498A before the amendments that we are adopting and as proposed, include a safe harbor provision addressing temporary noncompliance.[561]

5. Other Requirements for Summary Prospectus and Other Contract Documents

Like current rule 498A, final rule 498A as proposed includes additional requirements for non-variable annuity summary prospectuses.[562] These include:

- Certain requirements regarding the delivery of paper or electronic copies of the required online contract documents upon request;
- The requirement that a contract summary prospectus must be given greater prominence than any materials that accompany the contract summary prospectus;
- Requirements that: (1) the required online documents be presented in a format that is convenient for reading and printing, and (2) a person be able to retain electronic versions of these documents in a format that is convenient for reading and printing; and
- The requirement for any website address that is included in an electronic version of the summary prospectus to be an active hyperlink.

Failure to comply with these additional requirements will not, however, negate a person's ability to rely on the rule to satisfy prospectus delivery obligations.[563] No commenters specifically addressed these additional requirements.

E. Accounting (Items 16 and 26)

We are adopting, as proposed, amendments to permit RILA issuers to provide financial statements on Form N–4 in the same way that insurance companies currently provide financial statements on Form N–4. We are also extending these amendments to registered MVA annuities. As a result, the financial statements filed in connection with a registration statement that relates to the offering of either of these securities may be prepared in accordance with SAP to the same extent as currently permitted for insurance companies' financial statements filed on that form.

As discussed in the Proposing Release, Instruction 1 to Item 26(b) of Form N–4 currently permits insurance companies that are the depositors of variable annuity separate accounts to prepare their financial statements for use in a registration statement filed on Form N–4 in accordance with SAP if the depositor would not have to prepare its financial statements in accordance with GAAP except for use in that registration statement or other registration statements filed on Forms N–3, N–4, or N–6 (the forms used to register insurance products that are issued by investment companies).[564] The instruction further states that the depositor insurance company's financial statements must be prepared in accordance with GAAP if it prepares financial information in accordance with GAAP for use by its parent (as defined in Regulation S–X) in any report under sections 13(a) and 15(d) of the Exchange Act or any registration statement filed under the Securities Act.[565] In interpreting this instruction, the Commission has stated that SAP financial statements could be used under the insurance product forms, in limited circumstances, when: (1) GAAP financial statements are not prepared for either the depositor or its parent; or (2) the depositor's parent prepares GAAP financial statements, but the depositor's accounts are immaterial to its parent's consolidated financial statements and, therefore, neither partial GAAP financial statements nor a GAAP reporting package is prepared by the depositor.[566]

Commenters supported permitting RILA issuers to provide financial statements on Form N–4 in the same way that insurance companies offering variable annuities currently provide financial statements on Form N–4.[567] Commenters stated that requiring GAAP financial statements in cases where the insurance company is not otherwise

[559] Final rule 498A(e).

[560] Final rule 498A(f)(4); final rule 498A(g)(4).

[561] Final rule 498A(h)(4). This provides that the conditions regarding the availability of the required online contract documents will be deemed to be met, even if the required online contract documents are temporarily unavailable, provided that the person has reasonable procedures in place to ensure that those materials are available in the required manner. A person relying on the rule to satisfy prospectus delivery obligations is required to take prompt action to ensure that those materials become available in the manner required as soon as practicable following the earlier of the time when the person knows, or reasonably should have known, that the documents were not available in the manner required.

[562] For these additional requirements, *see generally* final rule 498A(i).

[563] Final rule 498A(i)(5).

[564] *See* Proposing Release at Section II.D. Similar to insurance products currently filing registration statements on these forms, insurance companies registering offerings of non-variable annuities will also be required, if all of the required financial statements of the insurance company are not in the prospectus, to state in the prospectus, under a separate caption, where the financial statements may be found and to briefly explain how investors may obtain any financial statements not in the SAI. *See* current and final Form N–4, Item 16.

[565] Similar instructions are contained in the other forms used to register insurance products issued by investment companies. *See* Form N–3, Instruction 1 to Item 31(b), and Form N–6, Instruction 1 to Item 28(b).

[566] *See* Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies, Investment Company Act Release No. 23066 (Mar. 13, 1998) [63 FR 13988 (Mar. 23, 1998)] (discussing the same instruction in Form N–6).

[567] CAI Comment Letter; IRI Comment Letter; VIP Working Group Comment Letter, Gainbridge Comment Letter; Johnson Comment Letter; Meeting of American Council of Life Insurers, Committee of Annuity Issuers, and Insured Retirement Institute with SEC Staff Regarding SAP Financial Statements (Sep. 29, 2023) (''Presentation from Insurance Product Trade Groups on SAP Financial Statements'').

required to prepare financial statements in accordance with GAAP would result in significant costs and administrative burdens.[568] Some commenters further stated that permitting the use of SAP financial statements would reduce the burdens on many insurance companies offering or seeking to offer RILAs, which would lead to an increased selection of competitive products available to investors.[569] Some commenters also suggested that SAP financial statements, which focus on an issuer's ability to meet its obligations under its insurance contracts, provide sufficient material information that is relevant and meaningful for investors evaluating RILAs.[570] Moreover, some commenters suggested that permitting the use of SAP financial statements would benefit investors by promoting comparability between insurance companies, allowing contract holders to compare issuers and their solvency.[571] Commenters also supported extending this treatment to registered MVA annuities for the same reasons.[572]

One commenter suggested that we eliminate or more clearly explain the instruction to Form N–4 that says that an insurance company cannot use SAP financial statements if it prepares GAAP financial statements for a corporate parent that is a GAAP filer.[573] This commenter questioned the basis for the instruction because insurance companies that have publicly-traded parent companies have been provided exemptions from the requirement to provide GAAP financial statements in connection with the registration of certain annuities based on the authority provided in 17 CFR 210.3–13 (''3–13 Exemptions'').[574] We are retaining this instruction without modification. GAAP financial statements provide the most useful information for all users of financial statements,[575] and requiring filers to provide GAAP financial statements promotes uniformity and consistency in financial reporting.[576] Accordingly, the Commission generally requires that all financial statements be presented on a GAAP basis and has permitted the use of SAP financial statements only in limited circumstances. In the examples cited by the commenter, 3–13 Exemptions from the requirement to provide GAAP financial statements were provided to insurance companies consistent with the instructions regarding financial statements on Forms N–3, N–4, and N–6.[577] Under the final amendments, an insurance company registering a RILA or registered MVA annuity offering on Form N–4 will not need a 3–13 Exemption in order to provide SAP financial statements provided the insurance company satisfies the requirements of the instruction in Form N–4.[578]

Amendments permitting insurance companies registering offerings of RILAs and registered MVA annuities to rely on Instruction 1 to Item 26 to provide SAP financial statements to the same extent as they do when registering offerings of variable annuities on Form N–4 alleviate the cost burdens that would be imposed by requiring GAAP financial statements in cases where the insurance company is not otherwise required to prepare financial statements in accordance with GAAP and provide for the consistent treatment of financial statements for all insurance companies that meet the circumstances permitted by Form N–4.[579] Additionally, permitting RILA and registered MVA annuity issuers to provide SAP financial statements to the same extent as variable annuity issuers registering offerings on Form N–4 is consistent with maintaining investor protection. At the same time, SAP financial statements, which focus on an issuer's ability to meet its obligations under its insurance contracts, as regulated by State law, provide material information for investors evaluating RILAs and registered MVA annuities.

Requiring insurance companies to register offerings of non-variable annuities on Form N–4 will also provide those companies greater flexibility to update their registration statements without the need to update certain financial statements. Under section 10(a)(3) of the Securities Act, insurance companies currently are generally required to file a post-effective amendment annually to update their audited fiscal year-end financial statements as they relate to offerings of non-variable annuities.[580] In addition, Regulation S–X currently requires Form S–1 filers to include unaudited interim financial statements in any new registration statement or post-effective amendment that goes effective later than 134 days after the end of the insurer's fiscal year.[581] However, Form N–4 filers are not subject to this requirement.[582] Moreover, after the end of an insurer's fiscal year, insurance companies are currently required to include year-end audited financial statements in any new registration statement or post-effective amendment relating to non-variable annuities filed 45 days after the fiscal year-end.[583] However, Form N–4 filers

[568] CAI Comment Letter; IRI Comment Letter; Presentation from Insurance Product Trade Groups on SAP Financial Statements.

[569] CAI Comment Letter; Gainbridge Comment Letter; IRI Comment Letter; Presentation from Insurance Product Trade Groups on SAP Financial Statements.

[570] CAI Comment Letter; IRI Comment Letter; Presentation from Insurance Product Trade Groups on SAP Financial Statements.

[571] CAI Comment Letter; Presentation from Insurance Product Trade Groups on SAP Financial Statements.

[572] *See, e.g.,* CAI Comment Letter (stating that ''we completely support extending Form N–4 [to facilitate registering offerings of registered MVA annuities on the form]'' and that ''[o]ur comments here relating to financial statements apply equally to MVA contracts'').

[573] VIP Working Group Comment Letter.

[574] Rule 3–13 provides, in part, that the ''Commission may, upon the informal written request of the registrant, and where consistent with the protection of investors, permit the omission of one or more of the financial statements herein required or the filing in substitution therefor of appropriate statements of comparable character.''

[575] *See generally* Commission Statement of Policy Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter, Investment Company Act Release No. 26028 (Apr. 23, 2003) [68 FR 23333 (May 1, 2003)].

[576] *See* VASP Adopting Release at text following n.813.

[577] *See* Form N–3, Instruction 1 to Item 31(b); current Form N–4, Instruction 1 to Item 26(b); and Form N–6, Instruction 1 to Item 28(b).

[578] *See* final Form N–4, Instruction 1 to Item 26(b).

[579] These amendments are consistent with the Commission's current approach to non-variable annuities registered on Form S–1. Because Forms S–1 and S–3 do not include an instruction similar to Form N–4, Instruction 1 of Item 26(b), non-variable annuities currently registered on these forms are required to provide their financial statements in accordance with GAAP. However, the Commission, acting through authority delegated to the staff, has permitted insurance companies registering on Form S–1 to include SAP financial statements in non-variable annuity registration statements in the limited circumstances permitted by Form N–4. *See, e.g.,* Letter from Jenson Wayne, Chief Accountant, Division of Investment Management, to Stephen E. Roth, Eversheds Sutherland (US) LLP, regarding Fidelity & Guaranty Life Insurance Company and Fidelity & Guaranty Life Insurance Company of New York (Mar. 17, 2023), *available at https://www.sec.gov/files/fidelity-guaranty-031723.pdf.* The Commission has stated that this approach appropriately recognizes the cost burdens that would be imposed if the Commission were to require GAAP financial statements in cases where the depositor is not otherwise required to prepare financial information in accordance with GAAP. *See* Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts That Offer Variable Life Insurance Policies, Investment Company Act Release No. 25522 (Apr. 12, 2002) [67 FR 19848 (Apr. 23, 2002)]; *see also* VASP Adopting Release at n.813 and accompanying text.

[580] *See* Proposing Release at Section II.D.

[581] 17 CFR 210.3–12(a). Insurance companies that rely on rule 12h–7 are not required to provide periodic Exchange Act reports, including quarterly reports that include interim financial statements. Therefore, they must prepare interim financial statements for Securities Act registration statements, like Form S–1 and Form S–3, even though they do not prepare interim financial statements for other purposes.

[582] *See* final Form N–4, Instruction 3 to Item 26(b).

[583] *See* 17 CFR 210.3–01(c).

instead have a 90-day grace period.[584] Consequently, under the final amendments, insurance companies will be able to file and amend their non-variable annuity registration statements during certain times of year without the need to update their financial statements.[585] The final amendments, similar to permitting insurance companies to rely on Instruction 1 to Item 26 for non-variable annuities, as discussed above, provide for the consistent treatment of financial statements for all insurance companies registering offerings on Form N–4 that meet the circumstances permitted by Form N–4. The commenter that addressed this aspect of the proposal suggested that relief from these requirements to prepare interim financial statements on a quarterly basis is appropriate because investors in non-variable annuities, like investors in variable annuities, are less interested in the insurance company's operating results from period to period.[586]

We are also adopting, as proposed, a requirement for RILA issuers to provide information relating to changes in and disagreements with accountants on accounting and financial disclosure as detailed in 17 CFR 229.304 (''Item 304 of Regulation S–K'') in the SAI. We are also extending this requirement to registered MVA annuity issuers. Additionally, non-variable annuities will be required to provide as an exhibit any letter from the insurance company's former independent accountant regarding its concurrence or disagreement with the statements made by the insurance company in the registration statement concerning the resignation or dismissal as the insurance company's principal accountant. Prior to these amendments, non-variable annuities provided these items on Forms S–1, 8–K, and 10–K, as applicable. These items are designed to address the practice of ''opinion shopping'' for an auditor willing to support a proposed accounting treatment designed to help a company achieve its reporting objectives even though that treatment might frustrate reliable reporting.[587] The commenter that addressed this issue stated that it did not oppose this requirement as it applied to RILA issuers only and agreed with the placement of the disclosures modeled on Item 304 of Regulation S–K in the SAI.[588]

Some insurance companies issue index-linked life insurance products that have a similar payment structure to RILAs, resulting in similar regulatory treatment as RILAs currently. Some commenters stated that these life insurance policies should be permitted to register on Form N–6,[589] which, among other things, would allow insurance companies registering those policies to provide SAP financial statements in the same way that other insurance companies are currently permitted to on Form N–6.[590] The Commission did not propose to amend Form N–6 to permit insurance companies to register offerings of index-linked life insurance on the form, and any such amendments are beyond the scope of this rulemaking.

F. Filing and Prospectus Delivery Rules

1. Fee Payment Method and Amendments to Form 24F–2

We are adopting, largely as proposed, amendments to require insurance companies to pay securities registration fees relating to RILA offerings using the same method used for variable annuities.[591] In a modification from the proposal, we are also adopting this framework for registered MVA annuities. Under the final amendments, issuers registering the offerings of non-variable annuities on final Form N–4 will be deemed to be registering an indeterminate amount of securities upon effectiveness of the registration statement.[592] These issuers will be required to pay registration fees annually based on their net sales of these securities, no later than 90 days after the issuer's fiscal year ends, on Form 24F–2, the form that is used by registered separate accounts to pay securities registration fees relating to variable annuities.[593] We are further

[584] Consistent with the proposal, insurance companies filing on Form N–4 will have a 90-day grace period to file audited financial statements after fiscal year-end. *See* final Form N–4, Instruction 3 to Item 26(b). One commenter suggested amending Form N–4 to provide separate accounts filing on the form the same 90-day grace period provided to insurance companies filing on the form. *See* VIP Working Group Comment Letter. In a change from the proposal, Item 26(a) has been amended to provide separate accounts a 90-day grace period for financial statements similar to the 90-day grace period provided to insurance companies for similar reasons. The exceptions to rule 3–12 of Regulation S–X contained in instruction 5 to Item 26(a) do not apply if the financial statements of the registered separate account have never been included in an effective registration statement for annuity contracts or life insurance contracts under the Securities Act. *See* final Form N–4, Instruction 5 to Item 26(a). The exceptions to rule 3–12 of Regulation S–X contained in instruction 3(a) to Item 26(b) have been modified from the proposal so that the exceptions do not apply if the financial statements of the insurance company have never been included in an effective registration statement for annuity contracts or life insurance contracts under the Securities Act. *See* final Form N–4, Instruction 3 to Item 26(b). As proposed, the exceptions would not have applied if the financial statements of the insurance company had never been included in an effective registration statement for annuity contract or *variable* life insurance contracts.

[585] A further consequence of the changes will be that insurance companies will generally be making available their non-variable annuity-related financial statements to investors on an annual basis, consistent with the timing of financial statements for variable annuities. Currently, insurance companies relying upon rule 12h–7 provide their non-variable annuity-related financials annually, whereas insurance companies not relying on that rule provide financial statements quarterly. Insurance companies not relying on rule 12h–7 will file financial statements more frequently than annually if there are any post-effective amendments to the registration statement that require updated financial statements. *See* Form 10–Q.

[586] CAI Comment Letter.

[587] *See* Disclosure Amendments to Regulation S–K, Form 8–K and Schedule 14A Regarding Changes in Accountants and Potential Opinion Shopping Situations, Investment Company Act Release No. 16358 (Apr. 12, 1988) [53 FR 12924 (Apr. 20, 1988)] (''Disclosure Amendments to Regulation S–K, Form 8–K and Schedule 14A''); *see also* Form S–1, Item 11(i).

[588] *See* CAI Comment Letter. As registered MVA annuities similarly provide this disclosure currently and it will also be in the SAI, we are applying this requirement to registered MVA annuities for the same reason we are applying it to RILAs.

[589] Similar to Form N–4 and variable annuities, Form N–6 is used to register offerings of variable life insurance policies.

[590] *See, e.g.,* CAI Comment Letter; ACLI Comment Letter; IRI Comment Letter.

[591] To accommodate the changes, EDGAR will be modified to require insurance companies registering non-variable annuities to use a different CIK than that used for their other offerings. One CIK will be utilized to register the offerings of non-variable annuities on Form N–4 and pay registration fees for securities relating to non-variable annuity offerings on Form 24F–2. The other CIK will be utilized to register the insurance company's other offerings of securities as they do currently. As a result, insurance companies will need to utilize separate CIKs for their non-variable annuity-related filings. If the issuer only offers non-variable annuities, the issuer will only use one CIK. Further, we are amending rule 313 of Regulation S–T to permit filings relating to non-variable annuities offerings to have both an investment company type and contract identifier to facilitate insurance companies filing these forms and for ease in identification of particular contracts.

[592] The rule amendments apply the same registration fee payment approach to non-variable annuities that is provided by rule 24f–2 to other Form N–4 issuers. *See* final rules 456(e) (providing that where the registration statement relates to an offering of non-variable annuities, insurance companies will be deemed to have registered an indeterminate amount of securities for purposes of sections 5 and 6(a) of the Securities Act upon the effective date of its registration statement); and 457(u) (providing for insurance companies to pay registration fees for offerings of non-variable annuity securities on the same annual net basis as other Form N–4 issuers); *see also* final Form 24F–2. *See* 15 U.S.C. 78d(e) and 77z–3. We believe that these actions are necessary and appropriate in the public interest and consistent with the protection of investors.

[593] As a general matter, the final amendments provide the same process for registering an indeterminate amount of securities relating to non-variable annuity offerings as is currently provided for exchange-traded vehicle securities under rule 456(d) (which, in turn, mirrors the process for current Form N–4 issuers to register securities) except that: (1) this process will be mandatory for

Continued

specifying the calculation method for paying securities registration fees for non-variable annuity offerings, consistent with the fee calculation methodology that applies to variable annuities.[594] We also are amending, as proposed, Form 24F–2 to specify when issuers can take credits for non-variable annuity redemptions that pre-date their use of that form and when expiring annuity contracts are rolled over into a new crediting period, as well as other non-substantive and conforming amendments.[595] Commenters were supportive of our proposal to allow RILA issuers to pay fees in arrears on Form 24F–2, though they did have comments on specific elements of this part of the proposal as discussed below.[596] Commenters also supported extending this treatment to registered MVA annuities, subject to those comments.[597]

Without the adoption of these final amendments, insurance companies, like most issuers, would need to register a specific amount of securities when registering non-variable annuities. Indeed, until now, issuers of non-variable annuities were required to pay a registration fee for such securities to the Commission at the time of filing a registration statement on Form S–1 or S–3.[598] As a result, under Forms S–1 and S–3, insurance companies had to ensure that they did not inadvertently sell more non-variable annuities than were registered, even though this was not (and is not) a concern in relation to variable annuities. Further, insurance companies were required to pay fees at effectiveness on Forms S–1 or S–3 for the non-variable annuities being registered, in contrast with registered separate accounts, which do not have to pay a fee at effectiveness on Form N–4 but rather pay fees annually on Form 24F–2 on the net sales of securities that year. Now, under the final amendments, insurance companies will be required to pay fees under the framework outlined by the Investment Company Act, which provides that certain registered investment companies, including the variable annuity separate accounts that file on Form N–4, are deemed to have registered an indefinite amount of securities upon the effective date of their registration statement.[599] Instead of having to pay registration fees at the time of filing a registration statement, the final amendments will require insurance companies to pay registration fees in arrears based on their net issuance of non-variable annuities, no later than 90 days after the issuer's fiscal year end, on Form 24F–2.[600]

The final amendments are designed to require insurance companies to use the same framework to pay securities registration fees for non-variable annuities that they do for variable annuities. Insurance companies offer non-variable annuities in a manner substantially similar to variable annuities and similarly will benefit from paying registration fees on an annual net basis and from registering offerings of an indeterminate number of securities. The final amendments provide registration fee payment parity for an insurance company that may offer one or more related insurance products, including index-linked options offered as part of combination annuity contracts.[601] The final amendments' requirement that insurance companies pay registration fees for non-variable annuities on Form 24F–2 therefore should be efficient for insurance companies. This approach eliminates the risk that an insurance company will inadvertently oversell non-variable annuities with respect to a registration statement on Form N–4, and the payment of fees on an annual net basis furthermore should lead to a reduction in overall filing fees relating to these securities.[602] Further, by requiring insurance companies to use the same form and payment method under the final amendments for both variable and non-variable annuities, this process also will be efficient for the Commission.

The fee calculation method is consistent with the continuous offering of non-variable annuities to investors. These investors may make additional allocations or other investment decisions over time with respect to an investment in non-variable annuities. One effect of this was that, prior to these rule amendments, insurance companies, unlike other Form S–1 or S–3 issuers, could have increased difficulty in using the filing fees associated with unsold non-variable annuities of a particular offering to offset the filing fees due for a subsequent registration statement. This was because many insurance companies could not easily terminate an offering of non-variable annuities, a necessary step to recoup fees paid on unsold securities for use in a separate offering.[603]

We also are amending Form 24F–2 to indicate when insurance companies can take credits for redemptions of non-variable annuity securities not claimed

insurance companies that register non-variable annuities on Form N–4; and (2) such insurance companies will pay fees on Form 24F–2 instead of filing a prospectus supplement in accordance with rule 424. *See also* Closed-End Fund Offering Reform Adopting Release. For example, the final amendments will provide the same mechanics as other Form 24F–2 issuers when addressing interest calculations for late payments.

[594] All payments of filing fees for non-variable annuities registration statements will continue to be made by wire transfer, debit card, or credit card or via an ACH and there will be no refunds. *See* 17 CFR 230.111; Final Form 24F–2, Instruction A.5.

[595] In addition to conforming changes in final Form 24F–2 to effectuate the changes discussed below, to improve the form we are: (1) removing reporting relating to shares paid for prior to Oct. 11, 1997; (2) removing the statement in current Instruction A.3 to consult the EDGAR Filer Manual because the instructions referenced in Instruction A.3 are intended to be removed from the EDGAR Filer Manual; (3) removing current Instruction C.4, which includes EDGAR header tags for Item 5 of the form, as this information is no longer sufficient for filing purposes and current technical specifications are provided through the technical specifications page on the Commission's web page; (4) revising current Instruction C.9 for Item 5(vii) to correspond to the current instructions for fee filing rates on the Commission's website; (5) correcting the website linked in current Instruction D.1; and (6) removing the estimated Paperwork Reduction Act burden cited in current Instruction F as extraneous in light of the OMB approval box that contains information on this topic.

[596] *See* CAI Comment Letter; IRI Comment Letter; Gainbridge Comment Letter.

[597] *See, e.g.,* CAI Comment Letter.

[598] In general, issuers today—including insurance companies issuing non-variable annuities—are required under the Securities Act to pay a registration fee to the Commission at the time of filing a registration statement. *See* sections 6(b)(1) (requiring applicants to pay a fee to the Commission at the time of filing a registration statement) and (c) (providing that a registration statement shall not be deemed to have taken place without payment of a registration fee) of the Securities Act [15 U.S.C. 77f(b)(1) and (c)]. This means they pay registration fees at the time they register the offering of securities, regardless of when (or if) they sell them. In addition, although well-known seasoned issuers (''WKSIs'') have additional flexibility in paying filing fees, none of the insurance companies that issue non-variable annuities currently claim status as a WKSI. *See* Proposing Release at n.21 and accompanying text (citing, *inter alia,* section 6(b)(1) of the Securities Act [15 U.S.C. 77f(b)(1)]).

[599] *See* 15 U.S.C. 80a–24(f).

[600] *See id.;* final Form 24F–2.

[601] For combination products, each issuer of securities under the product (*e.g.,* the separate account for the variable option and the insurance company for the index-linked or MVA option) will file a separate Form 24F–2 relating to the payment of registration fees for its respective securities offered under the product.

[602] As part of the amendments to Form 24F–2, insurance companies will be required to include the value of any expiring non-variable annuities contract or index-linked or MVA option that is rolled over into a new crediting period in its calculation of the aggregate sale price of securities sold during the fiscal year. Insurance companies further will be required to report such contracts or options as redemptions. This will result in zero net sales being reported in this situation. *See* final Form 24F–2, Instruction C.4.

[603] *See* 17 CFR 230.457(p). To facilitate the transition to calculating fees on an annual net basis and filing Form 24F–2, a filer will reduce the number reported in Item 5(i) in connection with non-variable annuities by any excess securities that were registered under its last registration statement that remain unsold prior to the effectiveness of the final rule. *See* final Form 24F–2, Instruction C.5. This will be so that a filing fee is not charged twice for the same securities being registered.

during a prior fiscal year (''non-claimed prior redemptions''). Typically, issuers that file Form 24F–2 are eligible for a credit for fees paid on prior redemptions, which may be used to offset registration fees due for securities sold during the current fiscal year. This credit will only be available for non-claimed prior redemptions that occurred during any prior fiscal year that ended no earlier than the date the issuer became eligible to use Form 24F–2.[604] The current form, however, includes a legacy instruction that permits a credit for any non-claimed redemptions in a prior fiscal year that ends no earlier than October 11, 1995. This specific date is related to the timing of open-end funds' and unit investment trusts' transition to Form 24F–2.[605] With the addition of non-variable annuities to this form, we are removing the reference to October 11, 1995 in Item 5(iii) of Form 24F–2 and amending the related instructions so that Form 24F–2 is clear that issuers only will be able to take credit for non-claimed prior redemptions for a fiscal year prior to the date the issuer became eligible to use the form, which for insurance companies issuing non-variable annuities would be the date on which we adopt these amendments.[606]

While generally supportive of the proposal, commenters had some specific recommendations on how we could modify Form 24F–2. One commenter recommended that a separate line item be added to Form 24F–2 for unsold interests that were registered using Forms S–1 and S–3 registration statements.[607] This commenter suggested that, to provide greater transparency in the calculation of registration fees and to ensure RILA issuers receive credit for the amount of registration fees previously paid for unsold securities registered on the Forms S–1 and S–3 registrations statements, we provide a separate line item (*e.g.,* a ''redemption credit line'') on Form 24F–2 to explicitly treat such unsold securities as redemption credits. We have not added such a line item to Form 24F–2 because final Form 24F–2 will allow insurance companies to exclude non-variable annuities previously registered on Forms S–1 or S–3 from the registration fee payment calculation in the first Form 24F–2 filed following the conversion to Form N–4. Specifically, the form, both as proposed and as adopted, instructs filers to reduce the calculation of the amount of securities sold (and, thus, for which registration fees are to be paid) by the amount of securities registered under the Securities Act for which the issuer paid registration fees on a form other than Form 24F–2.[608] Thus, because those securities identified by the commenter were not registered pursuant to the final amendments (or section 24(f) of the Investment Company Act), insurance companies will be able to deduct those securities from the calculation without the need for a specific line item in that calculation that eventually would become obsolete. If additional clarity is desired, insurance companies may optionally use the explanatory notes section of the form to provide it.

Proposed Instruction C.4 to Form 24F–2 provided a special rule for RILAs that clarified that the value of any expiring annuity contract or investment option that is rolled over into a new crediting period should be reported both as securities sold and as securities redeemed, resulting in a net-zero calculation to the extent that these amounts are the same. One commenter stated, in discussing this proposed approach, that transfers from index-linked options to options (and variable options to index-linked options) should be viewed as substantially similar to rollovers of crediting periods from a registration fee payment perspective. The commenter stated that, in both cases, simultaneous purchases and redemptions of equal amounts occur, and thus both should be afforded comparable treatment in the context of registration fee payment.[609] This commenter therefore recommended that, with respect to combination contracts, we provide expanded guidance in Instruction C.4 in Form 24F–2 regarding net zero fee transactions to include (1) transfers from index-linked options to variable separate account subaccounts; and (2) transfers from variable separate account subaccounts to index-linked options. We are not adopting this recommendation because in a combination contract, the separate account and insurance company each file their own separate Form 24F–2. Expanding net zero fee transactions to include transfers from index-linked or MVA options to variable separate account subaccounts and vice versa would expand the ability of a registrant to determine net sales, and thus potentially reduce registration fees, to a greater extent than other registrants using Form 24F–2. This is because the form does not currently permit two or more legal entities to net purchases and redemptions and we do not believe netting across legal entities is appropriate. Therefore, we are not adding transfers from index-linked or MVA options to variable separate account subaccounts (and vice versa) to final Instruction C.2.

One commenter asked us to confirm that RILA issuers could file a single Form 24F–2 annually to pay registration fees for all ongoing RILA offerings and pay registration fees on a net basis across all such offerings rather than having to make multiple Form 24F–2 filings and pay registration fees on a RILA offering-by-offering basis as with variable product separate account registration fee payments because paying registration fees in the aggregate across all RILA offerings would allow companies to more effectively use their unsold interests registered on Forms S–1 or S–3.[610] Another commenter suggested that we permit RILA issuers to use a single Form 24F–2 on the grounds that requiring multiple nearly identical filings has little value to investors, leads to additional complexity for both the staff and insurance companies, makes tagged data less useful (as a single product will have multiple identical tags under different registrants and IDs), and provides no upside.[611] Consistent with the treatment for variable annuity and variable life insurance offerings, we agree that issuers should be permitted to pay registration fees for multiple offerings of non-variable annuities with different Securities Act numbers—provided that those Securities Act numbers are under the same Central Index Key (CIK) number—on a single Form 24F–2 and have added an instruction to that effect.[612]

2. Post-Effective Amendments and Prospectus Supplements

The final amendments, which we are adopting as proposed, will require RILA issuers to use the same framework for filing post-effective amendments to the registration statement that other issuers on Form N–4 use. We are also adopting

[604] *See* Form 24F–2, Item 5(iii); *see also generally* Closed-End Fund Offering Reform Adopting Release at n.348.

[605] *See* Registration Under the Securities Act of 1933 of Certain Investment Company Securities, Investment Company Act Release No. 22815 (Sep. 10, 1997) [62 FR 47934 (Sep. 12, 1997)] at n.9.

[606] In addition to insurance companies, interval funds have been able to use Form 24F–2 since Aug. 1, 2021 (the effective date of rule 24f–2 as applied to interval funds), so these funds likewise would only be able to take credit for non-claimed prior redemptions since that date.

[607] CAI Comment Letter.

[608] *See* Final Form 24F–2, Item 5(i) and Instruction C.5; *see also supra* footnote 603.

[609] CAI Comment Letter.

[610] CAI Comment Letter.

[611] VIP Working Group Comment Letter.

[612] *See* final Form 24F–2, Instruction A.6.

this requirement in connection with offerings of registered MVA annuities. Specifically, we are amending rule 485 to require insurance companies to use that rule when amending non-variable annuity registration statements on Form N–4. This change will permit insurance companies to file post-effective amendments relating to non-variable annuity registration statements that become automatically effective under rule 485(a) after a specified period of time after the filing or, in certain enumerated circumstances, immediately effective under rule 485(b).[613] In addition, we also are requiring insurance companies to apply rule 497 under the Securities Act when appropriate to file non-variable annuity prospectuses and prospectus supplements with the Commission.[614] These amendments will facilitate a uniform post-effective amendment and prospectus filing framework for issuers on Form N–4 and will provide increased efficiencies for insurance companies and Commission staff by applying consistent procedures for all security offerings registered on Form N–4. The one commenter who addressed this aspect of the proposal supported the proposed amendments and supported their application to registered MVA annuities.[615]

Prior to the adoption of these final amendments, our rules provided different processes for insurance companies when registering offerings of non-variable annuities on Forms S–1 and S–3, as compared to those of variable annuities on Form N–4, to update and keep current a registration statement or prospectus. Form N–4 was used by separate accounts that are unit investment trusts that offer variable contracts to register their securities under the Investment Company Act and to register an indefinite amount of continuously-sold securities under the Securities Act. As such, these issuers had a system of updating their disclosures that facilitates that structure. Issuers on Form N–4 typically update their registration statements annually through a post-effective amendment filed in accordance with rule 485 to, among other things, comply with Securities Act requirements.[616] Rule 485(b) provides for the immediate effectiveness of many of the routine updates that issuers on Form N–4 may make over the course of a continuous, long-term offering, such as those amendments filed for no purpose other than to bring the financial statements up to date under section 10(a)(3) of the Securities Act.[617] These issuers also file forms of prospectuses used in their offerings through rule 497 and can supplement their prospectuses, also known as ''stickering,'' to reflect certain changes to the information disclosed by making a filing with the Commission in accordance with rule 497.

Prior to the final amendments that we are adopting today, insurance companies had to follow the processes operating companies use, when these insurance companies were updating non-variable annuity registration statements. Operating companies that are engaged in a continuous offering of securities, like these issuers, are similarly required to update their registration statement each year and may update their registration statement for changes other than to bring the financial statements up to date.[618] For non-variable annuities whose offerings were registered on Form S–1, these updates typically occurred through a post-effective amendment.[619] Rule 462 provided insurance companies with a limited set of circumstances, none of which are specific or generally relevant to offerings of non-variable annuities, in which a post-effective amendment to a registration statement is effective upon filing.[620] Rather, when an insurance company sought to update a non-variable annuity registration statement on Form S–1, the issuer had to file a post-effective amendment that was typically declared effective by Commission staff acting pursuant to delegated authority.[621]

In addition to differences in the post-effective amendment process, insurance companies also followed, prior to the adoption of the final amendments, different processes to file non-variable annuity prospectuses than current Form N–4 filers, relying on rule 424 rather than rule 497. Although these rules provide for similar processes, certain differences affected these insurance companies. For example, rule 424 requires an issuer to file a prospectus only if the issuer makes substantive changes or additions to a previously-filed prospectus, whereas rule 497 requires funds to file every prospectus that varies from any previously-filed prospectus.[622] Accordingly, under the final amendments, an insurance company will need to file every prospectus relating to a non-variable annuity offering that varies in form from a previously filed prospectus before the modified prospectus is first used.[623] This approach will provide a publicly accessible, usable database of current non-variable annuity prospectuses which also will assist the Commission in conducting its regulatory functions. In addition, rule 424 includes provisions related to continuous or delayed securities offering under rule 415.[624] However, in light of the amendments we are making to the non-variable annuity registration framework with this rulemaking, these provisions will no longer be applicable to non-variable annuities.[625]

Consistent with the other elements of this proposal, the final amendments are designed to provide parity between non-variable annuities and variable annuities that are currently registered on Form N–4. Non-variable annuities, like variable annuities, are longer-term investment products that are continuously offered and must maintain a current registration statement and up-to-date prospectus for new investors as well as for existing investors that may be able to make additional contributions

[613] *See* rule 485(b).

[614] Consistent with this change, we are making corresponding changes to (1) rule 424(f) to specify that insurance companies must use rule 497 rather than rule 424 when filing non-variable annuity prospectuses and prospectus supplements, and (2) rule 415(b) to exempt offerings of non-variable annuities from the requirements of paragraph (a) of that rule consistent with the treatment of variable annuity separate accounts.

[615] CAI Comment Letter. This and one other commenter did raise questions on the effective dates of the amendments to rules 485 and 497 which we address below. *See* CAI Comment Letter; VIP Working Group Comment Letter; *see also infra* Section II.J. Additionally, while not specific to this requirement, one commenter suggested that we amend 17 CFR 240.10b–10(b)(1) to permit RILA issuers to use quarterly statements rather than the immediate confirmations usually required, consistent with the treatment of variable annuities under that rule. *See* CAI Comment Letter. We are not adopting this change at this time because it is beyond the scope of this rulemaking.

[616] *See, e.g.,* section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)].

[617] *See* rule 485(b)(1)(i). Material post-effective amendments, however, are not immediately effective. *See* rule 485(a).

[618] *See, e.g.,* section 10(a)(3) of the Securities Act; rule 415(a); Item 512 of Regulation S–K.

[619] Under Form S–3, the section 10(a)(3) update need not be made through a post-effective amendment. Rather, under this form, the section 10(a)(3) update generally occurs when the issuer files its annual report on Form 10–K containing the issuer's audited financial statements for its most recently completed fiscal year.

[620] *See* rule 462(d) and (e). For example, this rule provides that a post-effective amendment that seeks only to add exhibits to a registration statement would be effective upon filing. In addition, although a well-known seasoned issuer is permitted to file a post-effective amendment to an automatic shelf registration statement with immediate effectiveness, none of the insurance companies currently offering non-variable annuities currently claims status as a well-known seasoned issuer.

[621] *See* 15 U.S.C. 77h; 17 CFR 229.501(a); 17 CFR 230.473. *See also supra* footnote 619 (describing the Form S–3 post-effective amendment process).

[622] *See* rule 424(a); rule 497.

[623] *See* rule 497(e).

[624] *See* rule 424(b).

[625] *See* rule 415(b).

or reallocate assets. Accordingly, applying rule 485's simplified post-effective amendment process is a more appropriate framework for non-variable annuity registration statements given their similarity to variable annuities. Non-variable annuity registration statements are routinely updated over the course of an offering and may be subject to material and non-material amendments over the long-term nature of the investment product. As such, the final amendments address the post-effective amendment process for non-variable annuity registration statements and thereby provide benefits to insurance companies currently using Form S–1 in relation to non-variable annuity offerings by reducing administrative complexity when updating financial statements included in a registration statement or when making other changes to a registration statement through rule 485's provisions for automatic and immediate effectiveness.[626] Requiring insurance companies to rely on the simplified post-effective amendment process will enable these issuers to update their disclosures in a manner that complements and facilitates the offering structure of non-variable annuities and will provide efficiency in the context of combination contracts.[627]

Requiring insurance companies to rely on rules 485 and 497 in connection with non-variable annuities also will provide a uniform post-effective amendment and prospectus filing framework for all issuers using Form N–4 and provide insurance companies that may offer one or more related insurance products, including index-linked or MVA options offered as part of combination annuity contracts, consistent filing requirements across related products. This also should result in enhanced efficiencies as these issuers would no longer be required to manage distinct filing processes for related products. In addition, employing the framework provided by rules 485 and 497 will provide Commission staff with an increased degree of administrative efficiency by facilitating the review of amendments containing material changes to non-variable annuity registration statements while permitting amendments with non-material changes to become effective immediately.

3. Prospectus Delivery

As proposed, we are prohibiting the use of rule 172 in connection with RILA offerings. We are also prohibiting its use in connection with registered MVA annuity offerings. Under rule 172, a final prospectus is deemed to precede or accompany a security for sale for purposes of Securities Act section 5(b)(2) as long as the final prospectus meeting the requirements of Securities Act section 10(a) is filed or the issuer will make a good faith and reasonable effort to file the final prospectus with the Commission as part of the registration statement within the required rule 424 prospectus filing timeline.[628] We received no comments on this aspect of the proposal.

Registered investment companies, including variable annuity separate accounts, are excluded from rule 172 and therefore must deliver a prospectus to investors.[629] Therefore, we are excluding offerings of non-variable annuities from rule 172 to ensure that investors receive a prospectus about these complex investments and because we are treating these offerings like offerings of variable annuities in other respects. Moreover, we understand that, as a practical matter, insurance companies typically do not rely on rule 172 in connection with non-variable annuities because they usually deliver prospectuses to accompany or precede other communications, such as annuity applications, to avoid those communications being offers that otherwise would be non-conforming prospectuses that violate section 5 of the Securities Act.[630]

G. Communication Rules Applicable to Non-Variable Annuities

As proposed, we are amending rule 156 to make its provisions applicable to RILA sales literature, and, in a change from the proposal, we are also applying these changes to registered MVA annuities in light of the similarities in the products.[631] Additionally, in a change from the proposal, we are also making a technical amendment to rule 433 to allow certain RILA issuers that can meet the rule's conditions to continue to use a free writing prospectus without it needing to be preceded or accompanied by a prospectus that satisfies the requirements of section 10 of the Securities Act.

1. Sales Literature (Rule 156)

Under the Federal securities laws applicable to all securities (including non-variable annuity offerings), it is unlawful for any person to use materially misleading communications in connection with the offer or sale of any security.[632] Rule 156 does not prohibit or permit any particular representations or presentation, rather it is an interpretive rule that provides factors to be weighed in considering whether, in the specific context of investment company sales literature, a statement involving a material fact is or might be misleading for purposes of the Federal securities laws.[633] Amending rule 156's provisions to include non-variable annuity sales literature will provide guidance to insurance companies on ways to avoid presenting investors with materially misleading advertisements, which, consistent with the RILA Act, should help ensure that investors receive the information necessary to make informed decisions about these products.

Rule 156 provides guidance on whether a statement involving a material fact is misleading in sales literature, depending on an evaluation of the context in which it is made, with the rule providing four non-exhaustive factors to guide in this determination.[634] Like investment company sales literature generally (and variable annuity marketing materials particularly), RILA advertisements discuss complex investment features that could benefit from rule 156's contextual analysis in considering whether a particular representation is materially misleading. Moreover, Commission staff reviewed RILA advertisements to better understand how insurance companies market these products to investors. As part of this review, and based upon prior

[626] *See* rule 485.

[627] Some commenters asked if RILA issuers would be permitted to use the ''rate sheet'' process outlined in ADI 2018–05 for the disclosure of certain rate changes. *See* CAI Comment Letter. The application of that staff statement beyond variable contracts is beyond the scope of this rulemaking. Insurance companies are encouraged to engage with Commission staff on this ADI and whether modifications to address RILAs would be appropriate.

[628] *See* rule 172(b) and (c); *see also* Closed-End Fund Offering Reform Adopting Release at n.561 and accompanying text.

[629] *Id.* at Section VI.B.1.a.

[630] *See* section 2(a)(10) of the Securities Act (providing, in part, that a communication sent or given after the effective date of the registration statement shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of section 10(a) was sent or given to the person to whom the communication was made). *See also* Closed-End Fund Offering Reform Adopting Release at n.561 (stating that a final prospectus only filed as provided in rule 172 will not be considered to be sent or given prior to or with a written offer within the meaning of this clause of section 2(a)(10)).

[631] *See* final rule 156.

[632] *See* 15 U.S.C. 77q(a); 15 U.S.C. 78j(b); 17 CFR 240.10b–5.

[633] *See* Mutual Fund Sales Literature Interpretive Rule, Investment Company Act Release No. 10915 (Oct. 26, 1979); [44 FR 64070 (Nov. 6, 1979)] (''Rule 156 Release'').

[634] *See* current rule 156(b).

experience reviewing RILA registration statements, the staff identified RILA marketing approaches that could benefit from rule 156's guidance about advertising statements that could be misleading under the Federal securities laws without appropriate context. Thus, by extending this guidance to RILAs, the final amendments to rule 156 focus attention to specific areas of RILA sales literature that we have identified as being particularly susceptible to misleading statements.[635] These considerations are equally applicable to registered MVA annuities given the similarities in the products.

Several commenters expressed support for the proposed amendments to rule 156 and no commenters opposed them.[636] Commenters stressed the benefits to investors of applying rule 156 to RILA advertising. One commenter stated that the application of rule 156 to RILA sales literature is a ''natural fit'' given the applicability of its guidance to RILAs, noting that the proposed amendments would protect investors by, among other things, requiring insurance companies to consider the potentially misleading nature of statements about past performance in their sales literature.[637] Because the features of a RILA investment, such as limits on gains, change frequently, this commenter observed that past performance is often irrelevant to current RILA investors who are not able to utilize those past rates in current market conditions. Referring to news reports expressing concerns about sales techniques used to sell annuities generally, this commenter suggested that these concerns further emphasize the need for marketing rule protections in the context of RILA sales literature.[638]

Some commenters also expressed concerns about the potential for confusion about other RILA features.[639] One of these commenters stated that RILAs are inherently misleading products and urged the Commission to do more to protect investors with regard to certain confusing RILA features.[640] For example, some commenters stated that claims that RILAs have no ongoing fees are misleading because investors will sometimes incur fees even if they hold the investment past the surrender charge period.[641] These commenters urged that we require disclosure of such fees and charges even if they are hard to quantify. These commenters also stated that there was the potential for investor confusion because RILA returns are based on a price return index instead of a total return index, suggesting that insurance companies need to explain the difference and specify which return is applicable to the RILA so that investors can understand the difference between investing in an index fund (which might be subject to explicit ongoing fees, but in which investors receive a total return, including dividends) and a RILA based on a price return index (whose return would be less than that of an index fund that includes a total return).

One commenter also expressed concerns about representations concerning tax deferral and death benefits in RILA advertisements.[642] For example, this commenter suggested that the term ''death benefit'' is misleading because these features are just a return on an investment (like that provided by mutual funds, stocks, and bonds), and further, unlike other comparable investments, death benefits are fully taxed at ordinary income rates. Similarly, this commenter expressed a concern that annuity advertisements frequently exaggerate the benefits of tax deferral by providing charts and examples that rely on unreasonable assumptions (such as comparing the tax-deferred value of an annuity to the value of a taxable account without reflecting an investor's inability to access her investment from a tax-deferred account without paying taxes). Finally, this commenter also expressed concern regarding the discretion of an insurance company to change key terms, such as minimum rates. This commenter suggested that this discretion was particularly concerning because, unlike most other investments where the issuer is a fiduciary (such as funds or equity investments), RILA issuers have no duty to act in the investor's interest when acting unilaterally to alter the product by setting or changing rates.

This same commenter stated that focusing on RILA marketing practices is important because investors may not read an entire prospectus and thus may rely on marketing materials for information about a RILA's complex features. This commenter, however, suggested that RILA issuers should be permitted (or even required) to produce fair presentations of performance, which the commenter believed would allow investors to see how RILAs operate under real market conditions. This commenter agreed that providing fair representations of RILA performance is difficult because the rates offered by insurance companies are constantly changing but suggested that RILA performance presentations could be required to use average cap rates over a calendar year, while prohibiting those presentations from using back-tested index performance or performance of the RILA prior to the product's launch. As described above, rule 156 is an interpretive rule that provides factors to weigh in considering whether, in the specific context of sales literature, a statement involving a material fact is or might be misleading for purposes of the Federal securities laws. Because rule 156 does not prohibit or permit any particular representations or presentation, we disagree with the commenter's suggestion that we impose a requirement under rule 156 regarding the use of cap rates in providing representations as to historical RILA performance.

After considering these comments, we are adopting the amendments to rule 156 as proposed, with the added application to registered MVA annuities. As discussed below, these amendments address commenter concerns about potentially misleading statements in RILA sales literature by providing insurance companies with guidance about the contextual analysis to use in determining whether a particular representation in non-variable annuity advertising could be materially misleading.

For example, as stated above, commenters expressed concern about the potential for investors to be misled in connection with representations in RILA marketing materials about a lack of ongoing fees. Final rule 156(b)(4) provides that representations about fees or expenses associated with an investment in a non-variable annuity could be misleading ''because of

[635] *See* Rule 156 Release (Rule 156 is ''intended to highlight general areas which, based on the Commission's regulatory experience with investment company sales literature, had proven to be particularly susceptible to misleading statements'').

[636] *See, e.g.,* Better Markets Comment Letter; Johnson Comment Letter. One commenter stated concern that the Proposing Release implied that misleading marketing practices are common in RILA advertising. *See* CAI Comment Letter. We did not intend to express, and are not expressing, a view about the prevalence of misleading marketing practices in RILA advertising. This commenter also suggested that it is noteworthy that most RILA advertisements are submitted for review to the Financial Industry Regulatory Authority even though there is currently no legal requirement to do so. We discuss this in more detail below. *See infra* Section II.G.2.

[637] *See* Better Markets Comment Letter.

[638] *See id.* (citing 2023 N.Y. Times article discussing the fact that investors often face aggressive sales pitches on annuities with opaque terms and hefty commissions that give brokers incentives to sell annuities that pay them the most).

[639] *See* Johnson Comment Letter; Lee Comment Letter.

[640] *See* Lee Comment Letter.

[641] *See* Johnson Comment Letter; Lee Comment Letter.

[642] *See* Johnson Comment Letter.

statements or omissions made involving a material fact, including situations where portrayals of the fees and expenses associated with an investment in the fund or registered non-variable annuity omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading.'' While non-variable annuity investors are not typically charged direct ongoing fees or expenses, RILAs do typically limit an investor's ability to participate in upside performance, and non-variable annuities with contract adjustments (including registered MVA annuities) can impose implicit costs upon highlighted features such as guaranteed benefits.[643] Thus, in the context of non-variable annuity sales literature, under this provision of rule 156, consideration should be given about whether representations or portrayals either of a non-variable annuity's costs or charges (*e.g.,* advertising implying that a RILA has low costs or no ongoing charges), or optional benefits that are subject to a contract adjustment, would necessitate qualifying statements or explanations regarding the costs or tradeoffs to the investor to receive an advertised benefit or those generally associated with the non-variable annuity.

Similarly, final rule 156(b)(1)(ii)'s extension to non-variable annuity sales literature also addresses some of the commenter concerns we received regarding RILA features that, when described in marketing materials, may require additional context to ensure they are not misleading. Final rule 156(b)(1)(ii) provides that a statement in non-variable annuity sales literature could be misleading because of ''[t]he absence of explanations, qualifications, limitations or other statements necessary or appropriate to make such statement not misleading.'' Whether a given explanation, qualification, or limitation is necessary or appropriate to make statements in sales literature not misleading will depend on the facts and circumstances in each case. The examples that follow are areas where an insurance company should consider the need for further explanation, qualifications, or limitations, but are not intended to suggest that that further explanation, qualifications, or limitations are necessary in each case in order to make the examples not misleading.

For example, where a RILA advertisement includes statements regarding index returns, under this provision, consideration should be given as to whether the insurance company needs to explain the difference between a price return index and a total return index, including how that difference can affect an investor's returns, or if an advertisement describes a RILA as a growth product, whether qualification of the statement is necessary in light of relevant RILA features, such as the existence and extent of any limitations on upside index performance.

If RILA sales literature discuss these aspects of the contract without adequately explaining these limitations or the insurer's discretion to alter key features, that omission could make the advertisement misleading. For instance, if sales literature advertises a particular feature of a RILA's bounded return structure (including, *e.g.,* a specified index; an upside feature such as a particular ''cap rate'' or ''participation rate''; or a downside feature such as a ''floor'' or ''buffer'') that is not available for the life of the product, under the rule consideration should be given regarding whether the statement could be misleading without providing additional context as to the insurer's discretion.

Additionally, under these provisions of final rule 156, insurance companies should also consider whether representations that highlight downside protections of a RILA (*e.g.,* describing the RILA as a loss avoidance vehicle) could also be misleading without qualifying explanations or statements, including the context of the cost or limitation of those protections (*e.g.,* upside limitations). Insurance companies should further consider whether the same analysis would apply to representations that accentuate the benefits of customization without discussing the trade-offs associated with that customization (*e.g.,* long lock-up periods to get the best rates or having to experience a contract adjustment when making a change) or do not explain that the insurance company has reserved the right to change or remove key features of the contract.

Lastly, final rule 156(b)(2)(i) states that ''[r]epresentations about past or future investment performance could be misleading because of statements or omissions made involving a material fact, including situations where: [p]ortrayals of past income, gain, or growth of assets convey an impression of the net investment results achieved by an actual or hypothetical investment which would not be justified under the circumstances, including portrayals that omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading.'' In the context of non-variable annuity advertising, under this provision, consideration should be given to whether illustrations about the operation of a non-variable annuity or its features could be misleading. This could be the case in a RILA advertisement because, for example, it uses assumptions (such as limits on gains or index performance that includes dividends, whereas the RILA's index does not include dividends) that are not currently offered or exceed what could be reasonably anticipated, or use ''cherry picked'' data.

Similarly in the case of RILA and registered MVA annuity advertising, with regard to the commenter concern regarding the potential for statements that exaggerate the benefits of tax deferral, under final rule 156(b)(2)(i) consideration should be given to whether portrayals of the tax-deferred value of the annuity, especially where this value is compared to the value of a taxable account, should reflect the advantages of taxable accounts (*e.g.,* discussing, if applicable, whether a taxable account would be taxed at lower capital gains rates).[644] Likewise, given the frequency with which RILA terms can change and the sensitivity of a RILA's returns to the particularized choices made by individual investors,[645] including the historical performance of a RILA or any particular index-linked option itself in an advertisement may be inconsistent with amended rule 156's guidance.[646]

[643] Insurance companies may apply a contract adjustment to an investor's account when an investor annuitizes or takes advantage of benefits like ''free withdrawal'' provisions (that typically permit investors to withdraw up to 10% of the contract value each year without paying a surrender charge), death benefits, systemic withdrawals, and guaranteed benefits. *See, e.g.,* Dodie Kent and Ronald Coenen, Jr., *The Design and Regulatory Framework of Registered Index-Linked Annuities,* ALI CLE Conference on Life Insurance Products 2023 (''It is important to note that interim value adjustments may apply to surrenders and *all* types of 'withdrawals,' such as free look payments; annuitization; death benefit payments; deductions for third party advisory fees; systemic withdrawals; and even income payments under guaranteed benefit riders.'').

[644] *See* Johnson Comment Letter.

[645] Registered MVA annuity advertisements do not raise the same concerns, as investor returns in a registered MVA are not subject to the same range of particularized investor choices, but are instead based on a particular fixed rate that is periodically reset by the insurance company.

[646] Because the terms of a RILA investment, such as limits on gains, change frequently, past performance is often irrelevant to current investors who are not able to utilize those past rates in current market conditions. In addition, to the extent that a RILA is using a point-to-point crediting method, that RILA's return to an investor would be

Continued

Further, including historical index performance in an advertisement also would be misleading if, for example, it suggested that the performance shown is predictive of future performance of the index or a RILA. On the other hand, using the index's historical performance solely to illustrate how a RILA works, and *in a fair and balanced way* (*e.g.,* by showing index performance relative to representative limits on gains and losses, as some RILA advertisements currently do) would be consistent with final rule 156, assuming those advertisements otherwise include appropriate caveats to ensure that the illustrations are not misleading and do not suggest that the illustrations show the performance of the RILA or a particular index-linked option.

2. Free Writing Prospectuses and Advertisements (Rules 433 and 482)

In addition to the prohibition against using materially misleading communications in connection with the offer or sale of any security, Congress has imposed advertising restrictions to the extent that certain advertisements are considered prospectuses under the Securities Act.[647] The Commission has stated that Congress imposed these restrictions so that investors base their investment decisions on the full disclosures contained in the *statutory* prospectus, which is intended to be the primary selling document.[648] However, these advertising restrictions require special considerations for many investment companies. Specifically, investment companies are uniquely situated in that the only ''product'' of the typical investment company is its shares, and ''because it is in continuous registration, any advertisement for such a company is a prospectus that is illegal unless it complies with statutory requirements.'' [649] Because of these restrictions, investors were unable to learn about the investment company itself, as they would about other companies, ''from advertisements of its products or policies or from widely disseminated annual reports to shareholders or similar publications.'' [650] In recognition of these problems, the Commission adopted specialized advertising rules for registered investment companies and business development companies (collectively ''funds''), including rule 482, which permits funds to provide advertisements and sales literature to investors without being accompanied or preceded by a statutory prospectus (''prospectus delivery requirements'') by treating such advertisements as prospectuses under section 10(b) of the Securities Act.[651] Accordingly, a rule 482 advertisement is a prospectus for purposes of potential civil liability under section 12(a)(2) of the Securities Act.[652] Currently, rule 482 is only available to funds, which are substantively regulated under the Investment Company Act. These substantive regulations provide a range of direct and indirect investor protections by, for example, regulating fund structure, holdings and operations, and reducing fund complexity and helping ensure that fund fees are reasonable in relation to services rendered.[653] Insurance companies offering non-variable annuities, like other non-fund issuers, are not subject to these requirements under the Investment Company Act.

Rule 482 also requires enhanced disclosures in fund advertisements designed to convey balanced information to prospective investors, including standardized methodologies that certain funds must use if they wish to include performance data in their advertisements.[654] These advertisements also generally are filed with the Financial Industry Regulatory Authority (''FINRA''), which has adopted rules providing standards for the fund advertising practices of its members and established and implemented procedures to review that advertising.[655] FINRA does not currently have rules that expressly require similar standards for non-variable annuities. As they are offered by registered investment companies, variable annuity advertisements are currently subject to rule 482, including the requirement to provide standardized performance information to the extent that they are providing performance data in their advertisements.[656]

Further, Congress expressly directed the Commission to adopt rules that permit registered investment companies to use prospectuses that include information the substance of which is not included in the statutory prospectus, and that are deemed to be

particularly sensitive to the specific date the investor purchased the RILA and when the crediting period ends for the index-linked option chosen by the investor. *See* Proposing Release at n.352. This further increases the likelihood of a current investor's investment experience deviating from the historical performance of a given RILA, even when that RILA had similar terms to those currently offered.

[647] *See, e.g.,* section 2(a)(10) of the Securities Act (defining prospectus): section 5(b)(1) of the Securities Act (prohibiting the use of any means or instruments of transportation to carry or transmit any prospectus relating to any security with respect to which a registration statement under the Securities Act has been filed unless such prospectus meets the requirements of section 10 of the Securities Act); section 10 of the Securities Act (stating information required in prospectus).

[648] *See, e.g.,* Advertising by Investment Companies, Investment Company Act Release No. 9811 (June 8, 1977) [42 FR30378 (June 14, 1977)] (''Investment Company Advertising Rules Proposing Release''); Amendments to Investment Company Advertising Rules, Investment Company Act Release No. 26195 (Sept. 29, 2003) [68 FR 57760 (Oct. 6, 2003)] (''482 Amendment Adopting Release'').

[649] *See* Investment Company Advertising Rules Proposing Release.

[650] *Id.* (stating that these concerns put investment companies on a different footing than insurance companies, ''since institutions such as . . . insurance companies which compete with investment companies for investor interest are not subject to the same limitations on their advertising as are investment companies,'' such that, absent rule 482's provisions, those limitations could restrict the availability to investors of information about all relevant investment possibilities).

[651] Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act. *See* section 2(a)(48) of the Investment Company Act [15 U.S.C. 80a–2(a)(48)]. When the investment company advertising rule was first adopted, it applied to advertisements of any registered investment company (including closed-end funds) so long as the investment company was engaged in a continuous offering, *i.e.,* ''is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act.'' *See* Advertising by Investment Companies, Investment Company Act Release No. 10852 (Aug. 31, 1979) [44 FR 52816 (Sep. 10, 1979)] (''1979 Adopting Release''). The rule was subsequently revised to include business development companies and omit the requirement that the investment company be engaged in a continuous offering. *See* Adoption of Integrated Disclosure System, Investment Company Act Release No. 12264 (Mar. 3, 1982) [47 FR 11380 (March 16, 1982)].

[652] *See* Investment Company Advertising Rules Proposing Release (citing 15 U.S.C. 771(2)).

[653] *See, e.g.,* section 12(d) of the Investment Company Act (restricting the ability of registered investment companies to invest in the securities of other investment companies); section 15(c) of the Investment Company Act (requiring directors to request and evaluate information reasonably necessary to evaluate the terms of advisory contracts); and section 26(f) of the Investment Company Act (imposing reasonability requirements regarding the fees and charges that may be imposed in connection with variable annuity separate accounts).

[654] In addition to standardized performance requirements, rule 482 also mandates certain disclosures and generally prohibits rule 482 advertisements from being accompanied by an application for investment in the investment company. *See, e.g.,* rule 482(b) and (c).

[655] Section 24(b) of the Investment Company Act [15 U.S.C. 80a–24(b)] requires the filing with the Commission of ''any advertisement, pamphlet, circular, form letter, or other sales literature'' for any registered investment company other than a closed-end fund. 17 CFR 270.24b–3 (''rule 24b–3'') relieves such funds of the obligation under the Investment Company Act to file advertisements and other sales materials with the Commission if those materials are filed with a national securities association (such as FINRA) registered under section 15A of the Securities Exchange Act of 1934 [15 U.S.C. 78o] that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising; *see also* FINRA Rule 2210.

[656] Rule 482(d).

permitted by section 10(b) of the Securities Act.[657] Thus, rule 482 was amended in 2003 to permit investment company sales literature that includes information not included in the statutory prospectus.[658] Congress has not provided a similar direction for issuers other than registered investment companies. However, the Commission has used its exemptive authority to permit the use of prospectuses that include information the substance of which is not included in the statutory prospectus for issuers that are not investment companies if the free writing prospectus meets the requirements of rules 433 and 17 CFR 230.164 (''rule 164'').[659] In addition to permitting free writing prospectuses that include information the substance of which is not in the statutory prospectus, rule 433 also permits seasoned issuers, that is, issuers of offerings registered on Form S–3, and other select issuers to use a free writing prospectus that is not subject to the prospectus delivery requirements, much like rule 482 permits for fund sales literature.[660] We stated in the Proposing Release that, under the proposal, the ability of RILA sales literature to be treated as ''free writing prospectuses'' would continue to be subject to rule 433 and rule 164, as well as any other applicable rule that permits a communication notwithstanding the ''gun jumping'' provisions of the Securities Act.[661]

As explained in the Proposing Release, we determined extending rule 482 to RILA issuers was not warranted currently. This conclusion largely followed from our understanding that the rule's emphasis on providing standardized performance data requirements would be conceptually difficult to apply to RILAs and inconsistent with current RILA advertising practices.[662] However, we sought comment on these questions and acknowledged that circumstances might change in the future.

Several commenters suggested that we amend rule 482 to extend its provisions to RILAs despite the concerns discussed in the Proposing Release.[663] Some of these commenters suggested that an extension of rule 482 to RILAs would remedy what they view as an improper dichotomy under the current rule 433 framework that impedes the ability of some insurance companies to engage in broad-based advertising for RILA offerings.[664] Specifically, these commenters stated that this framework often makes it practically impossible to do broad-based advertising (such as television commercials) for RILA offerings registered on Form S–1 due to the application of the prospectus delivery requirements to those advertisements.[665] Conversely, non-variable annuity offerings registered on Form S–3, or variable annuity options that can use rule 482, can be broadly advertised in print and on television because they are not subject to the prospectus delivery requirements. These commenters expressed the view that the purposes underlying this different treatment under rule 433 of seasoned issuers and well-known seasoned issuers (who can file on Form S–3) as compared to the treatment of non-reporting and unseasoned issuers (who must file on Form S–1) are not relevant to RILA offerings or the ability of a RILA investor to contextualize RILA advertisements.[666]

Thus, according to these commenters, amending rule 482 to include RILAs would bring regulatory uniformity both between RILAs whose offerings have, until this rulemaking, been registered on different forms (*i.e.,* Forms S–1 and S–3), and between RILAs and variable annuity options, and therefore reduce the burdens and risks that insurance companies face in applying the different advertising frameworks to their insurance offerings.[667] Some commenters suggested that not extending rule 482 to include RILAs would essentially result in a regulatory preference for variable annuity contracts over RILAs by perpetuating prospectus delivery requirements for some RILA issuers that do not apply to registered variable annuity contracts by virtue of their ability to rely on rule 482.[668] Additionally, one commenter suggested that, in addition to being consistent with the Commission's approach to revising Form N–4, expanding rule 482 to include RILAs would be consistent with congressional intent and that investors would benefit from standardizing the regulation of advertising and sales literature across RILA and variable annuity products.[669]

While some commenters acknowledged our concerns about the inapplicability of rule 482's standardized performance provisions to RILAs, they suggested that these concerns could be addressed either by excluding RILAs from those provisions, or subjecting the ability of RILA advertisements to use rule 482 to a condition that they not contain historical performance data for the RILA or any particular index-linked option.[670] Commenters stated that the mere absence of standard performance rules for RILAs should not be a bar to amending rule 482, with one commenter observing that closed-end funds may advertise using rule 482 even though standard performance rules do not exist for those investments.[671] Commenters also suggested that the Commission could exercise regulatory oversight of RILA advertisements by conditioning their ability to use rule 482 on review by FINRA or, in the alternative, review by the Commission.[672] One commenter suggested that, in addition to such regulatory review, the ability of RILA advertisements to use rule 482 could be conditioned upon other criteria, such as performance principles that ensure that performance presentations are not misleading, or requiring that RILAs

[657] 15 U.S.C. 80a–24(g); *see also* National Securities Markets Improvement Act of 1996, Public Law 104–290, Section 204.

[658] *See* 482 Amendment Adopting Release at Section II.A.

[659] *See* Securities Offering Reform, Securities Act Release No. 8591 (Jul. 19, 2005) [70 FR 44722 (Aug. 3, 2005)] (''Securities Offering Reform'') at Section III.D.3.b.iii(C)(2)(a). Rule 164 generally permits the use of a free writing prospectus where an eligible user has filed a registration statement, the other requirements of rule 164 are met, and the conditions of rule 433 are satisfied. *See id.* at n.212 and accompanying text.

[660] RILAs registered on Form S–1 are subject to prospectus delivery requirements when using free writing prospectuses pursuant to current rule 433.

[661] *See* Proposing Release at n.356.

[662] *See* Proposing Release n.356 and accompanying text (noting that while variable annuity marketing materials frequently utilize standardized performance returns, this is not the case with RILA advertisements, which typically market RILAs on other bases that are less amenable to standardized performance metrics, for example, highlighting that these are flexible products whose features can be customized to fit a particular investor's needs).

[663] *See* CAI Comment Letter; ACLI Comment Letter; IRI Comment Letter; Gainbridge Comment Letter; VIP Working Group Comment Letter.

[664] *See* CAI Comment Letter; Gainbridge Comment Letter; ACLI Comment Letter.

[665] These considerations also apply to communications regarding registered MVA annuities.

[666] One of these commenters suggested that offerings of other registered annuity and life insurance products, including registered MVA annuities, may be similarly situated to RILAs. *See* CAI Comment Letter.

[667] *See* CAI Comment Letter; Gainbridge Comment Letter; VIP Working Group Comment Letter; IRI Comment Letter.

[668] *See* ACLI Comment Letter; Gainbridge Comment Letter.

[669] *See* Gainbridge Comment Letter.

[670] *See* CAI Comment Letter (stating that the Proposing Release correctly noted that RILA issuers do not utilize such performance metrics in RILA advertisements, so this condition would not be a substantive departure from existing practice); IRI Comment Letter; Gainbridge Comment Letter.

[671] *See* CAI Comment Letter; ACLI Comment Letter; VIP Working Group Comment Letter.

[672] *See* CAI Comment Letter; Gainbridge Comment Letter; VIP Working Group Comment Letter.

meet certain standards applicable to variable annuity products, such as a requirement that rates and fees be reasonable in relationship to the services rendered and risks assumed under the contract.[673]

A number of these commenters suggested that if the Commission were unwilling to amend rule 482 to include RILA sales literature, in the alternative, we should amend rule 433 to allow all RILAs to use free writing prospectuses without meeting the prospectus delivery requirements in order to make such requirements consistent for all RILA issuers without regard to their seasoned status.[674] One commenter stated that, at a minimum, the Commission would need to amend rule 433 in order to maintain the status quo by explicitly exempting RILA offerings that are registered on Form N–4 by issuers who file reports pursuant to section 15(d) of the Exchange Act from the prospectus delivery requirements.[675] Absent such an amendment, the rulemaking would have the effect of imposing new, universal prospectus delivery requirements in connection with RILA marketing materials, even for RILA issuers that would otherwise be eligible to rely on rule 433 by virtue of registering on Form S–3. This commenter suggested that changing the status quo in this way would be unduly restrictive and inconsistent with our approach to other securities offerings.

Consistent with the proposal, we have determined not to extend rule 482 to RILA issuers at this time. As discussed, commenters raised broader concerns about the impact of the prospectus delivery requirements in rule 433 and how they may operate to impede the ability of some insurance companies to engage in broad-based advertising for RILA offerings. Commenter suggestions that we amend rule 482 to include RILA advertising (so that *all* insurance companies would be permitted the ability to provide RILA sales literature to investors without being accompanied or preceded by a summary or statutory prospectus), subject to certain conditions, would benefit from further consideration, and the Commission invites further engagement on these issues.[676] Factors to consider in any future proposal regarding amendments to rule 482 would include the nature and scope of any applicable conditions, the benefits of any such potential conditional expansion of rule 482, and the potential risk of misleading investors.

In response to commenters, however, we are, in a modification from the proposal, making a technical amendment to rule 433 in order to maintain the status quo for insurance companies that can meet that rule's conditions to use a free writing prospectus in connection with the offering of non-variable annuities without meeting the prospectus delivery requirements, notwithstanding their use of Form N–4 going forward.[677] It would not be appropriate to subject non-variable annuity offerings to a categorically different regulatory treatment than offerings of other seasoned issuers or to deprive those insurance companies that are considered seasoned issuers of the ability to rely on the provisions of rule 433 to use a free writing prospectus without complying with the prospectus delivery requirements.[678] It is therefore necessary and appropriate in the public interest and for the protection of investors to amend rule 433 to provide that an insurance company may use a free writing prospectus without needing to meet the prospectus delivery requirements with respect to those non-variable annuity offerings registered on Form N–4 where the issuer would otherwise be eligible to use Form S–3 pursuant to that form's General Instructions I.B.1, I.B.2, I.C, or I.D.[679] Consistent with the current requirements applicable to these non-variable annuity offerings, these free writing prospectuses can be used after a registration statement has been filed and may also include information the substance of which is not included in the registration statement.[680]

H. Existing Commission Letters

Certain Commission letters, or portions thereof, providing 3–13 Exemptions in connection with the registration of an offering of RILAs and registered MVA annuities on Form S–1 will be withdrawn or rescinded in light of the change to permit RILAs and registered MVA annuities to provide SAP financial statements on final Form N–4 in the same way that other insurance companies offering variable annuities are permitted on current Form N–4. On the compliance date of the final amendments, some letters, or portions thereof, will be moot, superseded, or otherwise inconsistent with the final amendments and, therefore, will be withdrawn or rescinded.

Commenters generally supported or stated that they did not oppose withdrawing or rescinding these 3–13 Exemptions.[681] Some commenters agreed that the 3–13 Exemptions extended to RILAs would no longer be needed in light of the change to permit RILAs to register on Form N–4 and provide SAP financial statements in the same way that Form N–4 currently permits other insurance companies registering variable annuities to provide financial statements.[682] One of these commenters agreed with a statement in the Proposing Release that the 3–13 Exemptions previously granted to registered MVA annuities would be withdrawn or rescinded to the extent that offerings of those securities are permitted to be registered on Form N–4.[683] Another commenter stated that these 3–13 Exemptions should not be withdrawn or rescinded until after the final compliance date.[684] As proposed, the exemptions provided in the letters outlined below will not be rescinded or withdrawn until the compliance date.

We are not withdrawing or rescinding 3–13 Exemptions, or portions thereof, providing exemptions from the GAAP financial statement requirements with respect to annuity products other than RILAs and registered MVA annuities. With respect to RILAs, this is consistent

[673] *See* VIP Working Group Comment Letter. Congress has expressly prohibited the sale of any variable annuity contract unless the fees and charges deducted under the contract, in the aggregate, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company. Congress further requires that insurance companies represent this in a variable annuity contract's registration statement. 15 U.S.C. 80a-26(f)(2)(A). These provisions do not apply to RILAs.

[674] *See* CAI Comment Letter; ACLI Comment Letter; Gainbridge Comment Letter.

[675] *See* CAI Comment Letter.

[676] *See supra* footnotes 670–673 and accompanying text.

[677] Additionally, to the extent an insurance company otherwise meets the requirements of a well-known seasoned issuer under rule 405, that issuer would be able to rely on rule 422(b)(1)(iii) in connection with an offering of non-variable annuities, notwithstanding its registration of the offering on Form N–4.

[678] While commenters only specifically raised this issue with respect to RILAs, by moving registered MVA annuities to Form N–4 as well, applying this change to registered MVA annuity offerings is necessary to preserve their ability to communicate under rule 433 for the same reason the change is necessary for RILA communications.

[679] *See* section 10(b) of the Securities Act and final rule 433(b)(1)(v). We also are amending paragraphs (b)(1)(i) and (ii) of the rule to correct citations to Form S–3 and Form F–3.

[680] *See* final rule 433(a) and (b).

[681] *See* CAI Comment Letter; IRI Comment Letter; VIP Working Group Comment Letter.

[682] CAI Comment Letter; IRI Comment Letter.

[683] CAI Comment Letter. *See also* Proposing Release at Section II.G and n.363 (stating that ''if [insurance companies were required to use Form N–4 for registered MVAs], 3–13 Exemptions provided in connection with registered MVAs would be withdrawn or rescinded for the reasons discussed in'' Section II.G of the Proposing Release).

[684] VIP Working Group Comment Letter.

with the proposal.[685] Commenters agreed with this approach.[686]

On the compliance date of the final amendments, 3–13 Exemptions that will be withdrawn or rescinded include all of the 3–13 Exemptions listed below to the extent they relate to RILAs and registered MVA annuities.

TABLE 9—EXISTING COMMISSION LETTERS

Name	Date
Great-West Life & Annuity Insurance Company and Great-West Life & Annuity Insurance Company of New York	9/28/2018
Athene Annuity and Life Company	9/28/2018
Allianz Life Insurance Company of North America and Allianz Life Insurance Company of New York	9/28/2018
MONY Life Insurance Company of America	3/7/2019
Lincoln Benefit Life Company	3/15/2019
Symetra Life Insurance Company and First Symetra National Life Insurance Company of New York	8/8/2019
Forethought Life Insurance Company	10/17/2019
Nationwide Life Insurance Company	10/17/2019
Minnesota Life Insurance Co	6/11/2020
MEMBERS Life Insurance Co	11/6/2020
Transamerica Life Insurance Company and Transamerica Financial Life Insurance Company	2/11/2021
Midland National Life Insurance Company	8/12/2021
Wilton Reassurance Life Company of New York	9/30/2021
Union Security Insurance Company	1/11/2022
Protective Life Insurance Company and Protective Life and Annuity Insurance Company	10/14/2022
Everlake Life Insurance Company	10/21/2022
Fidelity & Guaranty Life Insurance Company and Fidelity & Guaranty Life Insurance Company of New York	3/17/2023
Delaware Life Insurance Company and Gainbridge Life Insurance Company	4/28/2023
Brighthouse Life Insurance Company of New York	9/21/2023
Jackson National Life Insurance Company and Jackson National Life Insurance Company of New York	9/26/2023
Eagle Life Insurance Company	9/29/2023
Pacific Life Insurance Company and Pacific Life & Annuity Company	3/1/2024
American General Life Insurance Company, The Variable Annuity Life Insurance Company, and The United States Life Insurance Company in the City of New York	5/28/2024

I. Technical Amendments to Forms N–3 and N–6

The Commission is adopting as proposed a technical amendment to Form N–6 to reflect the correct placement of an amendment to this form that the Commission adopted in 2020 in the release titled ''Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets'' (herein referred to as the ''Exempt Offering Framework Adopting Release'').[687] In that release, the Commission adopted, among other amendments, amendments to certain instructions associated with the Exhibits items of Form N–4 and Form N–6. The amendatory instructions in the Exempt Offering Framework Adopting Release erroneously referred to outdated Exhibits items of these forms. That is, the amendatory instructions referred to Items 24 and 26 respectively, instead of Items 27 and 30 respectively (as adopted by the Commission in earlier amendments to Forms N–4 and N–6 in the VASP Adopting Release).[688] The Commission received no comments on the proposed technical amendments. The final amendments to Form N–4 correctly reflect the placement of the amendment that the Commission adopted in the Exempt Offering Framework Adopting Release in Item 27 of the form instead of in Item 24. We are also adopting a technical amendment to Item 30 of Form N–6 to correctly reflect the placement of the amendment that the Commission adopted in the Exempt Offering Framework Adopting Release in this item instead of in Item 26.

In addition, we are adopting technical amendments to the definition of ''Summary Prospectus'' in Forms N–3 and N–6 to reflect the lack of subparagraphs in rule 498A(a). When these definitions were originally adopted, they inadvertently referred to subparagraphs that did not appear in rule 498A(a).[689]

J. Effective and Compliance Dates

The effective date for all rules and forms associated with the final amendments is September 23, 2024, which is 60 days from the date of publication of the final amendments in the **Federal Register**. As discussed in more detail below, the compliance date for the final amendments will be May 1, 2026, except with respect to rule 156 and the technical amendments to Forms N–3 and N–6. We are not providing a compliance period for rule 156 and the technical amendments to Forms N–3 and N–6 and compliance will therefore be required on the effective date.

We proposed a six-month delayed effective date for all amendments except for the final Form N–4, amended rule 498A, and technical amendments to Form N–6 which we did not propose to delay. Commenters generally supported or did not oppose the proposed effective date for final Form N–4, final rule 498A, or the technical amendment to Form N–6 and agreed that this approach was consistent with the RILA Act.[690] However, comments on the proposed 6-month delayed effective date for the remaining amendments were mixed. One commenter opposed delaying the effectiveness of the rule 485 amendments for six months.[691] This commenter stated that the rule 485 amendments should be effective before the calendar year-end of 2024 so that insurance companies could file under

[685] *See* Proposing Release at n.357.

[686] CAI Comment Letter; IRI Comment Letter.

[687] Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Investment Company Act Release No. 34082 (Nov. 2, 2020) [86 FR 3496 (Jan. 14, 2021)].

[688] *See* Exempt Offering Framework Adopting Release at amendatory instructions 50 and 51; *see also* VASP Adopting Release at Section II.C.4 (Table 6).

[689] *See* final rule 498A(a); *see also* VASP Adopting Release in the Text of Rule and Form Amendments. These amendments are ministerial, do not make any substantive modifications, and do not impose any new substantive recordkeeping or information collection requirements.

[690] *See, e.g.,* CAI Comment Letter; IRI Comment Letter.

[691] *See* VIP Working Group Comment Letter.

rule 485(a) ahead of their May 1, 2025 annual update. We also received a number of comments requesting that we clarify the practical effect of having two effective dates.[692] For example, one commenter asked whether final rules implementing the final Form N–4 framework and subject to the six-month delayed effective date (*e.g.,* final rules 415, 485, 497) would nevertheless apply on the effective date to RILAs registered on Form N–4.[693] Specifically, this commenter asked whether, as of the effective date, RILAs registered on the final Form N–4 would be required to pay registration fees in arrears consistent with final rule 456 and final Form 24F–2, file post-effective amendments and supplements consistent with final rules 485 and 497; and be exempt from three-year refreshes consistent with final rule 415.

We reasoned in the proposing release that the six-month delayed effective date for certain amendments would provide the Commission with the necessary time to prepare the EDGAR system to accommodate transitioning RILA offerings onto the proposed framework. After further consideration and preparation, we have determined that the EDGAR system will be ready to accommodate the transition as of the effective date and an additional 6-month delayed effective date for certain amendments will be unnecessary. A single effective date for all of the amendments adopted in this release will provide filers with a simpler timeline that reduces confusion about the logistics of filing.

We proposed a compliance date of one year after publication of the final amendments in the **Federal Register**.[694] All initial registration statements and post-effective amendments that were annual updates to effective registration statements on Form N–4 and filed after the proposed compliance date under the proposal would have been required to comply with the amendments. We also proposed that RILAs that had previously registered offerings of securities on Form S–1 or Form S–3 would file a post-effective amendment to their registration statement pursuant to rule 485(a) at the time of their next annual update following the compliance date, using final Form N–4.[695]

Commenters generally supported the proposed timeline or supported the proposed timeline except as applied to certain amendments. In particular, one commenter stated that the compliance date would allow sufficient time for all insurers to prepare for compliance with the final amendments, but urged the Commission to modify the approach to better accommodate insurance companies currently registering RILA offerings on Form S–3.[696] The Commission proposed that compliance would be required in the first annual update after the compliance date but, because an annual report on Form 10–K operates as an annual update to a registration statement filed on Form S–3 and must be filed before an annual update to a registration statement on Form S–1, the commenter asserted that this approach would unfairly result in a shorter compliance period than that of a Form S–1 registrant (on or before December 31, 2025 and May 1, 2026, respectively). The commenter suggested that we should not consider these Form 10-Ks annual updates for purposes of complying with the final amendments.

We agree that RILA filers should not have different compliance periods based on whether they currently file on Form S–1 or S–3 and did not intend to provide different compliance periods based on the Securities Act form an insurance company is currently using. We therefore are providing a compliance date of May 1, 2026 rather than an approach based on the timing of an insurance company's annual update. Accordingly, all issuers of non-variable annuities that have previously registered offerings of securities on Forms S–1 or Form S–3 will be required to file a post-effective amendment to their registration statement pursuant to final rule 485(a) that will be effective on or before May 1, 2026, using final Form N–4.[697] Similarly, all initial registration statements and post-effective amendments filed on Form N–4 and effective on or after May 1, 2026 will be required to comply with the final amendments. This compliance period is designed to give all insurance companies sufficient time to comply with the proposed changes, including to update their registration statements; to prepare to use final rules 485 and 497 to update their registration statements and file prospectuses with the Commission; and to begin paying securities registration fees on final Form 24F–2. Nonetheless, issuers of non-variable annuities may choose to file on Form N–4 as early as the effective date (and will thereafter be required to comply with the final amendments).

The Proposing Release stated that, in appropriate circumstances, we would consider requests by registrants with respect to existing variable annuity contracts to file post-effective amendments pursuant to rule 485(b)(1)(vii) when these post-effective amendments make conforming changes to comply with the proposed amendments to Form N–4.[698] One commenter requested that we allow certain insurance companies, on a case-by-case basis, to forgo filing a rule 485(a) post-effective amendment entirely for insurance companies' stand-alone variable annuities on the grounds that the changes necessary to comply with the proposal may not be substantive.[699] After consideration of the final amendments to Form N–4, we have concluded it would be appropriate for registrants of existing variable annuity contracts that are not combination contracts that offer index-linked options or MVA options to file post-effective amendments pursuant to rule 485(b) to make conforming changes

[692] *See* CAI Comment Letter; VIP Working Group Comment Letter.

[693] *See* CAI Comment Letter.

[694] This compliance period would have applied for all of the amendments in the Proposing Release other than the technical amendment to Form N–6 discussed in Section II.I.

[695] *See* Proposing Release at n.372 and accompanying text.

[696] *See* CAI Comment Letter.

[697] A post-effective amendment filed under rule 485(a) [17 CFR 230.485(a)] generally becomes effective either 60 days or 75 days after filing, unless the effective date is accelerated by the Commission. Insurance companies registering offerings of non-variable annuities generally should be able to rely on template filing relief, in which case they will not need to file a rule 485(a) filing for each non-variable annuity. *See* 485(b)(1)(vii). Insurance companies with currently-registered non-variable annuities that only issue non-variable annuities and will be using the same CIK will be permitted to transition by filing a 485APOS or 485BPOS in EDGAR. Both of these submission types allow the entity to keep its current Securities Act file number, and both allow the filer to obtain new contract IDs and the needed Form N–4 investment company type designation in EDGAR. Insurance companies that will be acquiring new CIKs for their non-variable annuity offerings will need to transition by filing an administrative Form N–4 submission (which is only used for EDGAR purposes and is not an official filing) under a newly-issued CIK to obtain a new Securities Act file number, new contract IDs, and the Form N–4 investment company type (which is used for EDGAR purposes only) followed by a 485APOS or 485BPOS in EDGAR.

[698] Proposing Release at text accompanying n.373. A post-effective amendment filed under rule 485(b) may become effective immediately upon filing. A post-effective amendment may be filed under rule 485(b) if it is filed for one or more specified purposes, including to make nonmaterial changes to the registration statement. A post-effective amendment filed for any purpose not specified in rule 485(b) generally must be filed pursuant to rule 485(a). Under rule 485(b)(1)(vii), the Commission may approve the filing of a post-effective amendment to a registration statement under rule 485(b) for a purpose other than those specifically enumerated in the rule. The Commission's staff has been delegated the authority to approve registrants' requests under rule 485(b)(1)(vii). 17 CFR 200.30–5(b–3)(1).

[699] *See* CAI Comment Letter.

to comply with the amendments to Form N–4.

Commenters were mixed regarding our proposed approach of not having a separate Inline XBRL compliance period. One commenter supported the proposed approach, stating that service providers are accustomed to Inline XBRL requirements and will be able to transition RILAs within our proposed compliance period.[700] Another commenter opposed having the same compliance period for the Inline XBRL requirements and the other final amendments, stating that RILA issuers without variable products will not be familiar with Inline XBRL.[701]

We are not creating a separate, longer compliance period for filers to comply with the Inline XBRL requirements because we have determined that compliance by May 1, 2026 is feasible. Insurance companies already have experience with Inline XBRL tagging. In this regard, 22 of the 23 insurers that issue RILAs also offer products that are subject to tagging requirements on Forms N–3, N–4, or N–6 or otherwise have experience tagging registration statements.[702] Further, although we permitted a phased-in compliance date for Inline XBRL tagging in connection with the variable product summary prospectus rulemaking, we reasoned in that rulemaking that we could collect better data as a result because we could observe the new disclosures and create better taxonomies prior to the end of the XBRL compliance period, which in turn could lead to more accurate tagging and increased comparability of tagged disclosures.[703] The benefit of additional time is reduced in this rulemaking because we already update and release our taxonomies annually, which allows us to address any concerns about the quality of the tagged data we receive. In light of insurers' existing experience with tagging registration statements and our ability to update taxonomies, any increase in data quality gained from extending the Inline XBRL compliance period to May 2027 would be marginal compared to the impact on investors and the Commission from not having tagged data until 2027—specifically, reduced comparability, data aggregation, and a general ability to synthesize and consume non-variable annuity disclosures.

One commenter stated that registration on Form N–4 should be optional for registered MVA annuity offerings that no longer involve the issuance of new contracts (*i.e.,* closed blocks).[704] In the alternative, if such ''closed block'' registered MVA annuities were required to register on Form N–4, this commenter stated that the compliance period should be extended from 12 months to 24 months. As we discussed above, we are requiring all registered MVA annuities to register on Form N–4.[705] Providing a single compliance date of May 1, 2026, however, provides a similar period of time to the commenter's suggestion.

One commenter asked that we clarify whether a registrant can choose to comply with only a portion of final Form N–4 prior to the end of the compliance period.[706] For an insurance company that continues to use either Form S–1 or Form S–3 for non-variable annuity offerings prior to the compliance date, the requirements of those forms and associated rules will continue to apply until the insurance company begins using Form N–4. An insurance company that uses Form N–4 for non-variable annuity offerings must comply with all of the requirements of final Form N–4 and associated rules, including, for example, filling fees on Form 24F–2, after the effective date, provided that the insurance company is not required to comply with Inline XBRL tagging requirements until the compliance date. The Commission has taken a similar approach in other contexts with respect to early compliance by issuers.[707]

In a change from the proposal, we are not providing a compliance period for the amendments to rule 156 after the amended rule is effective.[708] The rule is designed to protect investors by addressing practices that could lead to materially misleading sales literature in connection with the offer or sale of a security, and historically the Commission has not provided a transition period to comply with amendments to this rule in light of investor protection concerns associated with the dissemination of materially misleading sales literature.[709] Further, we understand that a number of insurance companies already comply with rule 156 with respect to their offerings of non-variable annuities and so compliance with the rule should not impose significant additional burdens.[710] We are also not providing an additional compliance period for technical amendments to Forms N–3 and N–6, as these amendments entail no compliance burden.

We appreciate that these amendments will result in changes in practices for insurance companies, both in updating disclosures and in registering contract offerings. The final amendments also could result in insurance companies reviewing their sales literature in light of the final amendments to rule 156. In considering these changes, insurance companies are encouraged to contact the Commission staff with any questions they may have about these issues.

III. Other Matters

Pursuant to the Congressional Review Act,[711] the Office of Information and Regulatory Affairs has designated the final amendments as a ''major rule'' as defined by 5 U.S.C. 804(2). If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

IV. Economic Analysis

A. Introduction

We are mindful of the costs imposed by, and the benefits obtained from, our rules. Section 3(f) of the Exchange Act, section 2(b) of the Securities Act, and section 2(c) of the Investment Company Act state that when the Commission is engaging in rulemaking under such titles and is required to consider or determine whether the action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, the Commission shall consider whether the action will promote efficiency, competition, and capital formation, in addition to the protection of investors. Further, section 23(a)(2) of the Exchange Act requires the Commission to consider, among other matters, the

[700] *See* XBRL US Comment Letter.

[701] *See* CAI Comment Letter.

[702] *See* Proposing Release at n.472 and accompanying text.

[703] *See* VASP Adopting Release at n.917 and accompanying text.

[704] *See* CAI Comment Letter.

[705] *See supra* Section II.B.

[706] *See* VIP Working Group Comment Letter.

[707] *See* VASP Adopting Release at paragraph preceding n.994.

[708] While the Proposing Release did not specifically discuss a compliance period for the proposed amendments to rule 156, we stated that the compliance period would apply for all of the amendments in the release other than the technical amendments to Form N–6. *See* Proposing Release at n.371.

[709] This approach is consistent with our past practice regarding the rule's compliance date. *See* Tailored Shareholder Reports Adopting Release at Section II.J.

[710] At all times the Federal securities laws prohibit materially misleading communications in connection with the offer or sale of any security (including non-variable annuity offerings). *See* 15 U.S.C. 77q(a); 15 U.S.C. 78j(b); rule 10b–5.

[711] 5 U.S.C. 801 *et seq.*

impact such rules would have on competition and states that the Commission shall not adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

We are adopting amendments to our rules designed to carry out the requirements of Section 101(b) Division AA, Title I of the Consolidated Appropriations Act, 2023, to establish a registration form for RILAs. The Commission is amending the form currently used by most variable annuity separate accounts, Form N–4, to require insurance companies to register offerings of RILAs, as well as registered MVA annuities on that form as well. To facilitate this amendment, the Commission is also amending certain filing rules and making other related amendments to Form N–4 that apply to all issuers that use that form. The final amendments also require insurance companies to comply with rule 156, a current Commission rule that provides guidance as to when sales literature is materially misleading under the Federal securities laws to RILA and registered MVA annuity advertisements and sales literature.

While the Commission has developed a set of specific registration forms for variable insurance contracts and their issuers, insurance companies that offer non-variable annuities cannot use those forms because those issuers are not investment companies. Currently, insurance companies register the offerings of non-variable annuities on the Securities Act registration forms that are typically used to register traditional debt or equity offerings, Forms S–1 and S–3. Because Forms S–1 and S–3 are not tailored to the particular characteristics of non-variable annuities (or indeed insurance products more generally), these forms include a number of disclosure requirements that may be less material to investors when evaluating an insurance product like a RILA or registered MVA annuity and do not include line-item requirements mandating specific information that is of importance to investors in these products. The inclusion of disclosures that are of little relevance to their investors and the omission of information that is of importance to their investors limits the usefulness of the information investors currently receive about RILAs and registered MVA annuities and thus their ability to make informed investment decisions. In addition, Forms S–1 and S–3 require the use of GAAP financial statements, rather than the SAP financial statements that the State insurance regulators require. SAP financial statements, which focus on an issuer's ability to meet its obligations under its insurance contracts, as regulated by State law, provide material information for investors evaluating RILAs and registered MVA annuities and assessing an issuer's solvency. For those insurers that will be able to include or incorporate SAP financial statements in the Form N–4 registration statement, investors will benefit from the lower cost burdens on issuers provided by the use of SAP financial statements, to the extent that those savings are passed along to investors.

We have considered the potential costs and benefits that will result from the final rules in Section IV.C., as well as the potential effects on efficiency, competition, and capital formation in Section IV.D. Certain potential economic effects of the final amendments will stem from the statutory mandate, while others will stem from the discretion we are exercising in amending Form N–4, rule 498A, the filing and prospectus delivery rules, as well as the communication rules applicable to non-variable annuities. We also consider certain alternatives to our approach to implementing the statutory mandate, as discussed in Section IV.E. Where possible, we have attempted to quantify the economic effects. In some cases, however, we are unable to quantify the economic effects because we lack the information necessary to provide a reasonable and reliable estimate. For example, the final amendments could reduce the amount of time and effort investors require to make an investment decision. We do not have data on the extent to which the final amendments would reduce the amount of time and effort investors require to make an investment decision, or the value of that time and effort to investors. Also, because the final amendments facilitate not only the evaluation and comparison among non-variable annuities, but also facilitate the comparison of non-variable annuities to other annuity products, we may observe a change in investment in annuities. We do not have data that would allow us to estimate the extent to which we may observe a change in investment in annuities. Nevertheless, as described more fully below, the Commission is providing both a qualitative assessment and quantified estimate of the economic effects, where feasible. The Commission has sought comment on all aspects of the economic analysis, especially any data or information that would better enable a quantification of economic effects, and the analysis below takes into consideration relevant comments received.

B. Baseline

1. Affected Parties

The final amendments affect issuers of and investors in RILAs, issuers of and investors in registered MVA annuities, as well as issuers of and investors in variable annuities currently registered on Form N–4.

a. The Market for Annuity Products

As of May 1, 2024, there were 104 RILAs registered with the Commission issued by 29 insurance companies.[712] Among the 104 RILAs, 60 are stand-alone RILA products, while 44 are products with a RILA component. The number of RILAs registered on Form S–1 is 64, while the remaining 40 are registered on Form S–3. About 60% of the registered RILAs (63 RILAs) report SAP financials, with the remainder (41 RILAs) reporting GAAP financials.[713]

RILA contracts offer a variety of index-linked options. Specifically, RILA contracts offer index-linked options whose returns are linked, in part to, indices such as the S&P 500, Russell 2000, and NASDAQ–100. RILA contracts offer index-linked options with less well-known indices and ETFs as well, but with much lower frequency.[714]

As discussed in Section I, index-linked options whose returns are based, in part, on the same index may nevertheless have different elements that contribute to an investor's returns. Notably, different index-linked options whose returns are linked to the same index may offer different crediting periods (the set length of time for measuring growth of contract value based on the performance of the linked index—for example, one or three years), crediting methodologies, and buffer or floor levels.[715]

The final amendments also affect issuers of and investors in registered MVA annuities. As of May 1, 2024, there were 53 registered MVA annuities registered with the Commission issued

[712] Based on analysis of Forms S–1, S–3 and POS AM filed by RILA issuers.

[713] EDGAR Database. Certain Commission letters, or portions thereof, exempt certain insurance companies from the requirement to provide financial statements prepared in accordance with GAAP in connection with the registration of an offering of RILAs on Form S–1. *See supra* Section II.E.

[714] *See* Proposing Release at Section III.B.1. for more details.

[715] For more details, *see* Proposing Release at Section III.B.1.

by 16 insurance companies.[716] The number of registered MVA annuities registered on Form S–1 is 26, while the remaining 27 are registered on Form S–3. A little over one third of the registered MVA annuities (18 MVA annuities) report SAP financials, with the remainder (35 MVA annuities) reporting GAAP financials.

Table 10 provides information on the dollar amount of RILA sales over the past eight years.[717] RILA sales increased from $7.3 billion in 2016 to $47.4 billion in 2023, which represents a 549% increase between these seven years.[718] We do not have access to data on the sales of registered MVA annuities.

TABLE 10—SALES OF RILAS

[$ billions]

	2016	2017	2018	2019	2020	2021	2022	2023
Sales of RILAs	7.3	9.0	11.2	17.4	24.1	38.7	41.1	47.4

Source: *Fact Tank: Sales Data,* Life Insurance Marketing and Research Association, *https://www.limra.com/en/newsroom/fact-tank/* (using data from the U.S. Individual Annuity Sales surveys for Q4 for each year from 2016 through 2023).

Additionally, the final amendments affect issuers of and investors in variable annuities currently registered on Form N–4. As of 2019, there were a total of 2,396 unique variable annuity products offered by a total of 33 companies.[719] Net assets totaled $2,018.0 billion. Also in 2019, variable annuity sales totaled $98.3 billion.[720] Of the total sales, $62.8 billion (64% of total sales) were annuities within qualified plans and $35.5 (36%) were non-qualified annuities.[721] Investors purchased annuities across various distribution channels—captive agents, $34.5 billion, (35% of total sales); independent financial planners/NASD firms, $39.2 billion (40%); banks/credit unions, $9.2 billion (9%); wire houses/regional broker-dealers, $12.6 billion (13%); and direct response, $2.8 billion (3%).[722]

b. Issuing Insurance Companies

The number of insurance companies currently offering securities registered as RILAs with the Commission is 29, from 24 insurance company complexes. Out of these 29 insurance companies, 20 register RILAs on Form S–1, while the remaining 9 use Form S–3.[723] Insurance companies offer, on average, 4.3 RILA contracts, ranging from a maximum of 13 RILAs to a minimum of 1 RILA. The top five issuers offer 58 RILAs in total, or 56% of the number of existing RILAs.[724]

The number of insurance companies currently offering registered MVA annuities registered with the Commission is 16, from 14 insurance company complexes.[725] Out of the 16 insurance companies, 8 register MVA annuities on Form S–1 and 8 register MVA annuities on Form S–3.[726] Insurance companies offer, on average, 3.8 registered MVA annuity contracts, ranging from a maximum of 8 registered MVA annuity contracts to a minimum of 1 registered MVA annuity. The top five issuers offer 32 registered MVA annuities in total, or 60 percent of the number of existing registered MVA annuities.[727]

c. Investors

In 2023 there were an estimated 82.3 million individuals aged 45–64 and 59.3 million individuals aged 65 or older in the United States, representing 25 percent and 18 percent of the total population, respectively.[728] The number of individuals aged 65 or older is projected to be 63 million (19 percent of the projected population) in 2025, 76 million (22 percent of the projected population) in 2035, 80 million (22 percent of the projected population) in 2045, and 85 million (23 percent of the projected population) in 2055.[729]

Individuals may face meaningful burdens (*e.g.,* search costs) when trying to identify appropriate investments or savings products. Once identified, investors may face additional burdens (*e.g.,* acquiring and analyzing large amounts of information) to determine which specific investments or saving products among the ones identified allow investors to best meet their savings goals.[730] In addition, financial innovation has led to more complex financial products.[731] As a result of the burden associated with identifying appropriate investments, as well as the burden of acquiring and analyzing information to choose among the set of appropriate investments, investors may choose to limit the time and effort (*i.e.,* resources) expended to make investment decisions.

Decision making limitations may be particularly problematic in the context

[716] Based on analysis of Forms S–1, S–3 and POS AM filed by RILA issuers.

[717] *Fact Tank: Sales Data,* Life Insurance Marketing and Research Association, *https://www.limra.com/en/newsroom/fact-tank/* (using data from the U.S. Individual Annuity Sales surveys for Q4 for each year from 2016 through 2023).

[718] A recent survey of insurers found that 85% of respondents believed in 2021 that RILA sales would increase by 10% or more over the next three years, 10% believed that RILA sales would increase by less than 10%, while 5% believed that RILA sales would remain the same over that time period. No respondents indicated that they believed RILA sales would decrease. *See* discussion in Proposing Release at Section III.B.1.a.

[719] *See* Insured Retirement Institute Retirement Fact Book 2020 (''IRI Fact Book''). In 2018 (the last year for which this information is available in the 2020 edition), the total number of variable annuity contracts in force was 17.9 million, with an average individual contract value of $113,053.

[720] *Id.*

[721] *Id.*

[722] *Id.*

[723] As of May 1, 2024. Data obtained from Forms S–1, S–3 and POS AM filed by RILA issuers.

[724] Calculated using data obtained from Forms S–1, S–3 and POS AM filed by RILA issuers, as of May 1, 2024.

[725] Some of these insurance companies also issue RILAs, or annuity contracts offering index-linked options and MVA options. There are 38 insurance companies in total that issue RILAs, registered MVA annuities, or annuity contracts offering index-linked options and MVA options.

[726] As of May 1, 2024. Data obtained from Forms S–1, S–3 and POS AM filed by MVA annuity issuers.

[727] Calculated using data obtained from Forms S–1, S–3 and POS AM filed by MVA annuity issuers, as of May 1, 2024

[728] U.S. Census Bureau, Annual Estimates of the Resident Population for Selected Age Groups by Sex for the United States: Apr. 1, 2020, to July 1, 2023 (NC–EST2023–AGESEX–RES). We do not have demographic data on RILA investors. A 2022 survey found that 84 percent of individual annuity investors purchased their first annuity before age 65, including 45% who were between the ages of 50 and 64 years old. The average age of investors at first purchase of an annuity is 51. The average current annuity investor age is 74. *See* The Gallup Organization and Mathew Greenwald & Associates for The Committee of Annuity Insurers, *Survey of Owners of Individual Annuity Contracts* (2022), *available at https://www.annuity-insurers.org/wp-content/uploads/2023/07/Gallup-Survey-of-Owners-of-Individual-Annuity-Contracts-2022.pdf.*

[729] Projected Age Groups and Sex Composition of the Population: Main Projections Series for the United States, 2023 to 2100. U.S. Census Bureau, Population Division: Washington, DC.

[730] John Y. Campbell et al., *Consumer Financial Protection,* 25 J. Econ. Perspectives 91 (2011) (''Campbell et al. Paper''). Campbell et al. note that making decisions about financial products often requires considerable information on terms and conditions, particularly for financial decisions that are undertaken only infrequently.

[731] *See* Campbell Paper.

of saving for retirement because learning from experience is difficult. Investing in retirement products is only done infrequently and the outcomes of investing decisions are delayed, perhaps for decades, and are subject to large random shocks, so that personal experience is slow to accumulate and is contaminated by noise. Also, financial innovation can reduce the relevance of an investor's prior experiences. For example, prior experience investing in investment vehicles with unbounded returns would be less relevant for investing in RILAs (which have bounded returns) than it would be for investing in variable annuities (which have unbounded returns).[732]

2. Current Regulatory Requirements

As discussed in Section I above, non-variable annuities are securities for purposes of the Securities Act, and public offerings of non-variable annuities, therefore, must be registered with the Commission.[733] Unlike variable annuity contracts for which the Commission has adopted a specific registration form tailored to those products, insurance companies register non-variable annuity offerings on Form S–1 or Form S–3.

Form S–1 is available to any issuer (except foreign governments and issuers of asset-backed securities) to register securities for which no other registration form is authorized or prescribed. A registration statement on Form S–1 contains extensive disclosure about all aspects of the issuer's business and financial condition and consists of two parts: a prospectus (Part I), and additional information not required to be included in the prospectus (Part II), but that is publicly available on EDGAR. Form S–1 allows incorporation by reference only on a very limited basis. The prospectus must contain financial statements meeting the requirements of Regulation S–X, which generally requires audited financial statements prepared in accordance with GAAP.[734] Currently, disclosures about non-variable annuity offerings are largely unstructured. However, the audited financial statements in the prospectus, if prepared in accordance with GAAP, must be tagged in Inline XBRL if the Form S–1 contains a price or a price range.[735] Form S–1 must be declared effective by the Commission before any sales of the registered securities may be made. The time required for Commission review will depend on the number and complexity of Commission comments and the issuer's ability to adequately address those comments. The issuer must pay the Commission registration fee before it files a Form S–1. The amount of the fee is based on the proposed maximum aggregate offering price.[736] The issuer must indicate the amount of each type of security being registered and calculate the fee payable for each security.

Form S–3 is a ''short-form'' registration statement under the Securities Act that can be used by companies that have been subject to reporting obligations under the Exchange Act for at least one year and that satisfy certain other requirements.[737] Reporting obligations under the Exchange Act include audited financial statements prepared in accordance with GAAP and are structured in Inline XBRL. A registration statement on Form S–3 contains extensive disclosure about all aspects of the issuer's business and financial condition and consists of two parts: a prospectus which includes, either directly or incorporated by reference from the issuer's Exchange Act filings, detailed information about the issuer (Part I), and additional information not required to be included in the prospectus (Part II), but that is publicly available on EDGAR.

Registration using Form S–3 offers issuers advantages over registration using Form S–1. First, Form S–3 allows significant incorporation by reference, which allows for shorter prospectuses and makes Form S–3 easier to complete. Also, Form S–3 also allows for forward incorporation by reference, eliminating the need to file post-effective amendments to keep registration statements current.[738]

[732] *See* Campbell et al. Paper. The Campbell et al. Paper identifies five aspects of ''financial ignorance'' that may lead to poor investor decision making. First, investors may lack understanding of basic concepts necessary to make appropriate decisions. For example, investors appear to lack an understanding of diversification and the tradeoff between risk and return. Second, investors may not understand the terms of financial contracts. Third, it appears that, rather than using all available historical data to form views about future returns on alternative strategies, investors rely on their own specific experiences to form an opinion. Fourth, individuals appear to not understand their own difficulties with financial decision making. Finally, investors appear to not understand the incentives faced by other parties and the effect these incentives have on their strategic behavior. Other studies suggest poor investment decisions may result from investor uncertainty and lack of investor familiarity with different assets. For example, individuals may invest sub-optimally because individuals are unable, given historical experience, to form precise estimates of how they expect assets to perform in the future. *See, e.g.,* Raymond Kan and Guofu Zhao (2007). Optimal Portfolio Choice with Parameter Uncertainty, *Journal of Financial and Quantitative Analysis,* 27(3), 621–656. Rather than being unable to form precise estimates of how they expect assets to perform in the future, investors may not have, perhaps due to not having the requisite experience, the ability to form any expectation about how an asset will perform in the future. If investors' ambiguity is great enough, they simply may choose not to invest in particular assets. *See, e.g.,* David Easley and Maureen O'Hara (2009). Ambiguity and Nonparticipation: The Role of Regulation, *Review of Financial Studies,* 22(5), 1817–1843. Finally, investors may make poor investment decisions because they choose to overweight investment in assets with which they are familiar, and underweight, or exclude, investment assets with which they are less familiar. *See, e.g.,* Gur Hubberman (2001). Familiarity Breeds Investment, *Review of Financial Studies,* 14(3), 659–680 and Massimo Massa and Andrei Simonov (2006). Hedging, Familiarity, and Portfolio Choice, *Review of Financial Studie*s, 19(2), 633–685.

[733] *See supra* footnote 26 and accompanying text.

[734] Certain Commission letters, or portions thereof, exempt certain insurance companies from the requirement to provide financial statements prepared in accordance with GAAP in connection with the registration of an offering of non-variable annuities on Form S–1. As discussed in Section IV.B.1.a, 63 RILAs and 18 registered MVA annuities report SAP financials.

[735] *See* 17 CFR 229.601(b)(101)(i)(B).

[736] Generally, Form S–1 (or Form S–3) fees paid for a withdrawn registration statement are available to the issuer for use with its future registration statements. The amount available for use as an offset under rule 429 under the Securities Act equals the portion of the filing fee paid that is associated with any unsold securities of the same class registered on an earlier registration statement. Once a filing fee has been used as an offset, those unsold securities on the earlier registration statement are deemed deregistered. Non-variable annuities are continuously offered to investors, who in many cases are long-term investors that may make additional allocations or other investment decisions with respect to an investment in a RILA. Because non-variable annuity investors may make additional allocations or other investment decisions with respect to an investment, unless a prior non-variable annuity offering is completely unsold, non-variable annuity issuers may have increased difficulty in using filing fees associated with unsold securities of a prior offerings.

[737] The issuer must be either organized under U.S. law with its principal business operations in the United States or a foreign private issuer that reports under the Exchange Act using the domestic reporting forms. The issuer must have a class of securities registered under section 12(b) or 12(g) of the Exchange Act, or be required to file reports under section 15(d) of the Exchange Act. The issuer must have been subject to the reporting requirements of the Exchange Act and have filed all reports and materials required under sections 13, 14, and 15(d) of the Exchange Act for the 12 calendar months preceding the filing of Form S–3, and, with certain exceptions, must have timely filed all such reports and other materials required to be filed during the 12 calendar months and any portion of a month immediately preceding the filing of the registration statement. An issuer that meets all of the requirements of Form S–3 and that has a public float of $75 million or more (*i.e.,* ''seasoned issuers'') may use Form S–3 to register any offering of debt or equity for cash.

[738] One commenter noted that it can be more efficient and provide a better investor experience to register RILAs on Form S–3 rather than on Form S–1 because, unlike an S–1 prospectus, due to the fact that Form S–3 incorporates by reference company-related information from periodic reports filed on Forms 10–K and 10–Q, an S–3 prospectus concentrates on disclosures about the features, benefits, and risks associated with the RILA contract that is not impeded by extensive and irrelevant company-related disclosures. *See* CAI Comment Letter.

A Form S–3 filed by a non-WKSI must be declared effective by the Commission.[739] A Form S–3 receives either a full review or a targeted review of one or more sections of the registration statement. The time to resolve any Commission comments will depend on the number and complexity of the Commission's comments. An issuer must pay Commission filing fees before it files Form S–3. The amount of the filing fee is based on the proposed maximum aggregate offering price.

Under the Federal securities laws applicable to all securities (including non-variable annuity offerings), it is unlawful for any person to use materially misleading communications in connection with the offer or sale of any security.[740] Rule 156 is an interpretive rule that provides factors to be weighed in considering whether a statement involving a material fact is or might be misleading in the specific context of investment company sales literature, including literature relating to the sale of variable annuities.

As discussed in Section I above, in 2022 Congress enacted the RILA Act directing the Commission to adopt a new registration form for RILAs within 18 months of enactment (*i.e.,* the end of June 2024). If the Commission fails to adopt the form by the end of June 2024, the RILA Act provides that issuers can begin registering the offering of RILAs on Form N–4.

3. Market Practice

Annuities can play a role in helping investors save for retirement and receive guaranteed lifetime income during retirement.[741] There are multiple types of annuities available to help investors who have different financial goals or tolerances for risk save for retirement: fixed annuities (including registered MVA annuities), variable annuities, and RILAs. Generally, fixed annuities offer investors preservation of their investment by guaranteeing a minimum rate of return, but with little opportunity for asset growth. For example, during the accumulation phase,[742] a traditional (*i.e.,* book value) fixed annuity offers investors a fixed rate of return (known in advance) for a given period of time.[743] A registered MVA annuity is similar to a traditional fixed annuity, but the surrender value is subject to a market value adjustment based on interest rate changes. Fixed index annuities guarantee a certain rate of return, but also provide the potential for (limited) additional returns based on the performance of a specified market index.[744]

Variable annuities accumulate savings based on the performance of the underlying investment options chosen by an investor. Typically, investors are able to choose among investment options that pass on the returns of a wide variety of mutual funds such as equity funds, bond funds, funds that combine equities and bonds, actively managed funds, index funds, domestic funds, and international funds.[745] Depending on the investment options chosen, variable annuities can offer investors the greatest opportunity for asset growth, but they also can involve the greatest amount of investment-based risk, compared to other types of annuities.[746]

RILAs are an index-linked product that can be purchased by individual investors as part of both qualified and non-qualified retirement accounts.[747] RILAs combine features of fixed-index annuities and variable annuities. RILAs limit or reduce downside risk, but also limit upside performance. In exchange for giving up the complete protection of principal offered by fixed annuities, a RILA investor is potentially afforded greater upside potential than that provided by fixed annuities, though typically less than the potential upside of investing in the same index within a variable annuity.[748] RILAs allow investors some ability to customize a level of risk with which they are comfortable.[749] Like other annuities, RILAs have an accumulation phase followed by a payout phase. The accumulation phase is divided into one or more crediting periods.[750] Also like other annuities, after a ''surrender charge'' period (generally, 3 to 10 years following an investor's last premium payment), investors can usually surrender their contract at the end of any crediting period and receive full account value.[751] Investors, however, may lose money if they withdraw early from an investment option or, in some RILAs, from the contract within a specified period, as explained in Section II.C.6 above.

At the end of a crediting period, the issuer credits a RILA investor's contract value with ''interest'' (which can be either positive or negative) that is based on the performance of a specified index, subject to restrictions on the upside, through a cap and/or ''participation rate,'' as well as some form of downside protection.[752] If the index declines, the credited loss is lessened by either a floor (a maximum loss percentage), a buffer (index losses are credited to the RILA investor's contract value only when they exceed a certain threshold), or a downside participation rate (the loss credited to contract value is a certain percentage of the index loss).[753] RILA downside protection mechanisms typically do not change over time, whereas issuers may, and likely will, change upside limits on gains for both new contracts as well as existing contracts to reflect changing market conditions.[754] If a RILA contract offers downside protection in the form of a floor, then the increased volatility would expose the issuer to greater downside risk. To offset the increased downside risk, an issuer might choose

[739] Currently, none of the insurance companies that issue non-variable annuities currently claim status as a well-known seasoned issuer. *See supra* footnote 598.

[740] *See* 15 U.S.C. 77q(a); 15 U.S.C. 78j(b); 17 CFR 240.10b–5.

[741] *See* IRI Fact Book (arguing that annuities give investors the ability to create their own pensions). For example, as also discussed in the IRI Fact Book, death benefits provide principal protection in the event that an investor dies during a market downturn.

[742] *See id.* During the accumulation phase, also called the savings phase, capital builds up. In this phase, the investor pays premiums into the contract to accumulate assets.

[743] *Id.* The IRI Fact Book also notes that fixed annuities involve less investment risk because they offer a guaranteed minimum rate of interest. The minimum rate is not affected by fluctuations in market interest rates. Also, the surrender value is based on the annuity's purchase value plus credited interest, net of any charges. Currently, insurance companies with a minimum A.M. Best Insurance Ratings of A- offer fixed rate annuities that guarantee between 3.55% and 5.40% for a three-year period, and between 3.20% and 5.40% for a ten-year period. *Multi-Year Guarantee Annuities (MYGA),* Annuity Advantage (accessed Feb. 16, 2024, and filtered by ''State'' of ''- All''; ''Min AM Best'' of ''A-''; ''Years'' of ''10''; and ''Range'' of ''Exact''), *available at https://www.annuityadvantage.com/annuity-rates-quotes/multi-year-guarantee-annuities/?rating=4&years=10&pos=300&sort=guarantee_period_yield&limit=all.*

[744] *See id.*

[745] *Id.*

[746] Additionally, variable annuities often involve direct fees, such as insurance charges, and indirect expenses, including management and other fees and expenses associated with the underlying mutual funds in which the variable annuity subaccounts invest. *See* IRI Fact Book.

[747] Thorsten Moenig, *It's RILA Time: An Introduction to Registered Index-Linked Annuities,* 89 J. Risk & Ins. 339 (2022) (''Moenig Paper'').

[748] *See* IRI Fact Book.

[749] *Id.*

[750] *Id.*

[751] *Id.*

[752] *Id.*

[753] *Id. See also* Moenig Paper arguing that RILAs are structurally similar to fixed-index annuities except that RILAs may credit negative returns. A fixed-index annuity can be viewed as a special case of a RILA with a floor of 0%. The insurer provides full protection on the index return in exchange for a low cap rate (commonly between 2% and 4%).

[754] *See* Moenig Paper. One commenter agreed, stating that although index-linked options include multiple parts, including an index, crediting period, upside crediting feature and rate, downside protection feature and rate, and associated fees (as applicable), the only ''moving part'' is the upside protection. *See* CAI Comment Letter.

to reduce its upside risk by lowering cap rates.[755] If the RILA contract offers downside protection in the form of a buffer, then increased volatility would expose the issuer to reduced downside risk. The reduced downside risk might cause issuers to increase cap rates.[756]

Also, unlike variable annuities, most RILAs do not include any direct ongoing fees or charges to the investor. Insurance companies, however, potentially can benefit from offering RILAs in at least three ways.[757] First, insurance companies can benefit from a favorable imbalance between the downside protections that a RILA contract offers, and the upside limits the contract offers.[758] That is, insurance companies might benefit to the extent the cost of providing the downside protection is less than the value, to the insurance company, of the upside limits.[759] One study estimates an average annual cost to investors from the imbalance between the downside protections and the upside limits that a RILA contract offers is approximately 0.17% of the RILA investment amount.[760] Similarly, holding constant the other terms of the contract, insurance companies can benefit when a RILA offers index-linked options whose index for measuring performance is a price-based index that does not account for dividend payments. For example, if an investor chooses an index-linked option whose performance is based, in part, on the S&P 500 Price Return Index, the credited return may be based on the point-to-point change in the S&P 500, which does not include the dividend payments of the underlying stocks.[761] Also, we understand that, generally, insurance companies can benefit from offering RILAs by investing RILA proceeds into fixed-income securities such as corporate bonds, thereby earning a ''credit risk premium.'' [762]

While most RILAs do not include any explicit ongoing fees or charges to the investor, RILAs typically have charges for early or mid-term withdrawals. As discussed in Section II.C.3.b, charges for early or mid-term withdrawals could include surrender charges and contract adjustments.

RILAs differ from other annuity contracts in other ways as well. Variable annuities involve a direct investment of premiums into subaccount(s) that correspond to one, or more, of many mutual funds. RILA premiums, on the other hand, are not directly invested into the assets of the underlying index, and typically investors can only choose among index-linked options whose returns are based on a small number of mainstream indexes.[763] In terms of the returns an investor experiences, the issuer of a variable annuity has no contractual obligations to fund such returns, in that premiums are directly invested into subaccounts which in turn are invested in shares of underlying portfolio companies. On the other hand, the RILA issuer does have contractual obligations relating to the returns an investor experiences, taking into account RILA contracts' bounded return structures, because the RILA premiums are not directly invested in the assets of the underlying index. These obligations are short-term (*i.e.,* they are limited to the crediting period of the index-linked option the investor selects, which is usually one, two, three, or six years) and tied to the performance of a common index, so that issuers can hedge the embedded liabilities accurately through the financial markets.[764]

Like RILAs, registered MVA annuities have an accumulation phase divided into one or more crediting periods followed by a payout phase. Also like RILAs, registered MVA annuities apply contract adjustments upon withdrawals prior to term maturity. Unlike RILAs, however, registered MVA annuities' credited interest is not linked to the performance of an index. Registered MVA annuities offer a rate of return that is determined by the insurance company for a set period, subject to a specified minimum.[765] At the end of the period, the insurance company may

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[755] *Id.*

[756] *Id.*

[757] One commenter observed, without providing examples, that insurance companies utilize a variety of means to produce profit from RILAs. *See* ACLI Comment Letter.

[758] *See* Moenig Paper. One commenter agreed with our description, stating that RILAs are ''spread'' products, meaning that the issuer's profits are principally embedded in the structuring of the product and are not a portion of an overt fee or charge. The same commenter noted that there is an inextricable relationship between the limits on potential gains and the protection from potential losses while also stating that spreads cover expenses and compensate the insurer not only for the investment elements of the product, but liquidity, protection and other insurance features that are bundled together. *See* CAI Comment Letter. Another commenter stated that the amount of market participation or upside performance is oftentimes directly related to the amount of downside risk the investor wishes to assume. *See* Gainbridge Comment Letter. Also, one commenter noted that distribution costs are not recouped through the spread, but through explicit surrender charges. *See* CAI Comment Letter.

[759] We understand that insurance companies may use derivative securities to closely approximate the insurer's liabilities from a RILA contract at the end of each crediting period. *See, e.g.,* Moenig Paper and CAI Comment Letter. For example, for a RILA with both a floor and a cap, the insurance company can hedge its liability by purchasing a call option (with an appropriate strike price given the floor) and selling a call (with a higher strike price that is dependent on the cap). The insurance company may be able to offer a cap such that the proceeds from selling the call with the higher strike price exceed the cost of purchasing the call option with the lower strike price. For a RILA with a downside buffer (as opposed to a floor) and a cap, the process for insurance companies to hedge their liabilities is similar, but with a different mix of options. In the case of a RILA with a downside buffer and a cap, the insurance company could purchase a call option, sell a call option (with a higher strike price), and sell a put option (with a lower strike price, as appropriate given the downside buffer). In this case, the insurance company might be able to offer a cap such that the proceeds from selling the call and the put exceed the cost of the call option with the lower of the two strike prices. One commenter stated that insurance companies set downside protections and upside limits such that a favorable imbalance between the two does not exist. *See* CAI Comment Letter. Another commenter stated that RILAs are intended to produce revenue for insurance companies sufficient to cover the cost of doing business. *See* ACLI Comment Letter.

[760] *See* Moenig Paper; Public Filings on EDGAR. Staff examined 24 one-year term rates linked to the S&P 500 index, Nasdaq 100 index, Russell 2000 index, and MSCI EAFE and found results consist with the 0.17% estimate of the Moenig Paper. *See* discussion in Proposing Release, Section III.B.3.

[761] *See* Moenig Paper. The Moenig Paper provides the following example: assuming insurance companies hold the underlying securities, if stock prices rise by 7% on average over the crediting period, in addition to paying 2% in dividends, then the RILA account would be credited 7%, even though investors in the underlying stocks would earn a 9% return. When insurance companies rely on derivative securities, omitting dividend payments can also benefit insurers by reducing the cost of providing a given amount of downside protection (*e.g.,* through lower option prices). Comment letters were mixed regarding whether insurance companies benefit when a RILA offers index-linked options whose index for measuring performance is a price-based index. One commenter noted that insurance companies do not earn or keep any dividends paid by the companies whose securities comprise an index because insurance companies invest in derivatives, rather the underlying securities themselves. The same commenter also noted that while it is true that using a price return index lowers options costs for insurance companies, those lower costs are passed along to RILA investors in the form of greater participation in upside performance. *See* CAI Comment Letter. Other commenters offered an opposing view. For example, one commenter stated that the biggest ''drag,'' and benefit to the insurance company, on RILAs and all indexed annuities is the use of a price return index instead of a total return index. In particular, the commenter stated that the insurance company, in essence, gets the total return on its investments and passes along the lower price return, keeping the difference. *See* Johnson Comment Letter. Another commenter suggested that the use of price return indices misleads investors regarding RILA performance. *See* Lee Comment Letter.

[762] We understand that insurance companies can similarly benefit from offering registered MVA annuities to the extent insurance companies' investment yields exceed interest credited to investors. One commenter stated that insurance companies do not benefit from the entire credit risk premium when offering RILAs. The commenter stated that much of the credit risk premium is used to pass additional value to customers via greater participation in upside performance. *See* CAI Comment Letter.

[763] *See* Moenig Paper.

[764] *Id.*

[765] *See* IRI Fact Book.

offer a new rate for the next period.[766] Like RILAs, generally registered MVA annuities typically do not impose direct fees on the investor, other than surrender charges. Instead, insurance companies can benefit from the difference between what the insurance companies expects to earn on the proceeds from registered MVA annuity sales and what the insurance company has committed to paying out (*i.e.,* the ''spread'').[767]

Additionally, non-variable annuities and variable annuities differ with respect to their use of proceeds. As discussed in Section II.C.5, variable annuity proceeds are held in separate accounts insulated from the insurance company's general account and, therefore, are insulated from the issuer's general account creditors. Variable annuity proceeds in unitized sub-accounts must be invested as the investor chooses and returns are credited to the account directly. On the other hand, contract values, benefits, and guarantees provided by non-variable annuities are paid out of assets held in the insurance company's general account or a non-unitized separate account, and may not be insulated from the claims of the insurer's general creditors (and thus subject to the insurance company's claims-paying ability).

Also, non-variable annuity proceeds can be invested as the issuer sees fit. We understand that insurance companies are able to invest RILA proceeds in derivative securities that closely approximate the issuer's liabilities from RILA contracts.[768] In doing so, insurance companies are able to hedge away their risk at a low cost. Further, we understand that insurance companies can invest remaining proceeds into fixed-income securities (*e.g.,* corporate bonds) that allow them to earn a ''credit risk premium.'' [769] The credit risk premium can be an important source of benefits to RILA issuers.[770]

[766] *Id.* Generally, registered MVA annuities specify a minimum credited interest rate for the lifetime of the contract.

[767] *See* IRI Fact Book.

[768] *See* Moenig Paper. One commenter noted that investments supporting RILA contracts are not generally specifically earmarked to a contract, but rather are managed based on the insurer's aggregate reserves supporting all its RILA contracts. *See* CAI Comment Letter.

[769] *Id.*

[770] *Id.* One commenter noted that insurance companies do not benefit from the entire credit risk premium, stating that ''Much of this credit risk premium is used to pass additional value to customers via greater participation in upside performance.'' *See* CAI Comment Letter.

C. Benefits and Costs

1. Benefits

a. Use of Form N–4

Unlike variable annuity offerings that are registered on Form N–4, insurance companies register non-variable annuity offerings on Forms S–1 or S–3. Forms S–1 and S–3 include a number of disclosure requirements that are specific to the insurance company issuing the non-variable annuity that the Commission does not require in the registration statements for offerings of variable annuities.

The final amendments require that insurance companies use Form N–4 to register the offering of RILAs and registered MVA annuities and we are adapting Form N–4 for that purpose.[771] Because it is an existing form, non-variable annuity issuers and investors are familiar with Form N–4. As a result of expanding the scope of Form N–4 to address non-variable annuities, non-variable annuity offerings will be registered on the same form as variable annuities. Requiring insurance companies to register non-variable annuity offerings on Form N–4 leverages insurance-product specific disclosure requirements reflected in the form and also makes use of the summary prospectus layered disclosure framework the Commission adopted in 2020 for variable annuities.

The following sections discuss the specific benefits deriving from the contents and requirements of the form in detail. In addition to these benefits, expanding the scope of Form N–4 to include RILAs and registered MVA annuities will benefit investors by making it easier for them to evaluate and compare non-variable annuities, and also to compare other annuity products with non-variable annuities. For example, investors may require less effort to evaluate and compare annuity products that register using the same form and may find the focus of Form N–4 on insurance-product specific information helpful in evaluating and comparing these annuity products. Additionally, investors in combination contracts will benefit by receiving one prospectus that describes the entire contract and available investment options, rather than two prospectuses that separately describe variable and non-variable options (and that repeat information about contract features that variable- and non-variable annuity contracts have in common). To the extent that investors require less effort to evaluate and compare these annuity products, investors may be more likely to make decisions that better align with their investment goals. Commenters broadly agreed that the proposed amendments to Form N–4 would provide RILA investors with more meaningful and helpful disclosures as compared to the more generic disclosures required on Forms S–1 and S–3.[772]

One commenter, who agreed with the Commission's proposal to amend Form N–4 to include existing disclosures for registered MVA annuities that are filed on Form S–1 or S–3, requested that MVA issuers be permitted to continue to register MVA contracts no longer offered for sale to new investors on Form S–1 or S–3.[773] The commenter went on to state that the costs of transitioning a closed block of MVAs from Form S–1 or S–3 to Form N–4 could ''significantly outweigh the benefits.'' [774] We disagree with the commenter's statement that the costs of transitioning a closed block of MVAs from Form S–1 or S–3 to Form N–4 could significantly outweigh the benefits. By requiring rather than permitting insurance companies to register all MVA annuities on Form N–4, investors will benefit by having access to more tailored and comparable information necessary to make informed investment decisions.[775] For registered offerings of closed block registered MVA annuities, tailored disclosures will benefit investors when making additional investments in the contract or deciding how to reallocate their existing investment at the expiration of the MVA period.

b. Contents of Form N–4

The final amendments are designed to help investors make informed investment decisions regarding the annuity products that are registered on Form N–4. The registration process on Form N–4 uses a layered disclosure approach designed to provide investors with key information relating to the contract's terms, benefits, and risks in a concise and reader-friendly presentation, with access to more detailed information for those investors who want it. Providing investors with key information is particularly

[771] *See* Form N–4, proposed General Instruction B.1. Commenters broadly supported this element of the proposal. *See* discussion in *supra* Section II.A.

[772] *See* discussion in *supra* Section II.A. With respect to issuers that already provide the same or similar disclosures on Forms S–1 or S–3 as are required by the final amendments, the benefits of disclosure of that same information may be mitigated.

[773] *See* CAI Comment Letter.

[774] *See id. See also* IRI Comment Letter (stating that transitioning registered MVA annuities that are no longer offered or sold to new investors to Form N–4 would be unnecessary.)

[775] *See* discussion in *supra* Section II.B.

important in the context of annuity contracts such as RILAs, registered MVA annuities, and variable annuities because their structures are typically more complex than other types of investment products commonly sold to retail investors.

In particular, the final amendments update the contents of Form N–4 to specifically address non-variable annuities, including by: (1) amending the form's general instructions; (2) amending the requirements for front and back cover pages; (3) updating the Key Information Table (or ''KIT''); (4) providing new principal disclosures regarding non-variable annuity investment options; and (5) providing for new contract adjustment and fee disclosures. The final amendments also include certain other technical and conforming amendments to Form N–4 and related rules designed to accommodate the inclusion of non-variable annuity offerings on that form as well as requiring the insurance company to provide disclosure in response to the remaining items on Form N–4 to the extent applicable.[776]

General Instructions

The final amendments require RILA and registered MVA annuity offerings registered on Form N–4 to comply with the general instructions of that form, including requirements related to: (1) using document design techniques that promote effective communication; (2) organizing information to make it easier for investors to understand; (3) including information in the prospectus or SAI not otherwise required so long as the additional information is not incomplete, inaccurate, or misleading, and does not obscure or impede understanding of the information that is required; (4) requiring Form N–4 filers to define special terms used in the prospectus in any presentation that clearly conveys meaning to investors; (5) allowing insurance companies to describe multiple contracts that are essentially identical in a single prospectus; (6) making available the dates of both the prospectus and SAI; (7) providing an interactive data file related to certain information on the form; (8) requiring insurance companies to include active hyperlinks, or other means of facilitating access that leads directly to the relevant website, for an electronic version of the prospectus; and (9) the use of incorporation by reference. The general instructions are designed to require clear and consistent disclosure to investors about annuity contracts currently registered on the form and to make clear how filers must prepare and file their registration statements.

One commenter stated that the proposed amendments would delete the last sentence of General Instruction C.3.(a), which states that information required in the KIT or the overview section need not be repeated elsewhere in the prospectus. That commenter stated that excessive repetition adds to the length of the prospectus without any commensurate value to investors.[777] The final form amendments take commenter concerns into account and address areas where the discussion of the same or similar topics in multiple locations could be limited while continuing to promote the goal of highlighting key information about non-variable annuities and enhancing understanding of non-variable annuity features and risks.[778] Also, the final amendments, like the proposal, incorporate layered disclosure. The use of layered disclosure means that the disclosure requirements necessarily address particular topics in more than one location in the registration statement. Where this occurs, the disclosure requirements intentionally include summary disclosure in the first ''layer,'' and additional details building on the summary in the second ''layer.''

Clear disclosure benefits investors by making it easier for investors to evaluate and compare offerings. Concise and decision-useful disclosures can help facilitate the investment decision-making process. Also, the presentation of information in a consistent manner will facilitate not only the evaluation and comparison among RILA and registered MVA annuity offerings, but also will facilitate the comparison of non-variable annuities to other annuity products.[779] Further, certain investors, while aware of variable annuities, simply may not be aware of RILAs or registered MVA annuities as investment options. Presentation of information in a consistent manner on Form N–4 could increase investor awareness of non-variable annuities as an investment option.

Front and Back Cover Pages

The final amendments make certain changes to information currently required on the front and back pages of a prospectus for all registrants on Form N–4. Like variable annuities registered on Form N–4, RILAs and registered MVA annuities are required to present certain information on the front and back cover pages of the prospectus. The final amendments require several new cover page disclosures for all Form N–4 issuers. One set of changes provides additional information distinguishing among the investment options available in the annuities registering on Form N–4 and cross-reference the prospectus appendix that provides additional information about each option. These changes could help investors better understand what investment options are available under the contract, in an easily identifiable location. Some commenters suggested that the proposed cover page disclosures were too voluminous given the purpose of the front cover page and could cut against the form's layered disclosure approach, thereby reducing the benefits to investors.[780] The number of specific features and risks highlighted on the cover page is driven by the complex nature of the non-variable annuity being registered. Further, because these points are generalized on the cover page but discussed in more detail later in the prospectus, they are consistent with the concept of layered disclosure.

Some commenters also raised concerns about specific required front and back cover disclosures.[781] Generally, the disclosures highlight risks that are particularly prevalent in non-variable annuities. These new disclosures should benefit investors by putting them on notice of key considerations at the outset, helping investors make informed decisions.

Key Information Table

As required for current Form N–4 issuers, the final amendments require RILA and registered MVA annuity issuers to provide a Key Information Table in their registration statements. The KIT includes a summary of five areas: (1) fees, expenses, and adjustments; (2) risks; (3) restrictions; (4) taxes; and (5) conflicts of interest. The KIT is important summary disclosure for investors that is included in the prospectus, and the final amendments to the KIT requirements are intended to highlight important considerations related to non-variable annuities, including certain unique and/or opaque aspects of non-variable

[776] The technical amendments to Forms N–3 and N–6 discussed in Section II.I have no economic effects.

[777] *See* CAI Comment Letter.

[778] *See* discussion of comments related to repetition informing the final amendments in Section I.D.2.

[779] The consistent presentation of information also could facilitate information collection by third parties such as investment advisers and data aggregators who could then, in turn, provide information to investors.

[780] *See* discussion in *supra* Section II.C.1.

[781] *See* discussion in *supra* Section II.C.1.

annuities.[782] Consistent with our layered disclosure approach for variable annuities registered on Form N–4, non-variable annuity issuers are required to provide cross-references in the KIT to the location in the statutory prospectus where the subject matter is described in greater detail. Certain of the amended KIT requirements apply to all Form N–4 issuers. In particular, in a change from the current KIT requirements for Form N–4 issuers, the final amendments require that responses to various line items be presented in a Q&A format.[783] Some commenters stated that the format requirement would reduce the benefits of the KIT because it may reduce comparability and because answers provided may not always be concise.[784] As discussed above, because the KIT disclosures as amended continue to be brief, we anticipate that any negative effect that the Q&A format may have on comparability or conciseness will be limited.[785] In addition, as stated in the Proposing Release, the Q&A format should improve investor comprehension of variable and non-variable annuities and contract adjustment-specific topics based on the results of our quantitative investor testing.[786]

In a change for all Form N–4 issuers, the final amendments change the order in which the KIT appears relative to the Overview of the Contract disclosures in the prospectus. We received one comment on this aspect of the proposal. The commenter stated that the repetition of information required in the Overview of the Contract and KIT would reduce the benefits of the KIT.[787] We disagree that covering the same topics in the Overview of the Contract and the KIT would reduce the benefits of the KIT. The disclosure is included in both locations to allow the reader to understand the contract at a high level (in the Overview of the Contract), as well as key features and risks of the annuity whose offering is being registered (in the KIT). Further, KIT requirements that address the same topic in different contexts may aid investor understanding of complex disclosure, and this approach is consistent with a layered disclosure approach.

Overall, the final KIT requirements (like the KIT requirements for variable annuities prior to these amendments) are designed to provide a brief description of key facts about RILAs and registered MVA annuities in a specific sequence and in a standardized presentation that is designed to be easy to read and navigate. A standardized presentation that is designed to be easy to read and navigate benefits investors by making it easier for investors to evaluate and compare non-variable annuity offerings. Also, the standardized presentation of information could facilitate not only the evaluation and comparison among non-variable annuity offerings, but also could facilitate the comparison of RILAs and registered MVA annuities to other annuity products.

Principal Disclosure Regarding Index-Linked or MVA Options

The final amendments to Form N–4 require disclosures that will provide investors with information about all annuities whose offerings are registered on Form N–4 as well as with specific information about RILAs and registered MVA annuities and non-variable options under the contract. With regard to Form N–4 issuers generally, the final amendments require registrants to disclose market risk, early withdrawal risk, contract benefits risk, insurance company risk, and the risk of contract changes. With regard to specific information about non-variable annuities, the final amendments include requirements related to: (1) information about non-variable annuities generally and an overview of certain key elements of any index-linked option offered under the contract; (2) a more in-depth description of any index-linked investment options available under the contract; (3) the inclusion of an appendix that consolidates certain summary information related to any index-linked options and fixed options available under the contract (which will accompany similar information about variable options offered under a ''combination'' contract); and (4) certain principal risk disclosures relating to investing in the non-variable annuity contract that the prospectus describes.

The final requirements are designed to provide additional information regarding the risk of investing in Form N–4 products generally, as well as the unique aspects of non-variable annuities and certain summary and detailed information about index-linked options available under a non-variable annuity contract. The information should benefit investors by making it easier for investors to evaluate and compare variable and non-variable annuity products registered on Form N–4. The required disclosure relating to index-linked and fixed options available under a contract should benefit investors by facilitating the comparison of these investment options to other investment options available under the contract, as well as to investment options that other non-variable annuity contracts offer.

The final amendments permit insurance companies to disclose current upside rates in the prospectus either by disclosing the information directly in the prospectus, as proposed, or by including a website address where the current upside rates can be found and incorporating by reference the information on the website into the prospectus.[788] Investors likely will find it more efficient to obtain current upside rates on the insurer's website identified in the prospectus than to review a potentially high number of prospectus supplements. It also will be familiar to many investors because this is the approach that many RILA investors currently use to obtain information about current upside rates. Moreover, allowing insurance companies to disclose current upside rates on a website and to incorporate this information by reference into the prospectus also will retain prospectus and registration statement liability, and ready accessibility of information that is a core aspect of the RILA offering. It will also accommodate RILA issuers' practice of changing current upside rates in response to market conditions. Because the approach we are adopting is consistent with current practice, we anticipate that all insurance companies will choose to use the website posting approach to disclose current upside rates instead of disclosing such information directly in the prospectus. To the extent the approach we are adopting is consistent with current practice, the benefits discussed above would be reduced.

Addition of Contract Adjustments and Other Amendments to Fee and Expense Disclosures

RILA and registered MVA annuity investors have the ability to withdraw or transfer their money before the end of a

[782] Many of the summary points presented in the KIT are discussed in greater detail in other parts of the form. In this way, the KIT is an integral part of the layered disclosure approach the Commission traditionally has taken with annuity products. To ensure that the KIT serves this function effectively, final rule will delete Form N–4's general instruction stating that where the discussion of information required by the Overview of the Contract (currently Item 3) or KIT (currently Item 2) also responds to the disclosure requirements in other items of the prospectus, registrants need not include additional disclosure in the prospectus that repeats the information disclosed in the Overview of the Contract or the KIT. *See supra* footnote 163 and accompanying text.

[783] Currently, such format is suggested but not required. *See* Form N–4, General Instruction C.3.(c).

[784] *See* ACLI Comment Letter; CAI Comment Letter.

[785] *See* discussion in *supra* Section II.C.3.a.

[786] *See supra* footnote 160.

[787] *See* discussion in *supra* Section II.C.2.

[788] Final Form N–4, Instruction 1 to Item 6(d)(2)(ii)(B).

crediting period. If amounts are removed from an index-linked option before the end of a crediting period, typically an insurance company will apply an IVA to the investor's contract value. The IVA, which adjusts the contract value based on a formula, typically changes with market conditions throughout the crediting period and may adjust daily. Similarly, a positive or negative market value adjustment could apply if amounts are partially or fully withdrawn from the contract or from an MVA option before the end of a specified period. These contract adjustments, whose calculation varies by insurance company, may have a positive or negative effect on the value of the contract.

The final amendments to Form N–4 require specific disclosures with respect to contract adjustments. Currently, Form N–4 requires variable annuity registrants to provide comprehensive information on the fees and expenses that investors will pay when buying, owning, and surrendering a contract, including expenses paid each year during the time the investor owns the contract. Although RILAs and registered MVA annuities typically do not charge the explicit fees and expenses common to variable annuities, they do typically utilize contract adjustments. Since negative adjustments may result in substantial costs to investors, it is important to include a detailed description of contract adjustments in the registration statement.

Specifically, the final amendments expand current disclosure requirements to address contract adjustments that could affect investors' contract value when buying, owning, and surrendering or making withdrawals from an investment option. The final amendments also require certain other specific disclosures about contract adjustments, such as requiring disclosures about the maximum potential loss that an investor could experience in connection with a negative contract adjustment.

Some commenters opposed certain changes to Item 4 and Item 7, arguing that the changes would mischaracterize the nature or magnitude of the quantities being disclosed, thereby reducing the benefits of the disclosures to investors.[789] The required disclosures help ensure that investors have access, in one place, to full disclosure regarding the economic consequences of withdrawing money from an index option or the contract. These disclosures will benefit investors by enabling them to better evaluate the costs of purchasing and owning annuity contracts, including non-variable annuities. In addition, these disclosures can make less-informed investors aware of non-variable annuities' unique characteristics, which could increase investor understanding of non-variable annuities as an investing option.

Some commenters on the proposal raised concerns about the inclusion of the maximum potential loss as part of the fee table disclosure requirements in Item 4, stating that contract adjustments do not reflect fees.[790] One commenter further stated that characterizing contract adjustments as a fee or charge is confusing.[791] The final amendments clarify the exposition within Item 4 by presenting information related to the maximum potential contract adjustment in a separate ''adjustments'' table. Further, the description of the new table makes it clear that these contract adjustments are in addition, and thus distinct, from fees. As a result, the revised disclosure should mitigate the concerns raise by commenters on the proposal. At the same time, addressing contract adjustments in the Item 4 disclosure—and clearly distinguishing them from fees—will alert an investor to the possibility of experiencing a contract adjustment, in addition to paying certain fees, if the investor removes money prematurely from an index-linked option or an MVA option, or the contract.[792] Therefore, including this information in Item 4 could benefit some investors by allowing them to more easily consider the economic consequences of removing amounts from an investment option before the end of a crediting period.

Other Amendments to Form N–4

The final amendments include certain other amendments to Form N–4 and related rules designed to accommodate the inclusion of RILA and registered MVA annuity offerings on Form N–4. These include amendments to Form N–4's facing sheet, definitions, exhibit list, and required representations, as well as amendments to certain Securities Act rules. Because these other amendments to Form N–4 and related rules are designed to accommodate the inclusion of non-variable annuity offerings on Form N–4, the benefits that could accrue as a result of these other amendments are those that result from RILA issuers registering offerings on Form N–4 rather than Form S–1 or Form S–3. For example, amending Form N–4 and related rules to accommodate the inclusion of non-variable annuity offerings on Form N–4 benefits investors because Form N–4 should make it easier for investors to evaluate and compare non-variable annuities, and also to compare other annuity products with non-variable annuities.

The final amendments also amend Form N–4's required exhibits list to add new Item 27(p) for all issuers, which requires the filing of any power of attorney included pursuant to rule 483(b). While this exhibit is already required to be filed with a Form N–4 registration statement under rule 483(b), practices differ regarding the placement of a required power of attorney exhibit within the exhibit list. This amendment will benefit investors in comparing these exhibits for all annuity products whose offerings are registered using Form N–4 by standardizing the location of these exhibits in the registration statement. Facilitating the comparison of annuity products could benefit investors by helping them to invest in non-variable annuities in a manner that is consistent with their overall financial needs and objectives.[793]

The final amendments also add new Item 31A in Form N–4 to require census-type information regarding non-variable annuities offered in connection with the applicable registration statement. Under this new item, insurance companies have to provide information regarding any non-variable annuity offered through the registration statement, as of the most recent calendar year-end, including (1) the name of each contract; (2) the number of contracts outstanding; (3) the total value of investor allocations attributable to index-linked or fixed options; (4) the number of contracts sold during the prior calendar year; (5) the gross premiums received during the prior calendar year; (6) the amount of contract value redeemed during the prior calendar year; and (7) whether the contract is a combination contract.

One commenter stated that the information in Item 31A would not be useful to investors in making investment decisions and would require insurance companies to publicly reveal ''private and confidential'' information that could be used by competitors. We

[789] *See* discussion in *supra* Section II.C.6.

[790] *See, e.g.,* CAI Comment Letter; VIP Working Group Comment Letter; Gainbridge Comment Letter.

[791] *See* CAI Comment Letter (stating that characterizing maximum potential loss due to a negative contract adjustment as a fee or charge is ''inaccurate and far more confusing than informative'').

[792] Additional information regarding contract adjustments also is available to investors in other parts of the prospectus where those adjustments are discussed in greater detail. *See, e.g.,* Items 5, 6, 7, 12, 22, and 31A.

[793] We did not receive any comments on the proposed amendments to Item 27.

disagree with the comment suggesting this information to be disclosed will result in private and confidential information being disclosed that will aid competitors.[794] The information that will be reported would complement the parallel census-type information that is currently required to be reported annually on Form N–CEN by registered unit investment trusts offering variable annuities. Moreover, information that insurance companies will report in response to Item 31A will be aggregated at the contract level, which reduces the possibility that any confidential or private information would be disclosed. The information in new Item 31A will help the Commission and staff in identifying trends in insurance companies' offerings of RILAs and registered MVA annuities by providing a more complete understanding of the marketplace for annuity securities. A more complete understanding of the marketplace for annuity securities will benefit investors by helping us carry out regulatory responsibilities, including monitoring risk and trends, formulating policy and guidance, and reviewing registration statements.

The final amendments also amend Item 34 of Form N–4 to require insurance companies to include two specific undertakings in their registration statements on Form N–4: (1) to file, during any period in which offers or sales are made, through a post-effective amendment to their registration statement, any prospectus required by section 10(a)(3) of the Securities Act and; (2) that, for the purposes of determining liability under the Securities Act, each post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. These undertakings are the same as two undertakings insurance companies were required to provide in registration statements registered on Forms S–1 or S–3. It remains appropriate for insurance companies to continue to furnish these representations concerning post-effective amendments to a registration statement as, under the final amendments, non-variable annuities may be continuously offered on a registration statement for an indefinite amount of time.[795]

Remaining Items

The final amendments require RILA and MVA annuity issuers to provide disclosure in response to the remaining items on Form N–4 to the extent applicable. These are items that we have previously determined are relevant in the context of variable annuity offerings. Requiring RILA and MVA annuity filers to provide disclosure in response to the remaining items on Form N–4 to the extent applicable will help ensure that comparable information is provided in a standardized, consistent manner for all filers using Form N–4.

Standardized, consistent disclosure of comparable information benefits investors by making it easier for investors to evaluate and compare RILA and registered MVA annuity offerings. Also, the presentation of information in a standardized, consistent manner across all filers using Form N–4 will facilitate not only the evaluation and comparison among non-variable annuities, but also the comparison of non-variable annuities to variable annuities. Further, certain investors, while aware of variable annuities, simply may not be aware of RILAs and registered MVA annuities as investment options. Presentation of information in a standardized, consistent manner on Form N–4 could increase investor awareness of RILAs and registered MVA annuities as investing options. Facilitating the comparison of annuity products could benefit investors by helping them to invest in non-variable annuities in a manner that is consistent with their overall financial needs and objectives.

Inline XBRL

The final amendments require many of the newly added disclosures on Form N–4 to be structured (*i.e.,* tagged) in Inline XBRL, a structured, machine-readable data language.[796] In addition, RILA and registered MVA annuity issuers will have to tag those prospectus disclosures that Form N–4 currently requires to be tagged.

As discussed in Section II.C.10., one commenter stated that the Inline XBRL requirements would be beneficial to all investors because they would facilitate access to data about non-variable annuities in a structured, machine-readable format.[797] Some commenters stated that tagging the newly added disclosures on Form N–4 would benefit investors by highlighting key elements of a RILA, allowing ''investors and their investment professionals (as well as data aggregators, financial analysts, and other data users) to efficiently analyze and compare information about available contracts.'' [798] However, one commenter stated Inline XBRL has little value for investment companies and insurance products.[799]

Inline XBRL has value for companies and insurance products, investors, investment professionals, and third parties such as data aggregators, financial analysts and other data users because it will make the tagged disclosures more readily accessible for aggregation, comparison, filtering, and other analysis. The Inline XBRL requirement will facilitate access to data about non-variable annuities, which could improve investor understanding of the disclosed information and indirectly benefit insurance companies.[800] For example, the data tagging could allow third parties such as financial data aggregators to efficiently compare and otherwise process the disclosed information into analyses accessible to investors. This could benefit insurance companies and non-variable annuity issuers by increasing investor understanding of non-variable annuities as an investment option, or make investors aware of RILAs' and registered MVA annuities' unique characteristics that may be appropriate for their particular situation. Additionally, an Inline XBRL requirement will enable other analyses that could directly benefit insurance companies, such as the ability to compare/redline disclosures automatically against the same disclosures in other periods, or perform targeted searches and redline comparisons of specific disclosure items, rather than performing such assessments on an unstructured

[794] *See* discussion in *supra* Section II.C.7.

[795] We did not receive any comments on the proposed amendments to Item 34.

[796] *See supra* section II.B.11.

[797] XBRL US Comment Letter.

[798] CAI Comment Letter. *See* XBRL US Comment Letter; *see also infra* footnote 449 and accompanying text.

[799] Johnson Comment Letter.

[800] It has been observed XBRL requirements improve investor understanding for public operating company financial statement disclosures. *See, e.g.,* Birt, J., Muthusamy, K. & P. Bir, *XBRL and the Qualitative Characteristics of Useful Financial Information,* 30 Account. Res. J. 107 (2017) (finding ''financial information presented with XBRL tagging is significantly more relevant, understandable and comparable to non-professional investors''); Cahan, S.F. et al., *The roles of XBRL and processed XBRL in 10–K readability, J. Bus. Fin. Account.* (2021) (finding 10–K file size reduces readability before XBRL's adoption since 2012, but increases readability after XBRL adoption, indicating ''more XBRL data improves users' understanding of the financial statements''); Efendi, J., Park, J.D. & C. Subramaniam, *Does the XBRL Reporting Format Provide Incremental Information Value? A Study Using XBRL Disclosures During the Voluntary Filing Program,* 52 Abacus 259 (2016) (finding XBRL filings have larger relative informational value than HTML filings).

document.[801] Accordingly, for Form N–4 filers, Inline XBRL can enhance the efficiency of review, yield savings in time and cost of preparing machine-readable data, and potentially enhance the quality of the data over other machine-readable standards as certain errors will be easier to identify and correct because the data is also human-readable.[802]

c. Option to Use a Summary Prospectus

The final amendments to rule 498A permit non-variable annuity issuers, as well as issuers of ''combination contracts'' offering a combination of index-linked options and variable options, to use a summary prospectus to satisfy statutory prospectus delivery obligations. Investors will continue to have access to the non-variable annuity statutory prospectus and other information about the non-variable annuity contract online, with paper or electronic copies of this information upon request. The current summary prospectus rule for variable contracts uses a layered disclosure approach designed to provide investors directly with key information relating to the contract's terms, benefits, and risks in a concise and reader-friendly presentation, with more detailed information available elsewhere. The final amendments to rule 498A broaden the scope of the rule to expand the layered disclosure approach to non-variable annuity contracts.[803]

As discussed in Section II.D above, the final amendments to rule 498A involve the use of two distinct types of summary prospectuses for non-variable annuity contracts, employing the same approach the rule currently uses for variable contracts. An ''initial summary prospectus,'' covering contracts offered to new investors, will include certain key information about the contract's most salient features, benefits, and risks, presented in plain English in a standardized order. The rule amendments also require ''updating summary prospectuses'' to be provided to existing investors in non-variable annuity contracts. The updating summary prospectus includes a brief description of certain changes to the contract that occurred during the previous year, as well as a subset of the information required to appear in the initial summary prospectus. Certain key information about the index-linked options that the contract offers as investment options will be provided in both the initial summary prospectus and updating summary prospectus.

The final amendments create a choice for insurance companies. Insurance companies may meet their prospectus delivery obligations by providing the statutory prospectus, or by providing a summary prospectus and making statutory prospectuses and other required documents available online. Those insurance companies that expect to benefit by providing summary prospectuses would choose to rely on the final amendments to meet their prospectus delivery obligations. For example, as discussed in Section II.F.3, we understand that non-variable annuity issuers typically deliver prospectuses to accompany or precede other communications, such as annuity applications. It is possible that providing layered disclosure through a summary contract prospectus regime (including costs of delivering initial summary and updating summary prospectuses and making statutory prospectuses and other documents available online) could result in reduced costs for issuers.[804] Conversely, those insurance companies that do not expect to benefit from this optional prospectus delivery regime would choose to continue to provide statutory prospectuses to investors.

If insurance companies choose to meet their prospectus delivery obligations by delivering summary prospectuses to investors, with other documents available online, investors will then have a choice as well. Under the layered disclosure framework we are adopting for non-variable annuities, investors will receive information in the form of a summary prospectus, with more detailed information available online if the investor chooses to access it.[805] Thus, investors can continue to review the statutory prospectuses by accessing them online, or they may request paper or electronic delivery of statutory prospectuses on an ad hoc basis. Alternatively, investors may choose only to consult the summary prospectuses. Further, if investors want to rely on some combination of summary and statutory prospectuses to receive information about the contract, that choice is available to them as well. Given the Commission's experience administering the optional summary prospectus regime for variable annuities, we expect a majority of non-variable annuity issuers will choose to use summary prospectuses. Thus, we expect that the vast majority of investors will have the option to use both summary prospectuses and statutory prospectuses in their decision-making, in whatever proportion investors think is best for their preferences.

The presentation required for the initial summary prospectus may reduce the investor effort required to compare non-variable annuity contracts, to consider different index-linked options that RILAs offer, or to compare non-variable annuity contracts with each other and with variable annuity contracts, when an investor considers a new investment. Information provided in a concise, user-friendly presentation could allow investors to compare information across contracts and as a result, may lead investors to make decisions that better align with their investment goals.[806]

[801] While these studies were not done within the insurance company context, it has been observed that XBRL requirements improve firm disclosures and decision making. *See* Olivia Berkman, XBRL: What are the Benefits, FEI Daily (Aug. 29, 2019), *https://www.financialexecutives.org/FEI-Daily/August-2019/XBRL-What-are-the-Benefits.aspx* (noting in an interview with a public company's chief financial officer that the company is able to ''search through XBRL filings to find similar companies within [its] industry that have had to present certain similar [disclosures] in the past,'' which has helped the company ''craft[ ] [its] disclosures to make sure that [the company is] complying with the spirit of GAAP and providing the information that [the company is] supposed to be providing''); *see also* Hyun Woong (Daniel) Chang, et al., The Effect of iXBRL Formatted Financial Statements on the Effectiveness of Managers' Decisions when Making Inter-Firm Comparisons. J. Info. Sys. (2020) (finding ''iXBRL filings facilitate information search and information match by allowing users to view XBRL data in HTML filings,'' and ''managers make more effective decisions when presented with financial information formatted in iXBRL (XBRL)'').

[802] *See* VASP Adopting Release at Section II.D (articulating similar benefits for tagging variable annuities).

[803] Some commenters questioned the inclusion of certain items. *See* discussion in *supra* Section II.D.

[804] *See* VASP Adopting Release. In the VASP Adopting Release we estimate that printing and mailing expenses are $0.18 less for initial and updating summary prospectuses than for statutory prospectuses. Because we understand RILA prospectuses to not be as long as variable annuity prospectuses, we would expect savings among RILA issuers to be less than the VASP Adopting Release savings, but we do not have a basis for believing savings for RILA issuers will be of an order of magnitude less than the VASP Adopting Release savings. We therefore believe savings for RILA issuers will be between approximately $.02 and $.18. We estimate the internal cost time of online posting of contract documents to be $772. *See infra* Table 11.

[805] During investor testing, several participants felt they would need information beyond the information contained in the KIT to make a decision about a RILA. *See* OIAD Investor Testing Report at Section 5, Qualitative Testing, Results from Round 1.

[806] Research suggests that individuals are generally able to make more efficient decisions when they have comparative information that allows them to assess relevant trade-offs. *See, e.g.,* Christopher K. Hsee et al., (1999). Preference Reversals Between Joint and Separate Evaluations of Options: A Review and Theoretical Analysis, *Psychological Bulletin,* 125(5), 576–90; *see also* Samuel B. Bonsall & Brian P. Miller, The Impact of Narrative Disclosure Readability on Bond Ratings and the Cost of Debt, 22 Rev. Acct. Stud. 608 (2017)

Initial Summary Prospectus. Should insurance companies issuing non-variable annuities choose to use summary prospectuses, investors may benefit in a number of ways.[807] The initial summary prospectus for non-variable annuities will be limited to describing only the contract and features currently available under the statutory prospectus. This focus could make more salient the features and risks of a non-variable annuity, thereby facilitating investors' evaluation of those features and risks.

The final amendments require a standardized presentation for non-variable annuity initial summary prospectuses to require certain disclosure items that will be most relevant to investors to appear at the beginning of the initial summary prospectus, followed by supplemental information. An initial summary prospectus must contain the information required by the rule, and only that information, in the order specified by the rule.[808] The information is required to appear in the same order, and under relevant corresponding headings, as the rule specifies. The required presentation could also facilitate comparisons of different non-variable annuity contracts, as well as comparisons between non-variable annuity contracts and variable annuities.

Standardized, consistent disclosure of comparable information benefits investors by making it easier for investors to evaluate and compare non-variable offerings. Also, the presentation of information in a standardized, consistent manner will facilitate not only the evaluation and comparison among non-variable offerings, but also will facilitate the comparison of non-variable annuities to other variable annuities. Further, certain investors, while aware of variable annuities, simply may not be aware of RILAs and registered MVA annuities as investment options. Presentation of information in a standardized, consistent manner in an initial summary prospectus could increase investor awareness of RILAs and registered MVA annuities as investing options.

In addition, given the time required to review a statutory prospectus, non-variable annuity investors may benefit from summary prospectuses because they offer a shorter alternative to statutory prospectus disclosure. There is evidence that suggests that consumers benefit from summary disclosures.[809] Within the specific context of investing, there is evidence from related contexts that suggests that summary prospectuses allow investors to spend less time and effort to arrive at the same portfolio decision as if they had relied on a statutory prospectus.[810] This research is consistent with the 2012 Financial Literacy Study, which showed that at least certain investors favor a layered approach to disclosure with the use, wherever possible, of summary documents containing key information about an investment product or service.[811]

Also, investors allocate their attention selectively,[812] and the sheer volume of disclosure in a statutory prospectus may discourage some investors from reading contract statutory prospectuses. The observations of a telephone survey conducted on behalf of the Commission with respect to mutual fund statutory prospectuses (which are typically shorter than variable contract statutory prospectuses, and shorter than non-variable annuity statutory prospectuses are expected to be under the proposal) are consistent with the view that the volume of disclosure may discourage investors from reading statutory prospectuses.[813] That survey observed that many mutual fund investors do not read statutory prospectuses because they are long, complicated, and hard to understand. Responses to investor surveys in other contexts, also suggest that shareholders may be more likely to read more concise shareholder reports.[814]

To the extent summary prospectuses increase readership of non-variable annuity contract disclosures, they could improve the quality and efficiency of portfolio allocations made on the basis of disclosed information for those investors who otherwise will not have read the statutory prospectus.

The required presentation for the initial summary prospectus may also reduce the investor effort required to compare non-variable annuity contracts, to consider different index-linked options that a RILA offers, or to compare non-variable annuity contracts with each other and with variable annuity contracts, when an investor considers a new investment. Information provided

and Alistair Lawrence, Individual Investors and Financial Disclosure, 56 J. ACCT. & ECON. 130 (2013) (finding that shorter and more focused disclosures could be more effective at increasing investor understanding than longer, more complex disclosures). Consistent with these findings, other empirical evidence suggests that disclosure simplification may benefit consumers of disclosed information. *See, e.g.,* Sumit Agarwal, et al., Regulating Consumer Financial Products: Evidence from Credit Cards Nat'l Bureau of Econ. Rsch (working paper no. 19484, Sept. 28, 2013, last revised Mar. 29, 2023), available at *https://ssrn.com/abstract=2332556* (finding that a series of requirements in the Credit Card Accountability Responsibility and Disclosure Act (CARD Act), including several provisions designed to promote simplified disclosure, have produced substantial decreases in both over-limit fees and late fees, thus saving U.S. credit card users $12.6 billion annually).

[807] Some investors may prefer to read statutory prospectuses, and therefore, the advantages associated with summary disclosure, as described in this section, may not apply to those investors. The statutory prospectus will, under the final amendments, be available online and in paper or electronic format upon request.

[808] Rule 498A(b)(5).

[809] There is evidence that the summarization of key information is useful to consumers. *See, e.g.,* Sumit Agarwal et al., *Regulating Consumer Financial Products: Evidence from Credit Cards* (NBER Working Paper No. 19484, rev. 2014), *available at https://www.nber.org/papers/w19484.* The authors find that a series of requirements in the CARD Act, including provisions designed to promote simplified disclosure, has produced decreases in both over-limit and late fees, saving US credit card users $20.8 billion annually; *see also* Robert L. Clark, Jennifer A. Maki & Melinda Sandler Morrill, *Can Simple Informational Nudges Increase Employee Participation in a 401(k) Plan?* 80 S. Econ. J. 677 (2014). The authors find that a flyer with simplified information about an employer's 401(k) plan, and about the value of contributions compounding over a career, had a significant effect on participation rates.

[810] *See* John Beshears et al., *How Does Simplified Disclosure Affect Individuals' Mutual Funds Choices? in* Explorations in the Economics of Aging 75 (David A. Wise ed., 2010) (''Beshears Paper''), *available at https://scholar.harvard.edu/laibson/publications/how-does-simplified-disclosure-affect-individuals-mutual-fund-choices.* We note, however, that while the authors find evidence that investors spend less time making their investment decision when they are able to use summary prospectuses, there is no evidence that the quality of their investment decisions is improved. In particular, ''On the positive side, the Summary Prospectus reduces the amount of time spent on the investment decision without adversely affecting portfolio quality. On the negative side, the Summary Prospectus does not change, let alone improve, portfolio choices. Hence, simpler disclosure does not appear to be a useful channel for making mutual fund investors more sophisticated . . .'' *Id.* at 13 (manuscript page).

[811] *See* 2012 Financial Literacy Study.

[812] *See* George Loewenstein, Cass R. Sunstein & Russell Golman. (2014) *Disclosure Psychology Changes Everything,* 6 Ann. Rev. Econ. 391 (2014).

[813] Prior to the Commission's 2009 adoption of mutual fund summary prospectus rules, the Commission engaged a consultant to conduct focus group interviews and a telephone survey concerning investors' views and opinions about various disclosure documents filed by companies, including mutual funds. During this process, investors participating in focus groups were asked questions about a hypothetical Summary Prospectus. Investors participating in the telephone survey were asked questions relating to several disclosure documents, including mutual fund prospectuses. *See* Abt SBI, Inc., *Final Report: Focus Groups on a Summary Mutual Fund Prospectus* (May 2008), *available at https://www.sec.gov/comments/s7-28-07/s72807-142.pdf.* Although the results from the investor testing reflect stated investor preferences, they do not provide us with information with respect to the extent to which RILA investors would actually be more likely to read a RILA summary prospectus relative to a statutory prospectus.

[814] *See* Tailored Shareholder Reports Adopting Release.

in a concise, user-friendly presentation could allow investors to compare information across contracts and as a result, may lead investors to make decisions that better align with their investment goals.[815] For example, the final amendments require insurance companies to distill certain key product information into tables, which could facilitate comparison across different products.

Further, the final framework for non-variable annuity contract summary and statutory prospectuses also includes design elements to facilitate investor use. In particular, the final amendments include requirements for linking both within the electronic version of a contract statutory prospectus and between the electronic versions of the contract statutory prospectus and the contract summary prospectus. The linking requirement will permit investors who use the electronic versions of contract prospectuses to quickly navigate between related sections within the contract statutory prospectus and back and forth between related sections of the contract summary prospectus and the contract statutory prospectus. Further, the final amendments also require that investors either be able to view the definition of each special term used in an online summary prospectus upon command, or to move directly back and forth between each special term and the corresponding entry in any glossary or list of definitions that the summary prospectus includes. This requirement will facilitate understanding of terms that may be confusing or unfamiliar among investors viewing the documents online.

Updating Summary Prospectus. As under current rule 498A, we are not requiring that RILA and registered MVA annuity issuers send an updated initial summary prospectus to investors each year. Instead, any non-variable annuity issuer that relies on rule 498A will send an updating summary prospectus, which will provide a brief description of certain changes with respect to the contract that occurred within the prior year.[816] The updating summary prospectus will also include certain of the information required in the initial summary prospectus that we consider most relevant to investors when considering additional investment decisions.[817] Further, updating summary prospectuses for non-variable annuity contracts, like initial summary prospectuses, will include specific disclosure items appearing in a prescribed order, under relevant corresponding headings.[818] An updating summary prospectus for a non-variable annuity contract will have to contain the information required by the rule, and only that information, in the order specified by the rule.

The updating summary prospectus for RILAs and registered MVA annuities will have many of the same benefits for investors associated with the initial summary prospectus discussed above, with respect to presenting key information in an easier and less time-consuming manner for investors. Specifically, because many terms of the non-variable annuity contract do not change from year-to-year, the contract statutory prospectus may contain large amounts of disclosure that is duplicative of disclosure that the investor has previously received. Those changes that do occur may be important to investors, but the disclosure about these changes could be difficult for the investor to identify given the volume of prospectus disclosure that investors would otherwise receive, and the current lack of a requirement to identify new or changed information.

Under the final amendments, the updating summary prospectus will include a concise description of important changes affecting the statutory prospectus disclosure relating to certain topics that occurred within the prior year—namely: (1) the availability of investment options under the contract, (2) the overview of the contract, (3) the KIT, (4) certain information about fees, (5) benefits available under the contract, (6) purchases and contract value, and (7) surrenders and withdrawals. These are topics that are most likely to entail contract changes and, for the reasons previously noted, are the types of contract changes most likely to be important to investors because they affect how investors evaluate non-variable annuity contracts and are relevant to investors when considering whether to continue in the existing option (if available) or transfer funds to a different option. The updating summary prospectus, if used by issuers to satisfy their prospectus delivery obligations, will likely reduce the burden on investors and increase their understanding of their contract by highlighting certain changes to the contract made during the previous year, while forgoing the repetition of most information that had remained unchanged.

d. Use of Statutory Accounting

The final amendments permit RILA and registered MVA annuity issuers to provide financial statements on amended Form N–4 in the same way that insurance companies currently provide financial statements on that form.[819] As a result of this change, the financial statements filed in connection with a registration statement that relates to the offering of either of these securities may be prepared in SAP to the same extent as currently permitted for insurance companies' financial statements filed on that form. We expect this approach to appropriately recognize the cost burdens if we were to require GAAP financial statements in cases where the insurance company is not otherwise required to prepare financial information in accordance with GAAP. In addition, SAP financial statements, which focus on an issuer's ability to meet its obligations under its insurance contracts, as regulated by State law, provide material information for investors evaluating RILAs and registered MVA annuities. As a result, permitting insurance companies to provide SAP financial statements when registering the offering of a RILA or registered MVA annuity to the same extent as they can in connection with variable annuities on Form N–4 will be consistent with maintaining investor protection. Also, investors could benefit to the extent the reduced cost burdens provided by SAP financial statements are passed along to investors.

The final amendments also require insurance companies registering non-variable annuities to provide information relating to changes in and disagreements with accountants on accounting and financial disclosure as detailed in 17 CFR 229.304 (''Item 304 of Regulation S–K''). Further, insurance companies will be required to provide as an exhibit any letter from the insurance company's former independent accountant regarding its concurrence or disagreement with the statements made by the insurance company in the registration statement concerning the resignation or dismissal as the insurance company's principal accountant. These items are currently provided by RILAs and registered MVA

[815] *See infra* footnote 806.

[816] Rule 498A(c)(1).

[817] *See* Table 8.

[818] Rule 498A(c)(6).

[819] Certain Commission letters, or portions thereof, exempt certain insurance companies from the requirement to provide financial statements prepared in accordance with GAAP in connection with the registration of an offering of RILAs on Form S–1. As discussed in Section III.B.1.a, among RILA contracts that are currently registered with the Commission, 47 RILAs report SAP financials and 43 RILAs report GAAP financials. Comments received on this aspect of the proposal are discussed in Section II.E.

annuities on Forms S–1, 8–K, and 10–K, as applicable, and are designed to address the practice of ''opinion shopping'' for an auditor willing to support a proposed accounting treatment designed to help a company achieve its reporting objectives even though that treatment might frustrate reliable reporting.[820] Because the requirements for Form N–4 filers under the final amendments are the same as for Form S–1, Form 8–K, and Form 10–K filers currently, we do not expect any additional benefits from the requirement to provide information relating to changes in and disagreements with accountants on accounting and financial disclosure.

e. Filing Rules

Fee Payment Method and Amendments to Form 24F–2. The final filing rules require RILA and registered MVA annuity issuers to pay registration fees for using the same method that other filers on Form N–4 currently use.[821] Issuers registering the offerings of non-variable annuities on amended Form N–4 are deemed to be registering an indeterminate amount of non-variable annuities upon effectiveness of the registration statement. These issuers will then be required to pay registration fees annually based on their net sales of these securities, no later than 90 days after the issuer's fiscal year ends, on the form that is used by current Form N–4 filers to pay registration fees (Form 24F–2). The final filing rule further specifies the calculation method for paying non-variable annuity registration fees, consistent with the fee calculation methodology that applies to current Form N–4 filers. The final filing rule also indicates when issuers can take credits for non-variable annuity redemptions that pre-date their use of that form and when expiring annuity contracts are rolled over into a new crediting period as well as other minor technical amendments.

The final filing rules will provide benefits to insurance companies. Registering an indeterminate amount of securities benefits insurance companies by eliminating the risk that a non-variable annuity issuer may inadvertently oversell securities with respect to a registration statement on Form N–4. The payment of fees on an annual net basis furthermore should lead to a reduction in overall filing fees relating to non-variable annuities. For example, insurance companies will no longer pay fees on registered, but unsold, securities. To the extent that there are cost savings for issuers, some of those savings may potentially be passed on to investors.

Post-Effective Amendments and Prospectus Supplements. As discussed in Section II.F.2, the final amendments require RILA and registered MVA annuity issuers to use the same framework for filing post-effective amendments to the registration statement as is currently used by other filers on Form N–4. First, the final amendments amend rule 485 under the Securities Act to require non-variable annuity issuers to use that rule when amending non-variable annuity registration statements on Form N–4. Requiring non-variable annuity issuers to use rule 485 when amending non-variable annuity registration statements on Form N–4 permits non-variable annuity issuers to file post-effective amendments that become automatically effective under rule 485(a) after a specified period of time after the filing or, in certain enumerated circumstances, immediately effective under rule 485(b). Issuers may benefit to the extent automatic effectiveness allows issuers to tap favorable windows of opportunity in the non-variable annuity market, to structure terms of non-variable annuities on a real-time basis to accommodate investor demand, and to determine or change the plan of distribution in response to changing market conditions.

Second, the final amendments require RILA and registered MVA annuity issuers to apply rule 497 under the Securities Act when appropriate to file non-variable annuity prospectuses and prospectus supplements with the Commission. Under the final amendments, a non-variable annuity issuer is required to file every prospectus relating to a non-variable annuity offering that varies in form from a previously filed prospectus before it is first used. This approach—rather than requiring filing only if the issuer makes substantive changes from or additions to a previously-filed prospectus—may benefit both investors and issuers. The requirement that insurance companies file every prospectus that varies in form from a previously filed prospectus before it is first used could facilitate investor evaluation and comparison by making publicly available the most timely information currently available to investors. We expect this benefit to be minimal, however, because rule 424 under the Securities Act requires non-variable annuity issuers only to file prospectuses that contain substantive changes. Prospectuses required to be filed under rule 497 that will not be required to file under rule 424, then, will be prospectuses updated with minor, non-substantive changes and likely of limited informational benefit to investors.

Issuers may benefit from applying rule 497 as well. The final amendments facilitate a uniform post-effective amendment and prospectus filing framework for all Form N–4 filers, which will provide insurance companies with more consistent filing requirements across similar products. This, in turn, could benefit insurance companies by making it easier to execute such offerings and may decrease compliance costs.

As discussed above, certain issuers use a short-form registration statement on Form S–3, which requires less information than Form S–1 and allows for significant incorporation by reference. Certain issuers also can rely on rule 430B under the Securities Act to omit certain information from the ''base'' prospectus when the registration statement becomes effective and later provide that information in a subsequent Exchange Act report (forward) incorporated by reference, a prospectus supplement, or a post-effective amendment. Issuers registering annuity product offerings on Form N–4, on the other hand, have limited ability to incorporate information by reference into their registration statements and cannot forward incorporate information from subsequently filed Exchange Act reports. Issuers registering annuity product offerings on Form N–4 also cannot rely on rule 430B to omit certain information from the base prospectus. Under the final amendments, then, non-variable annuity investors will generally have all the information available in one location (other than current rates, which will be permitted to be incorporated by reference from a website) rather than needing to separately access the information on a website or request the incorporated materials. As a result, costs to investors for assembling and assimilating necessary information could decrease, with a potentially stronger effect for investors that may not have the technical capabilities or monetary resources to search efficiently through multiple information sources.

f. Materially Misleading Statements in RILA Sales Literature

We are amending rule 156 to make its provisions applicable to RILA and registered MVA annuity sales literature. Rule 156 is an interpretive rule that provides factors to be weighed in considering whether a statement

[820] *See* Disclosure Amendments to Regulation S–K, Form 8–K and Schedule 14A; *see also* Form S–1, Item 11(i).

[821] Some commenters had specific recommendations on how we could modify Form 24F–2. *See* discussion in *supra* Section II.F.1.

involving a material fact is or might be misleading in the specific context of investment company sales literature, including literature relating to the sale of variable annuities. The final amendments to rule 156 indicate that whether a statement involving a material fact is misleading in non-variable annuity sales literature will depend on an evaluation of the context in which it is made, with the rule providing non-exhaustive factors to guide in this determination.

For example, rule 156(b)(1)(ii) provides that a statement could be misleading because of the absence of explanations, qualifications, limitations or other statements necessary or appropriate to make such statement not misleading. Under this provision, where made applicable to non-variable annuity sales literature, consideration should be given about whether an advertisement will be materially misleading if it markets the investment as a growth investment, a loss-avoidance vehicle, or a customizable product in the absence of qualifying explanations or statements. Similarly, under the provision, where made applicable to non-variable annuity sales literature, consideration should be given about whether an advertisement will be materially misleading if sales literature advertises a particular feature of the product's bounded return structure that is not available for the life of the product without providing additional context as to the issuer's discretion to make changes.

Further, rule 156(b)(4), prior to these amendments, provided that representations about fees or expenses associated with an investment in a fund could be misleading because of statements or omissions made involving a material fact, including situations where portrayals of the fees and expenses associated with an investment in the fund omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading. The final amendments change this provision to also address representations about the fees or expenses associated with a non-variable annuity contract and provide guidance about the contextual analysis to use in determining whether a particular representation in a non-variable annuity advertising could be materially misleading. As discussed in Section II.G.1., when complying with this provision in the context of non-variable annuity sales literature, under final rule 156(b)(4), insurance companies are prompted to consider whether representations or portrayals either of a non-variable annuity's costs or charges, or optional benefits that are subject to a contract adjustment, would necessitate qualifying statements or explanations regarding the economic costs to the investor to receive an advertised benefit or those generally associated with the non-variable annuity.

Also, rule 156(b)(2)(i) states that representations about past or future investment performance could be misleading because of statements or omissions made involving a material fact. This includes situations where portrayals of past income, gain, or growth of assets convey an impression of the net investment results achieved by an actual or hypothetical investment which would not be justified under the circumstances, including portrayals that omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading. Under the provision, where made applicable to non-variable annuity sales literature, consideration should be given about whether illustrations about the operation of a non-variable annuity or its features could be misleading because, for example, they use assumptions that are not currently offered or exceed what could be reasonably anticipated or use ''cherry picked'' data.

By reducing the potential for misleading or fraudulent statements in non-variable annuity sales literature, applying rule 156 to RILAs and registered MVA annuities provides investors with protections and helps ensure that investors receive the information necessary to make informed decisions about these products. Ensuring that investors receive the information necessary to make informed decisions could benefit investors by facilitating investor evaluation of RILAs and registered MVA annuities as well as investor comparison of non-variable annuities to other annuity products.

We are also making a technical amendment to rule 433 to maintain the status quo for insurance companies that can meet that rule's conditions to use a free writing prospectus in connection with the offering of non-variable annuities without meeting the prospectus delivery requirements, notwithstanding their use of Form N–4 going forward. Absent such an amendment, the rulemaking would have the effect of imposing new, universal prospectus delivery requirements in connection with RILA marketing materials, even for RILA issuers that would otherwise be eligible to rely on rule 433 by virtue of registering on Form S–3. Because the technical amendment to rule 433 maintains the status quo for insurance companies that can meet the rule's conditions to use a free writing prospectus in connection with the offering of non-variable annuities without the prospectus delivery requirements, we do not believe this amendment to rule 433 will create additional economic effects.

2. Costs

The final amendments will likely lead to certain additional costs for insurance companies registering non-variable annuities. These costs will likely vary across insurance companies, depending on their existing lines of business. Costs may also vary depending on the extent to which insurance companies will, as a result of the final amendments, create prospectuses that vary in form from previously filed prospectuses and the frequency of certain events, such as changes in accountants and disagreements with accountants on accounting and financial disclosure. Generally, the costs will be lower for insurance companies that currently offer products that register on Form N–4, for those insurance companies that do not change or remove key features of non-variable annuities frequently, and for those insurance companies that do not experience changes in, and disagreements with, accountants on accounting and financial disclosure. The costs of the final amendments may also be mitigated to the extent that insurance companies already provide the same or similar disclosures on Forms S–1 and S–3, 8–K, and 10–K, as applicable, as are required by the final amendments.

The costs to insurance companies will be composed of both direct compliance costs and indirect costs. Direct costs for insurance companies will consist of internal costs (for compliance attorneys and other non-legal staff, such as computer programmers, to prepare and review the required disclosure) and external costs (including filing fees, outside legal and accounting fees, as well as any costs associated with outsourcing all or a portion of the Form N–4 filing responsibilities to a filing agent, software consultant, or other third-party service provider).

The final amendments could lead to certain costs for investors as well. Direct costs that will be incurred by the insurance companies in coming into compliance with the final amendments ultimately may be passed on to investors. Investors also may bear costs associated with certain final amendments such as the change in filing rules as well as an insurance companies' option to use a summary prospectus.

a. Direct Costs

Form N–4. The direct costs associated with the final amendments will be most significant for the first Form N–4 registration statement that an insurance company will be required to prepare and file because the insurance company will need to familiarize itself with the new registration form and may need to configure its systems to efficiently gather the required information. In subsequent periods, we anticipate that insurance companies will incur significantly lower costs because much of the work involved in the initial registration statement preparation and filing is non-recurring and because of efficiencies realized from system configuration and reporting automation efforts accounted for in the initial filing period. The costs associated with preparing and filing a new registration statement (on Form N–4 as opposed to Forms S–1/S–3) will be lower to the extent an insurance company already has experience and systems in place to prepare and file registration statements on Form N–4 (*e.g.,* because the insurance company currently offers variable annuities whose offerings are registered on Form N–4).

Under the final amendments, insurance companies will register non-variable and variable annuity contract offerings on final Form N–4. In addition, the Commission is adopting other amendments to Form N–4 that will apply to all issuers that use that form.[822] We estimate the average cost of the final amendments for Form N–4 to be around $200,000 per contract per year.[823]

Insurance companies will also incur compliance costs to tag many of the newly required Form N–4 disclosures (as well as those prospectus disclosures that Form N–4 currently requires to be tagged) in Inline XBRL. Various XBRL and Inline XBRL preparation solutions have been developed and used by operating companies and investment companies to fulfill their structuring requirements, and some evidence suggests that, for smaller operating companies, XBRL compliance costs have decreased over time.[824] To the extent these insurance companies comply with Inline XBRL requirements internally rather than outsourcing to an external service provider, they may already be familiar with Inline XBRL software and may be able to leverage existing Inline XBRL preparation processes and/or expertise in complying with the new tagging requirements. This will limit the compliance costs arising from the new tagging requirements for these issuers to only those costs related to selecting additional Inline XBRL tags for those new disclosures to be tagged, and reviewing the tags selected for those disclosures. We estimate the average annual cost for XBRL compliance will be around $500 for each current N–4 filer, which is already familiar with structured disclosure in the context of Form N–4, and around $2,400 for each non-variable annuity issuer, which would newly file Form N–4.[825] However, 32 of the 38 insurers that issue RILAs and registered MVA annuities also offer variable products registered on Forms N–3, N–4, or N–6, all of which are currently structured, or otherwise have experience tagging registration statements, which would reduce the cost to these issuers compared to our estimate.[826]

Option to Use a Summary Prospectus. Issuers will benefit from the option to use a summary prospectus to the extent that providing layered disclosure through a summary prospectus regime (including costs of producing and delivering initial summary and updating summary prospectuses and of making statutory prospectuses, and other documents available online) is less expensive than providing statutory prospectuses to new investors and updated statutory prospectuses to existing investors annually. Insurance companies choosing to provide summary prospectuses will bear a one-time cost of preparing both the initial summary prospectus and the updating summary prospectus, as well as costs associated with preparing updated versions the updating summary prospectus in the future on at least an annual basis.[827] We estimate the average annual cost to prepare initial and updating summary prospectuses to be around $2,600 for each separate account registrant, who use rule 498A currently, and around $13,000 for each insurance company that issues non-variable annuities.[828]

Insurance companies that choose to provide summary prospectuses are required to make statutory prospectuses and other materials available online. We estimate the average annual cost to comply with the final website posting requirements of the rule to be around $900 for each insurance company that

[822] For example, compared to the current Form N–4, the final amendments switch the order of the Key Information Table and Overview of the Contract items, require issuers to present information in the KIT in a Q&A format, and require more specific principal risk disclosures.

[823] The $200,000 estimate is based on the following calculations: $159,600 (blended hourly rate for compliance attorney and senior programmer at $420 for 380 hours) + $40,000 (costs for external services) ≈ $200,000. Salaries for estimates presented in this section are derived from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. *See* Table 12 (with relevant details about estimates in footnotes 2–5). This estimate assumes that the annual cost per contract is the same regardless of whether a contract is first registered or whether the issuer files a post-effective amendment. We anticipate that the cost of filing post-effective amendments (*see* Table 13) will be lower than the cost of initial filings. As a result, this estimate is conservative.

[824] An AICPA survey of 1,032 public operating companies with $75 million or less in market capitalization in 2018 found an average cost of $5,850 per year, a median cost of $2,500 per year, and a maximum cost of $51,500 per year for fully outsourced XBRL creation and filing, representing a 45% decline in average cost and a 69% decline in median cost since 2014. *See* AICPA, *XBRL Costs for Small Companies Have Declined 45% since 2014* (2018), *available at https://us.aicpa.org/content/dam/aicpa/interestareas/frc/accountingfinancialreporting/xbrl/downloadabledocuments/xbrl-costs-for-small-companies.pdf.* Note that this survey was limited to small operating companies. Additionally, a NASDAQ survey of 151 listed issuers and other respondents in 2018 found an average XBRL compliance cost of $20,000 per quarter, a median XBRL compliance cost of $7,500 per quarter, and a maximum XBRL compliance cost of $350,000 per quarter in XBRL costs per quarter. *See* Letter from Nasdaq, Inc. (Mar. 21, 2019); Request for Comment on Earnings Releases and Quarterly Reports, Securities Act Release No. 10588 (Dec. 18, 2018) [83 FR 65601 (Dec. 21, 2018)].

[825] The $500 estimate is based on the following calculations: $406 (blended hourly rate for compliance attorney and senior programmer at $406 for 1 hours) + $50 (costs for external services) ≈ $500. The $2,400 estimate is based on the following calculations: $1,624 (blended hourly rate for compliance attorney and senior programmer at $406 for 4 hours) + $700 (costs for external services) ≈ $2,300. *See* Table 16 (with relevant details about estimates in footnotes 2–9).

[826] Based on analysis of Forms S–1, S–3, and POS AM filed by RILA issuers as of May 2024. *See also infra* footnote 867.

[827] The final amendments require insurance companies to use Form N–4 for registered MVA annuities and, as is the case with non-variable annuities and variable annuities, allowing registered MVA annuities the option to use a summary prospectus. As a result, additional insurance companies may opt to use summary prospectuses in connection with registering offerings compared to the proposal.

[828] The $2,600 estimate is based on the following calculations: hourly rate for compliance attorney at $425 for 6 hours ≈ $2,600. The $13,000 estimate is based on the following calculations: $7,512 (blended hourly rate for compliance attorney and intermediate accountant at $313 for 24 hours) + $897 (hourly rate for webmaster at $299 for 3 hours) + $5,000 (costs for external services) ≈ $13,000. This estimate includes the cost to include inter-and intra-document linking and special terms definitions. In addition, we estimate that non-variable annuity issuers will incur printing and mailing costs of approximately $1,500 per registrant for initial summary prospectuses and approximately $12,000 per registrant for updating summary prospectuses. (Separate account registrants already incur these printing and mailing costs under the baseline.) *See* Table 11 (with relevant details about estimates in footnotes 2–9).

issues non-variable annuities.[829] However, some of these costs may have already been incurred by issuers of contracts offering variable options as well as non-variable annuities.

Filing the Prospectus. As discussed in Section II.F, insurance companies registering offerings of RILAs and registered MVA annuities follow different processes to file prospectuses than current Form N–4 filers. For example, a RILA issuer is required to file a prospectus only if the issuer makes substantive changes or additions to a previously-filed prospectus, whereas current Form N–4 filers are required to file every prospectus that varies from any previously-filed prospectus. Accordingly, under the final amendments, a non-variable annuity issuer is required to file every prospectus relating to a non-variable annuity offering that varies in form from a previously filed prospectus before it is first used. This requirement could increase the number of prospectuses required to be filed by non-variable annuities which could, in turn, increase costs for issuers.[830] One commenter stated that the proposed rule would require RILA issuers to include the current rate in the prospectus on the day it goes effective and subsequently update such rates through the proposed 497 RILA rate-setting regime.[831] The commenter stated further that the requirement would be a significant change, and added expense, for RILA issuers, particularly companies that change current rates frequently. The commenter provided an example from a member firm suggesting that the member firm would need to file 432 supplements each year. The commenter did not provide an estimate of the cost of providing a supplement. As discussed further in Section II.C.4.a, certain commenters suggested that current upside rates should be posted online instead of included directly in the prospectus. After considering comments, we have determined to permit insurance companies to disclose current upside rates in the prospectus either by disclosing the information directly in the prospectus, as proposed, or by including a website address where the current upside rates can be found and incorporating by reference the information on the website into the prospectus. Additionally, all upside rate information for the prior calendar year must be filed annually with the Commission in a structured data format in response to Item 31A of Form N–4. Because the approach we are adopting is largely consistent with current practice, we anticipate that insurance companies will not incur significant additional costs.

Securities Registration Fees. Insurance companies registering offerings of RILAs and registered MVA annuities will be required to pay securities registration fees relating to non-variable annuity offerings in arrears annually by filing Form 24F–2. Like Form N–4, insurance companies will need to familiarize themselves with the new form and may need to configure their systems to efficiently gather the required information. We estimate the average annual cost of this requirement to be around $1,200 for each insurance company that issues non-variable annuities.[832]

Materially Misleading Statements in Non-Variable Annuity Sales Literature. The final amendments make the provisions of rule 156 applicable to non-variable annuity sales literature. The cost of the final amendments includes the direct cost of analyzing advertising materials in light of the guidance rule 156 provides. Insurance companies may review and approve advertisements beyond what occurs currently, particularly because determining whether a statement involving a material fact is misleading in non-variable annuity sales literature will depend on an evaluation of the context in which it is made. We expect some of these costs to be borne in the first year after adoption of the final amendments. That is, these costs will be transition costs and not sustained beyond the first year. We estimate that the transition costs associated with the advertising rule amendments will be around $5,800 per advertisement.[833] Also, ongoing sales literature activity may require internal review and approval of advertisements. We estimate that the costs associated with ongoing sales literature activity will be around $1,900 annually per advertisement.[834] These costs will be borne by insurance companies that issue and advertise non-variable annuities and third parties who prepare these advertisements.

b. Indirect Costs

Form N–4. While the prospectuses and other registration statement disclosure required by the final amendments will likely facilitate investor evaluation and comparison of non-variable annuities, investors could experience certain transition costs, and some investors may experience other ongoing costs. Transition costs will include the costs of the inconvenience to some investors of adapting to the new materials and to the changes in the presentation of information. Investors will also bear a one-time cost of the inconvenience of adjusting to the changes in the disclosures they receive. These costs are likely to be relatively lower for investors with less experience investing in non-variable annuities who are accustomed to existing non-variable annuity practices. Also, one commenter stated that while the proposed rule would facilitate comparison of non-variable annuities and variable annuities (both registered on Form N–4), the proposed rule would result in inconsistency in the disclosure of non-variable annuities and similar life insurance product offerings (that are not registered on Form N–4).[835] However, investors only would bear any associated cost to the extent investors consider life insurance products to be substitutes for non-variable and variable annuities. Generally, investors may treat variable life insurance products as supplements to their non-variable and variable annuity investments, rather than as substitutes.[836] As a result, we do not believe this cost, to the extent it exists, would be meaningful for investors.

Option to Use a Summary Prospectus. While we expect that, should insurance companies opt to use summary

[829] The $900 estimate is based on the following calculations: hourly rate for webmaster at $299 for 3 hours. *See* Table 11 (with relevant details about estimates in footnotes 2–9).

[830] The potential increase in cost could be greater for Form S–3 filers than for Form S–1 filers. Form S–3 requires less information than Form S–1. Also, Form S–1 allows incorporation by reference only on a very limited basis. Form S–3 allows for forward incorporation by reference. Form S–3 filers may need to produce incrementally more information to file on Form N–4 than Form S–1 filers. Transitioning to Form N–4 could be more expensive for Form S–3 filers than for Form S–1 filers, as a result.

[831] *See* CAI Comment Letter.

[832] The $1,200 estimate is based on the following calculations: $246 (rate for compliance clerk at $82 for 3 hours) + $938 (rate for programmer at $316 for 3 hours) ≈ $1,200. *See* Table 15.

[833] *See* Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements adopting release at n.744. However, these costs may be lower to the extent the advertisement at issue is less complex.

[834] *See* Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements adopting release at n.745. However, these costs may be lower to the extent the advertisement at issue is less complex or higher if it is more complex.

[835] *See* CAI Comment Letter.

[836] The Insured Retirement Institute states that ''The cash value available in a whole life policy can be used to supplement retirement income.'' For example, ''A whole life insurance policy can be used to soften the effects of a down market by allowing investors to either withdraw cash or take a loan from the life policy and avoid drawing down their other retirement savings at the least opportune time.'' *See* IRI Fact Book.

prospectuses, the majority of investors will benefit from their disclosures, certain investors may incur costs. For example, although research indicates that investors generally prefer to receive summary disclosures, there may be non-variable annuity investors who prefer to rely on statutory prospectuses when making investment decisions. While non-variable annuity statutory prospectuses will continue to be available online and in paper or electronic copy upon request, access to those statutory prospectuses will require investors to take additional steps, imposing some burden. For example, investors choosing to access the statutory prospectus online rather than requesting a paper copy will need to manually enter a hyperlink from a paper updating summary prospectus or click on a link to a website containing the statutory prospectus. To the extent that internet access and use among non-variable annuity investors is not universal, those investors without home internet access might experience a reduction in their ability to access statutory prospectus information quickly and easily.[837] Even for those investors with home internet access, there may be some resistance to taking the additional step of accessing the statutory prospectus online.

Use of Statutory Accounting Principles. The final amendments permit RILA and registered MVA annuity issuers to provide financial statements on amended Form N–4 in the same way that insurance companies currently do on Form N–4. One consequence of this change will be that the financial statements filed in connection with a non-variable annuity registration statement could be prepared in SAP to the same extent as currently permitted for insurance companies' financial statements filed on that form. The final amendments create a choice for certain insurance companies. They may prepare their financial statements for use in a registration statement in SAP, or they may prepare their financial statements for use in a registration statement in GAAP. Those insurance companies that expect to benefit from preparing their financial statements for use in a registration statement in SAP (*e.g.,* through reduced costs) will choose SAP.[838] Those insurance companies that do not expect to benefit from the option to prepare their financial statements for use in registration statement in SAP will continue to prepare their financial statements for use in a registration statement in GAAP. Because the final amendments will create the option, but not the obligation, to prepare their financial statements for use in a registration statement in SAP, we do not believe this provision of the final amendments will create additional costs.

Filing and Prospectus Delivery Rules. As discussed in Section II.F, when a non-variable annuity issuer seeks to amend a non-variable annuity registration statement on Form S–1, the issuer must file a post-effective amendment that is typically declared effective by Commission staff acting pursuant to delegated authority on such date as the Commission may determine. To the extent that investors previously benefited from the Commission staff's review of these filings before they become effective, allowing filings of non-variable annuity offerings to become automatically effective may eliminate such reviews and, as a result, possibly increase the costs to investors. However, issuers will still face liability under the Federal securities laws for registration statement disclosures (*e.g.,* sections 12 and 17 of the Securities Act and section 10(b) and rule 10b-5 under the Exchange Act), which may ameliorate the potential costs associated with reduced staff review. Moreover, rule 485 only permits updates to become immediately effective in limited, enumerated circumstances, in order to provide an opportunity for staff review for all other changes.

Materially Misleading Statements in RILA Sales Literature. While reducing the potential for misleading or fraudulent statements in non-variable annuity sales literature will provide investors with protections and help ensure that investors receive the information necessary to make informed decisions about these products, investors could bear the costs of these amendments through increased expenses that issuers would incur to implement the final amendments. Alternatively, if the cost of compliance with these final amendments is significant, some non-variable annuity issuers might reduce advertising to lower the extra costs of compliance. If this occurs, investors who would otherwise rely on advertisements to make investment decisions about non-variable annuities or compare non-variable annuities with other investment products might have less complete information for these purposes.

D. Effects on Efficiency, Competition, and Capital Formation

Efficiency. To investors, the costs of purchasing a non-variable annuity are more than just the dollar cost of the contract and include the value of an individual's time spent evaluating the contract and its various aspects. Further, for those investors who do not gain a full understanding of the contract, there could be a cost stemming from a potential mismatch between an investor's goals and the purchased contract. Depending on the size of an individual's potential purchase, certain of these additional costs could be considerable in comparison to the monetary costs associated with a contract purchase and could discourage investors from considering non-variable annuities even in circumstances where investment in a non-variable annuity would be beneficial.

For their part, insurance companies only supply RILAs and registered MVA annuities to the extent they expect the benefits derived from providing the contracts to be greater than the costs of supplying the contract. For issuers, costs include not only those costs associated with producing and servicing non-variable annuities, but also those costs associated with meeting various statutory and regulatory obligations.

These costs borne by both insurance companies and individuals are examples of market ''frictions.'' Market frictions have the effect of reducing the benefits from (*i.e.,* the efficiency of) contracting between market participants.[839] Rules that reduce costs for investors, issuers, or both, reduce market frictions and potentially enhance the benefits from contracting between market participants. By facilitating investor evaluation and comparison of RILAs and registered MVA annuities as well as facilitating the comparison of non-variable annuities to other annuity contracts, the final amendments could reduce frictions for investors. Requiring

[837] According to the most recent U.S. census data, approximately 85% of U.S. households had some form of broadband internet access in their home in 2018, and 92% had a computer (*e.g.,* desktop, laptop, tablet or smartphone). *See* Michael Martin, *Computer and internet Usage in the United States: 2018,* U.S. Census Bureau (Apr. 21, 2021), *available at https://www.census.gov/library/publications/2021/acs/acs-49.html; see also* Pew Research Center, *internet/Broadband Fact Sheet* (Apr. 7, 2021), *available* at *https://www.pewresearch.org/internet/fact-sheet/internet-broadband/* (''Today, 93% of American adults use the internet.'' and ''Today, roughly three-quarters of American adults have broadband internet service at home.''); *see also* Ani Petrosyan, *internet Usage in the United States—Statistics & Facts,* Statista (Aug. 31, 2023), *available at https://www.statista.com/topics/2237/internet-usage-in-the-united-states/#topicOverview* (''Today, over 90 percent of Americans have access to the internet'').

[838] Some commenters stated that permitting the use of SAP financials would reduce the burdens on many insurance companies offering or seeking to offer RILAs. *See supra* footnote 568.

[839] If market frictions are sufficiently large, market frictions can eliminate exchange altogether.

insurance companies to use a single registration form and filing process for all non-variable annuities as well as all variable annuity separate accounts that are structured as unit investment trusts, as well as allowing non-variable annuity issuers to provide financial statements on amended Form N–4 in the same way that insurance companies currently do on Form N–4, may also reduce certain compliance burdens for insurance companies. In addition, requiring non-variable annuity issuers to tag certain key information in Inline XBRL will enable investors, third-party information providers, Commission staff, and other data users to capture and analyze that information more quickly and efficiently than is possible when the same information is provided solely in a static, text-based format.

These increases in efficiency could lead investors to save more appropriately to meet their retirement goals. For example, for existing non-variable annuity investors the final amendments may increase the likelihood that investors choose to invest more or less money in non-variable annuities in a manner that is consistent with their overall financial needs and objectives—a level that may be higher or lower than current levels. Similarly, the final amendments may lead existing investors to choose to allocate their money into different investment options that the non-variable annuity offers, or different non-variable annuities (or other insurance products like variable annuities) that best meet their needs.[840] The final amendments also could help promote investment in non-variable annuities by investors who currently do not invest in non-variable annuities, to the extent such investments are appropriate for them. Finally, access to clearer information about the contract provisions may reduce the chances that an investor makes mid-crediting period withdrawals or transfers or surrenders a non-variable annuities when the costs of doing so do not justify the benefits.

Competition. If the final amendments increase efficiency of exchange in the non-variable annuity market, then we may observe a change in investment in non-variable annuities. For example, if there are individuals who currently do not invest in non-variable annuities (or invest less than they would have) because the costs other than the price of the contract are too high (including the effort to gain sufficient understanding of the product) or they are not aware of non-variable annuities as an investment, then to the extent the final amendments lower those costs or make investors more aware of non-variable annuities, we will expect to observe more investors entering the non-variable annuity market (*i.e.,* there could be an increase in demand for non-variable annuities). Conversely, there may be non-variable annuity investors who, because of the burden, choose not to read statutory prospectuses. To the extent those investors are more likely to read summary prospectuses, those investors may decide, as a result, that other investments or products are better suited to their investment goals. This could result in fewer investments in non-variable annuities (*i.e.,* there could be a decrease in demand for non-variable annuities).

As stated in the Proposing Release, if there are insurance companies who limited their participation in the non-variable annuity market prior to the final amendments as a result of the requirement to register non-variable annuity offerings on Form S–1 or Form S–3 or because of the costs of current prospectus delivery requirements, those insurance companies might increase participation in the non-variable annuity market (*i.e.,* there could be an increase the supply of non-variable annuities) as a result of the final amendments.[841] Commenters agreed with this assessment in the context of the proposal for RILAs, and provided comments that could similarly apply to registered MVA annuities. For example, several commenters noted that the ability of RILA issuers to provide financial statements on final Form N–4 in the same way that insurance companies currently do on Form N–4 would facilitate new entrants to, and enhanced competition in, the RILA marketplace.[842] More generally, one commenter stated that Forms S–1 and S–3 are not well-suited for insurance products and, as a result, the use of Form S–1 and S–3 has impeded the entry of new issuers to the RILA marketplace.

While stating that certain provisions of the proposed rule would promote market competition, this commenter did express concern—specific to RILAs—that the proposed requirement to disclose a guaranteed minimum limit on index losses for the life of the contract for each index-linked option would unreasonably constrain insurance companies from offering competitive upside rates or even certain classes of index-linked options altogether and might have an inadvertent chilling effect on product innovation and, in turn, investor choice.[843] As discussed in Section II.C.1, we are modifying the disclosure requirement to reflect the fact that not all non-variable annuities provide minimum guaranteed limits on index loss for the life of the contract. By clarifying that disclosure of minimum guaranteed limits on index loss for the life of the contract is not intended to require insurance companies to establish such minimums, the adopted change mitigates the commenter's concern. To the extent that competition in a market is related to the size of the market, the net effect of these potential changes in investor demand for, and issuer supply of, non-variable annuities might affect competition in the non-variable annuity market.

The final amendments might also affect competition by requiring that information about non-variable annuities be presented in a concise, user-friendly way, which could allow investors to compare information across products. Requiring non-variable annuity issuers to tag certain key information in Inline XBRL could further facilitate comparisons of information across registrants by making it easier for investors (directly or through third-party data aggregators) to extract and aggregate information through automated means for analysis and comparison, which could increase competition among non-variable annuity issuers for investor capital. For example, the final amendments require issuers to distill certain key product information into tables. The presentation of this information in a table facilitates evaluation among different non-variable annuities as well as comparison to variable annuities. Greater comparison among different non-variable annuities as well as comparison to variable annuities could lead to greater competition. Furthermore, by reducing the costs associated with aggregating data across non-variable annuities, the final Inline XBRL requirement could reduce barriers to entry for third-party data aggregators and induce competition among firms that supply information about non-variable annuities to investors, including other third-party aggregators and sales agents. Accordingly, we do

[840] One commenter stated that extending the relief provided by Form N–4 to issuers of RILA contracts will enable more insurance companies to enter the RILA market, which will increase market competition and the choices available to investors among products for retirement and other long-term purposes. *See* CAI Comment Letter. Increased choice in the future could benefit investors to the extent increased choices allow investors to allocate their money into different investments that better match their overall financial needs and objectives.

[841] *See* Proposing Release at Section III.D.

[842] *See, e.g.,* IRI Comment Letter; Gainbridge Comment Letter; CAI Comment Letter.

[843] *See* CAI Comment Letter.

not anticipate that the costs associated with Form N–4 tagging will be significant enough to deter insurance companies from entering the market for RILAs and registered MVA annuities. As such, we do not expect that the new and modified tagging requirements will decrease competition in the market for RILAs and registered MVA annuities.[844]

The effect on competition between insurance companies could be limited, however, to the extent non-variable annuity investors rely on an agent to help them select their non-variable annuity contract and the investment options under the contract and do not have access to broad comparisons across different non-variable annuities (or among different investment options that non-variable annuities offer) at the time of sale.[845] Agents generally only provide their customers with a subset of all non-variable annuities available in the general marketplace. Thus, while the product information in summary prospectuses will facilitate comparison across products offered by the agent, the effect will likely be limited to the agent's set of products rather than to the broader market.

Capital Formation. As discussed in connection with the potential effects of the final amendments on competition, if the final amendments increase the efficiency of exchange in the non-variable annuity market, then we may observe a change in investment in non-variable annuities. As discussed in Section IV.B.3, unlike variable annuities that involve a direct investment of premiums into one or more mutual funds, which in turn invest in underlying securities, non-variable annuity premiums are not directly invested into equity securities, but are typically invested into derivative securities or fixed-income securities such as corporate bonds. To the extent that an increase or decrease in the demand for non-variable annuities is not driven by investors substituting either away from, or into, variable annuities or other investment vehicles as an alternative, we would not expect changing demand for non-variable annuities to have any effect on the underlying securities. An increase or decrease in the demand for non-variable annuities could, however, increase or decrease the demand for fixed-income securities such as corporate bonds by insurance companies. To the extent the final amendments would cause investors to either substitute away from, or into, variable annuities or another investment that entail investment in underlying funds (which, in turn, invest in a portfolio of securities), there could be an effect on capital formation. If investors substitute away from variable annuities or other investment vehicles into non-variable annuities, there could be a reduction in the demand for the underlying securities and, by extension, a reduction in capital formation. If investors substitute away from non-variable annuities and into variable annuities or other investment vehicles, there could be an increase in the demand for the underlying securities. To the extent issuers invest non-variable annuity proceeds into fixed-income securities such as corporate bonds, there could be an increase in the demand for those securities.

The final Inline XBRL requirements could increase the efficiency of capital formation to the extent that making disclosures available in a structured format reduces some of the information barriers that make it costly for non-variable annuity issuers to find appropriate sources of new investors. Smaller issuers may benefit more from enhanced exposure to investors. If tagging certain disclosures in a structured format increases the availability, or reduces the cost, of collecting and analyzing key information about non-variable annuities, smaller non-variable annuity issuers may benefit from improved coverage by third-party information providers and data aggregators.

E. Reasonable Alternatives Considered

1. Creating an Entirely New Registration Form for RILAs

The final amendments require the registration of RILA offerings on Form N–4. As an alternative, we considered requiring insurance companies to register RILA offerings on an entirely new form. Most variable annuities use Form N–4, which has disclosure requirements tailored to these investments that provide investors with key information about a variable annuity's terms, benefits, and risks, along with information about the insurance company and the offering. Currently, insurance companies register RILA offerings on Forms S–1 or S–3, which allow registering general debt or equity offerings. Forms S–1 and S–3 require issuers to disclose not only information about the offering itself, but also extensive information about the registrant issuing the securities. In addition, registrants must include financial statements prepared in accordance with GAAP, unless an exemption has been granted pursuant to 17 CFR 210.3–13 that permits an insurance company to substitute SAP financials for GAAP financials. Form N–4, on the other hand, allows insurance companies to file financial statements prepared in accordance with SAP if they do not otherwise prepare GAAP financial statements.

A completely new registration form for RILA offerings could negatively affect investors' ability to compare different RILAs with variable annuities that register on Form N–4 (including contracts that offer index-linked options along with other investment options such as variable options or fixed investment options). Furthermore, given that we are amending Form N–4 to add information to capture aspects specific to RILAs, but many of the current form requirements are relevant to the registration of RILA offerings, a completely new and separate form for RILAs would not offer much (if any) benefit to investors in terms of new information compared to the final amendments to Form N–4. Since most variable annuity issuers already use Form N–4 to register their securities, and many RILA contracts are offered as ''combination'' contracts, the amended Form N–4 will efficiently provide investors with product-specific information about these combination contracts. As a result, investors will be able to compare annuity products, and the investment options that these products offer, with less time and effort.[846] To the extent that investors use less time and effort to compare annuity products and their underlying investment options, investors may be more likely to make decisions that align better with their investment goals.

Requiring RILA offerings to be registered on Form N–4 rather than on an entirely new form will also be more efficient for insurance companies since they will generally follow the same procedures they already use for the registration of variable annuities.[847] Using Form N–4 to register variable annuities and RILA offerings will also be less costly for insurance companies than using Form N–4 for variable annuities and a completely new form for RILAs since registrants are already familiar with Form N–4. It also will be less costly because, if RILA offerings had to be registered on a form other than

[844] *See also infra* Section III.D.

[845] We do not have data on the extent to which investors rely on agents when purchasing RILAs. In 2019, $95.5 billion of total variable annuity sales of $98.3 billion (97%) were through a distribution channel involving an agent (*see* IRI Fact Book). If investors rely on agents when purchasing RILAs to the same extent they do when purchasing variable annuities, then the vast majority of RILA investors rely on agents when purchasing RILAs.

[846] *See* CAI Comment Letter.

[847] *Id.*

Form N–4, combination contracts offering variable options and index-linked options would have to use two separate registration forms.

The Commission will also benefit from using Form N–4 for RILAs because the disclosure requirements for variable annuities and RILAs will be located in one form only, and registration statements for these products will be subject to the same filing and review processes.[848] This will reduce the use of resources by Commission staff needed to review the registration statements of RILAs and variable annuities.

2. Alternatives to Specific Form N–4 Amendments

The Commission is making amendments to Form N–4 so that insurance companies are required to register non-variable annuity offerings using that form. While the substance of many of the requirements in Form N–4 does not change from the current version of the form, we are updating some items to include disclosures specifically tailored to non-variable annuities. In certain limited circumstances, we have changed the disclosure requirements provided on the form for all filers, including those registering variable annuities.

As an alternative, we could have required more or less tailoring of the form for non-variable annuities. A larger number of amendments tailored to non-variable annuities than the number we adopted would be more costly for insurance companies registering non-variable annuity offerings because insurance companies that offer combination contracts (or that otherwise register variable annuities on Form N–4) would have to make more changes to their disclosure. For example, we could have required insurance companies to provide a diagram in the KIT to illustrate surrender charges and contract adjustments during different time periods of the contract, or illustrations showing how caps, floors, and/or buffers could affect an investor's returns across different market scenarios.

Also, we could have required insurance companies to provide information related to the economic tradeoffs associated with index-linked options. For example, we could have required RILA issuers to compare a hypothetical investment in the index-linked option to the value, or cost, of a combination of (i) derivatives that would provide the index-linked option's investment exposure; (ii) a fixed-income component; and (iii) the standard insurance features offered with the index-linked option, similar to the analysis conducted by the staff in the Proposing Release.[849] In such a comparison, we could either have required that the insurance company use the hypothetical investment discounted by the rate of interest the insurance company is crediting, or would credit, on fixed annuities with a term equal to the duration of the crediting periods of the index-linked option, or we could have required the insurance company to use the value of a risk-free zero-coupon bond with a time to maturity equal to the crediting period of the index-linked option. We also considered requiring additional disclosure related to the setting of early withdrawal charges or penalties and their impact on such a comparison of hypothetical investments. For example, we could have required the calculation of a disclosure to explicitly include the impact of early withdrawal charges or penalties on the liquidity of the investment. We could also have required more prominent placement of these features on marketing or other materials, or we could have required a comparison of these features to potential benefits of the RILA to clarify for investors possible trade-offs.

Conversely, a smaller number of amendments tailored to non-variable annuities than the number we are adopting would be less costly for insurance companies. Since insurance companies already use Form N–4 to register variable annuities, and most non-variable annuity issuers offer variable annuities registered on Form N–4, the costs of complying with the disclosure requirements of the amended form will not be substantial.

The amendments to Form N–4 will promote investor understanding of non-variable annuity contracts by presenting information in a clear and concise manner. We are not adopting a larger number of amendments tailored to non-variable annuities because they may add too much, or less relevant, information, which may overwhelm investors who may not have the time or capacity to process all the information.[850] [851] We are also not adopting only a subset of amendments tailored to non-variable annuities, as compared with the final rule, because they could result in less investor understanding relative to the understanding resulting from the final amendments.

3. Limiting Scope of Structured Data Requirements

The adopted rule requires many of the newly added disclosures on Form N–4 to be tagged in Inline XBRL, in addition to those prospectus disclosures that Form N–4 currently requires to be tagged. Alternatively, the Commission could have limited the tagging requirement to only those disclosures being added to Items of Form N–4 that are already tagged in Inline XBRL. Under this alternative, disclosures relating to: the overview of the contract; the description of the Insurance company, registered separate account, and investment options; charges; purchases and contract value; purchase of securities being offered; disagreements with and changes to accountants; information about contracts with index-linked options and fixed options subject to a contract adjustment; and fee representations and undertakings would not be tagged.

Limiting the scope of tagging requirements in this manner would result in reduced compliance burdens for insurance companies, which would be required to apply fewer tags to their disclosures on Form N–4 filings. However, the alternative would also remove the informational benefits associated with making those disclosures available in a machine-readable manner. Furthermore, because Form N–4 filers already have Inline XBRL tagging obligations with respect to certain of the form's disclosure requirements, the burden reductions resulting from such an alternative would be limited. Therefore, we are not excluding the newly added disclosures on Form N–4 from the Inline XBRL tagging requirements.

V. Paperwork Reduction Act

We are amending several rules and forms that will modify the registration, offering, and communications processes for non-variable annuities under the Securities Act. We also are amending Form N–4 and related rules that will apply to all issuers of that form.[852] The

[848] *Id.*

[849] *See* Proposing Release at III.B.3., describing the staff analysis and the similar study conducted in the Moenig paper.

[850] *See, e.g.,* Julie R. Agnew and Lisa R. Szykman (2005). Asset Allocation and Information Overload: The Influence of Information Display, Asset Choice, and Investor Experience, *Journal of Behavioral Finance,* 6(2), 57–70, and Alejandro Bernales, Marcela Valenzuela and Ilknur Zer (2023). Effects of Information Overload on Financial Markets: How Much Is Too Much? International Finance Discussion Papers 1372, Washington: Board of Governors of the Federal Reserve System.

[851] Some commenters stated that the disclosure of the economic tradeoffs associated with index-linked options would be irrelevant, and even confusing and misleading, to investors. *See* IRI Comment Letter; CAI Comment Letter.

[852] We are amending rules 485 and 497 of Regulation C (OMB Control No. 3235–0074), which describes the procedures to be followed in preparing and filing registration statements with the

amendments will implement the requirements relating to non-variable annuities in the RILA Act. The amendments will have an impact on the current collections of information burdens under the Paperwork Reduction Act of 1995 (''PRA'') of the following rules and forms: Rule 498A, Form N–4, Investment Company Interactive Data, and Form 24F–2. The titles for the existing collections of information are: (1) ''Rule 498A Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts'' (OMB Control No. 3235–0765), which we are retitling to ''Rule 498A Summary Prospectus for Variable and Non-Variable Annuity and Variable Life Insurance Contracts;'' (2) ''Form N–4, Registration Statement of Separate Accounts Organized as Unit Investment Trust'' (OMB Control No. 3235–0318), which we are retitling to ''Form N–4, Registration Statement of Separate Accounts Organized as Unit Investment Trust or of Index-Linked Annuity Contracts;'' (3) ''Annual Notice of Securities Sold Pursuant to Rule 24f–2.'' (OMB Control No. 3235–0456), which we are retitling to ''Annual Notice of Securities Sold Pursuant to 17 CFR 270.24f–2 or 230.456(e);'' and (4) ''Investment Company Interactive Data'' (OMB Control No. 3235–0642).

The Commission published notice soliciting comments on the collection of information requirements in the Proposing Release and submitted the proposed collections of information to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. While the Commission received no comments specifically addressing the estimated PRA burdens and costs that the Proposing Release described, the Commission did receive comments discussing the burdens of implementing certain aspects of the proposal. We discuss those comments below, along with discussing updated estimates of the collection of information burdens associated with the final amendments. We also discuss below the collection of information burdens associated with amendments to rule 498A and Investment Company Interactive Data, as well as Forms N–4 and 24F–2, which are filed with the Commission and are not kept confidential. A description of the amendments, including the need for the information and its use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the economic effects of the amendments can be found in Section III above.

A. Rule 498A

We are amending rule 498A to permit insurance companies registering offerings of non-variable annuities, as well as issuers of ''combination contracts'' offering a combination of variable and non-variable options, to use a summary prospectus to satisfy statutory prospectus delivery obligations. Consistent with current rule 498A, the use of summary prospectuses for non-variable annuities will be voluntary, but the rule's requirements will be mandatory for issuers that elect to send or give a summary prospectus in reliance upon rule 498A. We also are making certain amendments to Form N–4 that will affect the variable annuity summary prospectuses currently provided to investors. The amendments to rule 498A are part of a layered disclosure approach that is designed to provide investors with a summary prospectus to help them make informed investment decisions regarding non-variable annuities, as discussed in more detail above. These amendments will result in a change in our current estimate of the burdens associated with this collection of information, specifically to account for these additional requirements for issuers that use rule 498A currently and to add non-variable annuities to the estimates.

The respondents to these collections of information will be insurance companies registering offerings of non-variable annuities and registered variable annuity separate accounts. The information provided under rule 498A will not be kept confidential.

The Commission did not receive public comments regarding the PRA estimates for rule 498A in the Proposing Release. Commenters that discussed rule 498A voiced support for the proposal to extend rule 498A to non-variable annuities.[853] As discussed above, in a change from the proposal, we are requiring insurance companies to use Form N–4 to register offerings of registered MVA annuities and, as is the case with non-variable annuities and variable annuities, allowing issuers of registered MVA annuities the option to use a summary prospectus. We have adjusted our numbers to account for the potential that additional insurance companies will opt to use summary prospectuses in connection with offerings of registered MVA annuities.

In our most recent Paperwork Reduction Act submission for Rule 498A, we estimated for rule 498A a total aggregate annual hour burden of 7,634 hours, and a total aggregate annual external cost burden of $9,094,866.[854] We have historically estimated the paperwork burden of rule 498A based on the number of variable annuity and variable life insurance separate account registrants, and our estimates of the updated burden resulting from the final amendments are similarly based on the number of non-variable annuity issuers.[855] We estimate that there are 38 insurance companies that issue RILAs, registered MVA annuities, or annuity contracts offering index-linked options and MVA options, and that there are 416 separate account registrants on current Form N–4 that would be impacted by the proposed amendments.[856] The summary prospectus is voluntary, so the percentage of non-variable annuity issuers that will choose to utilize it is uncertain. Given this uncertainty, we have assumed that insurance companies will choose to use a summary prospectus for 90% of all non-variable annuities, which is the same as our current estimate for variable annuity separate accounts. The table below summarizes our PRA initial and ongoing annual burden estimates associated with the final amendments to rule 498A.

Commission, and rule 405 of Regulation S–T (OMB Control No. 3235–0424), which specifies the requirements that govern the electronic submission of documents. The amendments will require insurance companies that issue non-variable annuities to tag specified information in registration statements filed on Form N–4 or post-effective amendments thereto, as well as in forms of prospectuses filed pursuant to rule 497(c) or 497(e) under the Securities Act that include information that varies from the registration statement using Inline XBRL. These burdens are included in our estimates for the Investment Company Interactive Data collection of information discussed in section V.D below.

[853] *See* CAI Comment Letter.

[854] On January 9, 2024, the Office of Management and Budget approved this collection of information estimate for rule 498A. The Proposing Release discussed a prior burden estimate, which the Office of Management and Budget approved on November 13, 2020. *See* Proposing Release at n.494.

[855] VASP Adopting Release at Section V.E.

[856] The non-variable annuity issuer estimate is based on a review of non-variable annuity registration statements filed with the Commission as of May 2024. *See supra* footnote 725. The estimate of variable annuity separate accounts is based on Form N–CEN data as of December 31, 2023. The Office of Management and Budget approved the burden estimate for rule 498A on January 9, 2024.

TABLE 11—RULE 498A—PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours	Wage rate	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES					
Separate Account Registrants					
Proposed Amendments	9	6	$425 (compliance attorney)	$2,550	
Number of registrants		× 419		× 419	
Total annual burden		2,514		$1,068,450	
Use of summary prospectus		× 90%		× 90%	
Total new annual burden for Reliance on Rule 498A		2,262.60		$961,605	
RILA Registrants					
Preparation and filing of Initial Summary Prospectus/Updating Summary Prospectus.	40	24.67	$313 (blended rate)	$7,709.38	$5,000
Online Posting of Contract Documents	2	2.67	$289 (webmaster)	$771.63	
Total burden per registrant		27.34		8,481.01	$5,000
Number of registrants		× 90		× 90	× 90
Total annual burden		2,460.60		$763,290.90	$405,000
Use of summary prospectus		× 90%		× 90%	× 90%
Total new annual burden for Reliance on Rule 498A		2,214.54		$686,961.81	$364,500
PROPOSED ESTIMATES FOR PRINTING AND MAILING BY RILA REGISTRANTS					
Initial Summary Prospectus					$120,000
Updating Summary Prospectus					$1,048,000
Total annual burden					$1,168,000
Use of summary prospectus					× 90%
Total new annual burden for Reliance on Rule 498A					$1,051,200
Total Proposed Estimated Burdens					
	Responses	Internal hour estimate		Internal hour cost estimate	External cost estimate
Current aggregate annual burden estimates	676	14,688		$3,900,193	$11,559,420
Aggregate proposed additional annual burden estimates	+ 83	+ 4,477.14		+ 1,648,566.81	+ $1,415,700
Revised aggregate annual burden estimates	= 759	= 19,165.14		= 5,548,759.81	= $12,975,120
	Internal initial burden hours	Internal annual burden hours	Wage rate [1]	Internal time costs	Annual external cost burden
FINAL ESTIMATES					
Separate Account Registrants					
Final Amendments	9	[2] 6	$425 (compliance attorney)	$2,550	
Number of separate account registrants		[3] × 416		× 416	
Total annual burden		2,496		$1,060,800	
Use of summary prospectus		× 90%		× 90%	
Total new annual burden for Reliance on Rule 498A		2,246		$954,720	
Non-Variable Annuity Registrants					
Preparation and filing of Initial Summary Prospectus/Updating Summary Prospectus.	40	[4] 24	[5] $313 (blended rate)	$7,512	[6] $5,000
Online Posting of Contract Documents	2	[7] 3	$299 (webmaster)	$897	
Total burden per registrant		27		$8,409	$5,000
Number of non-variable annuity issuers		[8] × 38		× 38	× 38
Total annual burden		1026		$319,542	$190,000
Use of summary prospectus		× 90%		× 90%	× 90%
Total new annual burden for Reliance on Rule 498A		923		$287,588	$171,000
FINAL ESTIMATES FOR PRINTING AND MAILING BY NON-VARIABLE ANNUITY REGISTRANTS [9]					
Initial Summary Prospectus					$57,000
Updating Summary Prospectus					$456,000
Total annual burden					$513,000
Use of summary prospectus					× 90%
Total new annual burden for Reliance on Rule 498A					$461,700
Total Final Estimated Burdens					
	Responses	Internal hour estimate		Internal hour cost estimate	External cost estimate
Current aggregate annual burden estimates	663	7,634		$2,337,471	$9,094,866
Aggregate proposed additional annual burden estimates	+ 35	+ 3,169 (2,246 + 923)		+ $1,242,308 ($954,720 + $287,588)	+ $632,700 ($171,000 + $461,700)

TABLE 11—RULE 498A—PRA ESTIMATES—Continued

	Internal initial burden hours	Internal annual burden hours	Wage rate	Internal time costs	Annual external cost burden
Revised aggregate annual burden estimates	= 698	= 10,803		= $3,579,779	= $9,727,566

Notes:

[1] The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated wage figures are modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013 (as adjusted to account for inflation, the "SIFMA Wage Report").

[2] Internal annual burden hours represents initial burden estimates annualized over a three-year period (9 hours/3 = 3 hours) plus 3 hours of ongoing annual burden hours.

[3] Estimate is based on a review of Form N–CEN reports through December 31, 2023. In its most recently approved PRA submission, the Commission estimated that 419 registrants on Form N–4 would be subject to the information collection burden under current rule 498A. For the estimated burden of the amendments to rule 498A, we have taken into account updated data regarding the number of registrants on Form N–4.

[4] Represents initial burden estimates annualized over a three-year period plus 11 hours of ongoing annual burden hours ((40 hours/3 = approximately 13 hours) + 11 hours = approximately 24 hours).

[5] Represents a blended wage rate of a compliance attorney ($425 per hour) and an intermediate accountant ($200 per hour). $313 is based on the following calculation: ($425 + $200)/2 = $313 rounded to the nearest whole dollar.

[6] We estimate that each insurance company that chooses to rely on rule 498A with regards to a non-variable annuity will incur a one-time collective external cost burden of $10,000 per registration statement to prepare both a new initial summary prospectus and a new updating summary prospectus for offerings on Form N–4. We also estimate an on-going collective burden of $2,500 per registration statement during each subsequent year to prepare updates to these materials. The three-year average cost of these estimates is $5,000.

[7] Represents initial burden estimates annualized over a three-year period plus two hours of ongoing annual burden hours ((2 hours/3 = approximately 1 hour) + 2 hours = approximately 3 hours).

[8] This estimate is based on the number of insurance companies issuing non-variable annuities. *See supra* footnote 725. The proposal reflected an estimate of the number of RILA s, as opposed to the number of insurance companies issuing RILAs. We have updated this approach to better reflect the way that the burden for rule 498A has historically been calculated (reflecting the number of variable annuity separate accounts relying on rule 498A—thus, reflecting the registrants that rely on the rule, not the number of contracts with summary prospectuses under the rule).

[9] Costs associated with printing and mailing for separate account registrants are already accounted for in the currently approved burdens for rule 498A. Estimates for non-variable annuity issuers printing and mailing costs are based on the currently approved burdens for printing and mailing costs under rule 498A (approximately $1,500 per registrant for initial summary prospectuses and approximately $12,000 per registrant for updating summary prospectuses).

[10] The estimated number of new responses is based on the total of the number of non-variable annuity responses under the proposed amendments (38 responses) and the difference between the number of responses for registered separate accounts under the current aggregate annual burden estimate (419 responses) and the final additional annual burden estimates (416 responses). (38 non-variable annuity issuer responses subtracted by 3 registered separate account responses).

B. Form N–4

Under the final amendments, insurance companies will register non-variable and variable annuity contract offerings on Form N–4, as amended, to address the features and risks of non-variable annuities, including RILAs and registered MVA annuities. In addition, we are adopting other amendments to Form N–4 that will apply to all issuers that use that form. For example, the final amendments will switch the order of the Key Information Table and Overview of the Contract items, require issuers to present information in the KIT in a Q&A format, and to require more specific principal risk disclosures. These amendments will result in a change in our current estimate of the burdens associated with this collection of information, specifically to account for these additional requirements for issuers that use Form N–4 currently and to add non-variable annuities to the estimates.

The Commission received no comments specifically addressing the estimated PRA burdens for the proposed amendments to Form N–4. Rather, as discussed above, the Commission received comments supporting the ability of non-variable annuities to register on Form N–4.[857] Those commenters generally suggested that the current burdens on insurance companies that register non-variable annuities on Form S–1 or S–3 may be lessened by having such contracts register on Form N–4.[858]

As discussed in the proposal, Form N–4 generally imposes two types of reporting burdens on issuers that use the form: (1) the burden of preparing and filing the initial registration statement; and (2) the burden of preparing and filing post-effective amendments to a previously effective registration statement. In our most recent Paperwork Reduction Act submission for Form N–4, we estimated for Form N–4 a total aggregate annual hour burden of 292,487 hours, and a total aggregate annual external cost burden of $33,348,866.[859] Compliance with the disclosure requirements of Form N–4 is mandatory, and the responses to the disclosure requirements will not be kept confidential. The respondents to these collections of information will be non-variable annuity issuers and registered variable annuity separate accounts. The purpose of the information collection requirements on Form N–4 is to meet the filing and disclosure requirements of the Securities Act and Investment Company Act, as applicable, and to provide investors with information necessary to evaluate an investment in an offering of securities registered on the form.

At proposal, we presented our information collection estimates by the product type that would be registered on Form N–4. Our proposed information collection estimates addressed RILAs and the initial burdens that a RILA issuer would incur to register a non-variable annuity on Form N–4 and file post-effective amendments; these estimates were the majority of the burden associated with the proposed amendments to rule 498A. We also included information collection estimates that would apply to variable annuity issuers that currently register their offerings on Form N–4, which were more incremental in nature. For each of these proposed information collection estimates—those associated with RILAs and those associated with variable annuities—we based our proposed information collection estimates on average burdens that we anticipated issuers would incur.

We are adopting amendments that require not only issuers of variable annuities and RILAs, as proposed, to register offerings of these annuity products on Form N–4, but also require issuers of registered MVA annuities to register offerings of these annuities on Form N–4. Accordingly, our final information collection estimates reflect these additional registrants as well as updated data since the proposal.

[857] *See supra* sections II.A. and II.B.

[858] *Id.*

[859] On Oct. 26, 2021, the Office of Management and Budget approved without change this burden estimate.

Specifically, our final information collection estimates reflect that the number of entities and responses have been modified from the proposal to include issuers of registered MVA annuities, and also to reflect that the estimated number post-effective amendments filed by issuers of variable annuities have declined from January 1, 2021 to December 31, 2023.

Our final information collection estimates reflect that our per-entity and per-response estimates have not changed from our proposed information collection estimates. This is because we received no comments specifically addressing the estimated PRA burdens for the proposed amendments to Form N–4, and also we do not anticipate that any of the changes from the proposal we are adopting will make any substantive modifications to the per-entity and per-response estimates or impose any additional substantive recordkeeping or information collection requirements within the meaning of the PRA compared to the proposal. Our final information collection estimates, like our proposed information collection estimates, are based on average burdens that we anticipate issuers will incur in registering annuity offerings and filing post-effective amendments on Form N–4. For ease of administration and in a change from the proposed approach to calculating these estimates, our final information collection estimates do not separately address the Form N–4 burdens that issuers of different types of annuities (*e.g.,* RILAs, registered MVA annuities, variable annuities) would incur. Instead, the final estimates include average estimates that any Form N–4 issuer would incur.

We estimate that there will be 1,235 responses that will be subject to collection of information requirements under the final amendments to Form N–4.[860] The tables below summarize our PRA initial and ongoing annual burden estimates associated with the final amendments to Form N–4.

TABLE 12—FORM N–4 INITIAL FILINGS—PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours	Wage rate	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES					
Separate Account Registrants					
Proposed Amendments	12	14	$406 (blended rate for compliance attorney and senior programmer).	$5,684	
Estimated number of annual responses		× 42		× 42	
Total new annual burden		588		$238,728	
RILA Issuers					
Proposed amendments to Form N–4	300	390.89	$406 (blended rate for compliance attorney and senior programmer).	$158,701.34	$40,000
Website availability requirement		0.5	$286 (webmaster)	$143	
Estimated number of annual responses		× 20		× 20	× 20
Total new annual burden		7,827.80		$3,176,886.80	$800,000
Total Proposed Burdens					
	Responses	Internal hour estimate		Internal hour cost estimate	External cost estimate
Current aggregate annual burden estimates	30	8,427		$2,494,716	$754,740
Aggregate proposed additional annual burden estimates	+ 32	+ 8,416.80		+ $3,416,614.80	+ $800,000
Revised aggregate annual burden estimates	= 62	= 16,843.80		= $5,911,330.80	= $1,554,740
FINAL ESTIMATED BURDENS					
	Internal initial burden hours	Internal annual burden hours [1]	Wage rate [2]	Internal time cost	Annual external cost burden
Final Amendments to Form N–4 [3]	300	[3] 380	$420 (blended rate for compliance attorney and senior programmer) [5].	$159,600	[6] $40,000
Estimated number of annual responses [6]		× 101		× 101	× 101
Total estimated annual new burden		38,380		$16,119,600	$4,040,000
Final Total Burdens					
	Responses	Internal hour estimate		Internal hour cost estimate	External cost estimate
Current aggregate annual burden estimates	30	8,427		$2,494,716	$754,740
Aggregate additional annual burden estimate [7] [8]	+ 71	+ 29,953		+ $13,624,884	+ $3,285,260
Revised aggregate annual burden estimates	= 101	= 38,380		= $16,119,600	= $4,040,000

Notes:

[860] This includes the number of initial filings plus post-effective amendments that we estimate below. *See* Table 14. Certain disclosure required by Form N–4 may not be applicable to insurance companies that register the offerings of non-variable annuities. Further, insurance companies that register RILA contracts, may post the current limit on index gains for each index-linked option on a website. For the ease of administering this collection, the information collection estimates are average estimates reflecting that different registrants could, in practice, incur different burdens regarding the Form N–4 disclosure requirements depending on the type of product being registered. For both variable and non-variable annuity registrants, this estimate is based on a review of annuity registration statements filed with the Commission from January 1, 2021 through December 31, 2023.

[1] This estimate includes the initial burden estimates annualized over a three-year period, plus the estimate of ongoing annual burden hours.
[2] The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report. The estimated wage figures are modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.
[3] This estimated burden applies to an issuer of any annuity registered on Form N–4.
[4] The final estimate includes the initial burden estimates annualized over a three-year period (300 hours/3 = 100 hours), plus 280 hours of ongoing annual burden hours (the estimate of ongoing internal hours associated with post-effective amendments (which will be filed in the year following an initial registration statement), as referenced in Table 13 *infra*). The final amendments will permit issuers of RILA contracts to incorporate information about current contract limits on gains by reference into their prospectuses from a website. *See* Item final Form N–4, Item 6. Because this incorporation by reference approach is permitted but not required, burdens associated with this permissible website disclosure are reflected in the burden estimate for the final amendments to Form N–4. For purposes of this information collection, we estimate that 100% of issuers of RILAs would incur burdens associated with website disclosure.
[5] The $420 wage rate reflects current estimates of the blended hourly rate for an in-house compliance attorney ($440) and a senior programmer ($399). $420 is based on the following calculation: ($440 + $399)/2 = $420 rounded to the nearest whole dollar.
[6] We estimate that the external cost to prepare and file an initial registration statement on Form N–4 is $40,000 per filing. This estimate is based on the currently approved external cost estimate for Form N–4 filings, adjusted to reflect staff experience of the costs associated with drafting and filing a registration statement on Form N–4, such as the cost of outside legal services.
[7] The estimate of the annual number of registration statements filed on Form N–4 is based on the average annual number of annuity filings (variable annuity, RILA, and registered MVA annuities) received by the Commission over the past three years (Jan. 1, 2021 to Dec. 31, 2023) on Forms N–4, S–1, and S–3. In its most recently approved PRA submission, the Commission estimated that insurance companies that issue variable annuities will make approximately 30 initial registration statement filings per year. For the estimated burden of the amendments to Form N–4, we have taken into account updated data regarding the number of initial annuity filings on Forms N–4, S–1 and S–3.
[8] The estimated number of new responses, 71 responses, is based on the total of the number of responses under the final amendments, 101 responses, less 30 responses which represents the number of responses for registered separate accounts under the current aggregate annual burden estimate. Similarly, the estimated additional internal hours figure reflects the total estimated annual new burden (38,380 hours) and subtracts the current internal hour estimate (8,427 hours) to avoid double counting the current burden that is applicable to registered separate accounts; the estimated additional internal hour cost figure reflects the total estimated annual new internal hour cost estimate ($16,119,600) and subtracts the current internal hour cost estimate ($2,494,716) to avoid double counting current internal hour cost applicable to registered separate accounts; and the estimated additional external cost figure reflects the total estimated annual new external cost ($4,040,000) and subtracts the current external cost estimate ($754,740) to avoid double counting current external costs applicable to registered separate accounts.

TABLE 13—FORM N–4 POST-EFFECTIVE AMENDMENT FILINGS—PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours	Wage rate	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES					
Separate Account Registrants					
Proposed Amendments	12	6	$406 (blended rate for compliance attorney and senior programmer).	$2,436	
Estimated number of annual responses		× 1,016		× 1,016	
Total new annual burden		6,096		$2,474,976	
RILA Issuers					
Proposed amendments to Form N–4	210	279.95	$406 (blended rate for compliance attorney and senior programmer).	$113,659.70	$24,000
Website availability requirement		0.5	$286 (webmaster)	$143	
Estimated number of annual responses		× 90		× 90	× 90
Total new annual burden		25,240.50		10,242,243	$2,160,000
Total Burdens					
	Responses	Internal hour estimate		Internal hour cost estimate	External cost estimate
Current aggregate annual burden estimates	1,366	+ 284,060		$84,100,454	+ $32,594,126
Aggregate proposed additional annual burden estimates	− 260	+ 31,336.50		+ $12,717,219	+ $2,160,000
Revised aggregate annual burden estimates	= 1,106	= 315,369.50		= 96,817,673	= $34,754,126
FINAL ESTIMATED BURDENS					
	Internal initial burden hours	Internal annual burden hours	Wage rate [1]	Internal time costs	Annual external cost burden
Final Amendments to Form N–4 [2]	210	[2] [3] 280	$420 (blended rate for compliance attorney and senior programmer) [4].	$117,600	[5] $24,000
Estimated number of annual responses [5]		× 1,164		× 1,164	× 1,164
Total new annual burden		325,920		$136,886,400	$27,936,000
FINAL TOTAL BURDENS					
	Responses	Internal hour estimate		Internal hour estimate	External cost estimate
Current aggregate annual burden estimates	1,366	284,060		$84,100,454	$32,594,126
Aggregate additional annual burden estimates [6]	− 202	+ 41,860		+ $52,785,946	$ − 4,658,126
Revised aggregate annual burden estimates	= 1,164	= 325,920		= $136,886,400	= $27,936,000

Notes:
[1] The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report. The estimated wage figures are modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.
[2] This estimated burden applies to an issuer of any annuity registered on Form N–4.

[3] The final estimate includes the initial burden estimates annualized over a three-year period, plus 208 hours of ongoing annual burden hours ((210 hours/3 = 70 hours) + 208 hours = 278 hours (rounded up to 280 hours)). The ongoing annual burden is estimated to be equal to the currently approved ongoing annual burden for initial filings on Form N–4 plus an addition 2 hours of ongoing annual burden hours. The final amendments will permit issuers of RILA contracts to incorporate information about current contract limits on gains by reference into their prospectuses from their website. *See* final Form N–4, Item 6. Because this incorporation by reference approach is permitted but not required, burdens associated with this permissible website disclosure requirement are reflected in the burden estimate for the final amendments to Form N–4. For purposes of this information collection, we estimate that 100% of issuers of RILAs would incur burdens associated with website disclosure.

[4] The $420 wage rate reflects current estimates of the blended hourly rate for an in-house compliance attorney ($440) and a senior programmer ($399). $420 is based on the following calculation: ($440 + $399)/2 = $420 rounded to the nearest whole dollar.

[5] We estimate that the external cost to prepare and file a post-effective registration statement on Form N–4 is approximately $24,000 per filing.

[6] The estimate of the average annual number of post-effective amendments to annuity filings (variable annuity, RILA, and registered MVA annuities) received by the Commission over the past three years (Jan. 1, 2021 to Dec. 31, 2023) on Forms N–4, S–1, and S–3. In its most recently approved PRA submission, the Commission estimated that insurance companies that issue variable annuities will make approximately 1,336 post-effective amendments per year. For the estimated burden of the amendments to Form N–4, we have taken into account updated data regarding the number of post-effective amendments for annuities on Forms N–4, S–1 and S–3. The estimate of annual the annual number of post-effective amendments to annuity filings reflects that the average number of post-effective amendments filed by separate account registrants with the Commission has declined over the past three years. *See infra* note 6.

[7] The aggregate final additional annual burden estimate reflects that the average number of post-effective amendments over the past three years (Jan. 1, 2021 to Dec. 31, 2023) by separate account registrants (1,088) has declined from the current aggregate annual burden estimate (1,366). The aggregate additional burden estimate takes 1,088 (the average number of post-effective amendments over the past three years by separate account registrant) and deducts 1,366 (the current aggregate burden estimate) which equals −278 and then adds 75 (the average number of post-effective amendments filed by insurance companies that issue RILA and registered MVA contracts over the past three years) which equals −202, as adjusted for rounding. Similarly, the estimated additional internal hours figure reflects the total estimated annual new burden (325,920) and subtracts the current internal hour estimate (284,060) to avoid double counting the current burden that is applicable to registered separate accounts; the estimated additional internal hour cost figure reflects the total estimated annual new internal hour cost estimate ($137,061,000) and subtracts the current internal hour cost estimate ($84,100,454) to avoid double counting current internal hour cost applicable to registered separate accounts; and the estimated additional external cost figure reflects the total estimated annual new external cost ($27,936,000) and subtracts the current external cost estimate ($32,594,126) to avoid double counting current external costs applicable to registered separate accounts.

TABLE 14—FORM N–4 TOTAL BURDEN—PRA ESTIMATES

	Responses	Internal annual burden hours [1]	Internal time costs [2]	Annual external cost burden
TOTAL BURDEN ESTIMATES INCLUDING AMENDMENTS				
Proposed Estimates				
Current aggregate annual burden estimates	1,366	292,487	$86,595,170	$33,348,866
Aggregate proposed additional annual burden estimates	−228	+ 39,753.30	+ $16,133,833.80	+ $2,914,740
Revised proposed aggregate annual burden hours	= 1,168	= 332,240.30	= $102,729,004	= $36,263,606
Final Estimates				
Current aggregate annual burden estimates	1,366	292,487	$86,595,170	$33,348,866
Aggregate final additional annual burden estimates	[3] −131	[4] 71,813	[5] $66,410,830	[6] $−1,372,886
Revised aggregate annual burden hours	1,235	364,300	$153,006,000	$31,975,980

Notes:

[1] This estimate includes the initial burden estimates annualized over a three-year period.

[2] This estimate is based on the Commission's estimates of relevant wage rates based on the SIFMA Wage Report. The estimated wage figures are modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. The particular wage rates that were considered are discussed in Table 12 and Table 13 above.

[3] The aggregate final additional annual burden estimates reflect that the average number of post-effective amendments over the past three years (Jan. 1, 2021 to Dec. 31, 2023) by separate account registrants (1,088) has declined from the current aggregate annual burden estimate (1,366). The aggregate final additional annual burden estimate for responses adds 71 (the aggregate annual additional burden estimate for initial registration statements) and −202 (the aggregate annual additional burden estimate for post-effective amendments) = −131.

[4] The aggregate final additional annual burden estimate for the internal annual burden hours adds 29,953 (the aggregate annual additional burden estimate for initial registration statements) and 41,860 (the aggregate annual additional burden estimate for post-effective amendments) = 71,813.

[5] The aggregate final additional annual burden estimate for internal time costs adds $13,624,884 (the aggregate annual additional burden estimate for initial registration statements) and $52,785,946 (the aggregate annual additional burden estimate for post-effective amendments) = $66,410,830.

[6] The aggregate final additional annual burden estimate for the annual external cost burden adds $3,285,260 (the aggregate annual additional burden estimate for initial registration statements) and $−4,658,126 (the aggregate annual additional burden estimate for post-effective amendments) = $−1,372,886.

C. Form 24F–2

Under the amendments, insurance companies will be required to pay applicable securities registration fees relating to non-variable annuities in arrears on Form 24F–2. Consistent with the other elements of this rulemaking, these amendments are designed to require insurance companies to use the same framework to pay securities registration fees for non-variable annuities that they do for variable annuities. Form 24F–2 is the annual notice of securities sold by certain funds that accompanies the payment of registration fees with respect to the securities sold during the fiscal year, net of securities redeemed or repurchased during the year. Compliance with Form 24F–2 is mandatory. Responses to this form are not kept confidential.

The Commission did not receive public comments regarding the PRA estimates for Form 24F–2 in the Proposing Release. Commenters generally supported the proposal to require insurance companies to pay fees in arrears on Form 24F–2 and did not indicate that they found this fee payment method burdensome.[861] As discussed above, in a change from the proposal, we are requiring insurance companies to pay fees for registered MVA annuities via Form 24F–2. We have adjusted our numbers to account for the fact that more insurance companies than originally anticipated will pay fees with Form 24F–2.

In our most recent Paperwork Reduction Act submission for Form 24F–2, we estimated for Form 24F–2 a total aggregate annual hour burden of 20,464 hours, and a total aggregate annual external cost burden of $0.[862] The likely respondents to the proposed amendments will include non-variable annuity issuers and current Form 24F–2 filers, which open-end investment companies, unit investment trusts, registered closed-end investment companies that make periodic repurchase offers under 17 CFR 270.23c–3, and face-amount certificate companies. We estimate that 38 non-variable annuity issuers will be subject to these final amendments and will file

[861] *See* CAI Comment Letter; IRI Comment Letter; Gainbridge Comment Letter.

[862] On April 17, 2024, the Office of Management and Budget approved this burden estimate. Before that, the Office of Management and Budget approved a burden estimate for Form 24F–2 on November 13, 2020. The 2020 OMB-approved burden estimate was cited in the Proposing Release.

one Form 24F–2 filing each per year.[863] The table below summarizes our PRA initial and ongoing annual burden estimates associated with the final amendments to Form 24F–2.

TABLE 15—FORM 24F–2—PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours	Wage rate	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES					
Clerical work to file Form 24F–2	3	3	$82 (compliance clerk)	$246	$0
Submission in a structured data format	3	3	$316 (programmer)	$948	$0
Total annual burden per response		6		$1,194	
Number of annual responses		× 90		× 90	× 90
Total new annual burden		540		$107,460	$0
TOTAL ESTIMATED PROPOSED BURDENS INCLUDING AMENDMENTS					
	Responses	Internal annual burden hours		Internal time costs	Annual external cost burden
Current aggregate annual burden	6,794	27,176		$4,633,508	$0
Aggregate proposed additional annual burden estimates	+ 90	+ 540		+ $107,460	+ $0
Revised aggregate burden estimates	= 6,884	= 27,716		= $4,140,968	= $0
	Internal initial burden hours	Internal annual burden hours	Wage rate[2]	Internal time costs	Annual external cost burden
FINAL ESTIMATES					
Clerical work to file Form 24F–2	3	[1] 3	$82 (compliance clerk)[2]	$246	$0
Submission in a structured data format	3	[1] 3	$316 (programmer)[2]	$948	$0
Total annual burden per response		6		$1,194	
Number of annual responses[3]		× 38		× 38	
Total new annual burden		228		$45,372	$0
TOTAL ESTIMATED FINAL BURDENS INCLUDING AMENDMENTS					
	Responses	Internal annual burden hours		Internal time costs	Annual external cost burden
Current aggregate annual burden	5,116	20,464		$4,072,336	$0
Aggregate final additional annual burden estimates	+ 38	+ 228		+ $45,372	+ $0
Revised aggregate final burden estimates	= 5,154	= 20,692		= $4,117,708	= $0

Notes:
[1] The estimate includes the initial burden estimates annualized over a three-year period (3 hours/3 = 1 hour), plus 2 hours of ongoing annual burden hours.
[2] The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report. The estimated wage figures are modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.
[3] This estimate is based on the number of insurance companies issuing non-variable annuities. *See supra* footnote 725. The proposal reflected an estimate of the number of RILAs, as opposed to the number of insurance companies issuing RILAs. We have updated this approach to better reflect the way that the burden for Form 24F–2 has historically been calculated.

D. Investment Company Interactive Data

The Investment Company Interactive Data collection of information references current requirements for certain registered investment companies and BDCs to submit to the Commission in Inline XBRL certain information provided in response to specified form and rule requirements included in their registration statements and Exchange Act reports. We are amending Form N–4, as well as rule 405 of Regulation S–T, that will require certain new structured data reporting requirements for insurance companies that register offerings of non-variable annuities.[864] The amendments will require insurance companies that issue non-variable annuities to tag specified information in registration statements filed on Form N–4 or post-effective amendments thereto, as well as in forms of prospectuses filed pursuant to rule 497(c) or 497(e) under the Securities Act that include information that varies from the registration statement using Inline XBRL.[865] The purpose of the information collection is to make information regarding non-variable annuities and variable annuities easier for investors to analyze and to help automate regulatory filings and business information processing, and to improve consistency across all types of investment products offered on Form N–4 with respect to the accessibility of information they provide to the market.

Insurance companies that use Form N–4 to register variable annuities are currently required to tag certain registration statement disclosure items using Inline XBRL.[866] For the insurance companies that will now be registering non-variable annuities, including registered MVA annuities, on Form N–4, our amended data tagging requirements would represent new burdens. Nevertheless, non-variable annuity issuers generally do have prior experience submitting filings to the Commission in Inline XBRL. The vast majority of insurance companies that

[863] This estimate is based on a review of non-variable annuity registration statements filed with the Commission as of May 2024. *See supra* footnote 725. We do not believe that the amendments to Form 24F–2 will affect the estimated burdens associated with current Form 24F–2 filers. We have not amended the currently approved burdens for current Form 24F–2 filers with more recent data for the purposes of this PRA estimate.

[864] The Investment Company Interactive Data collection of information do not impose any separate burden aside from that described in our discussion of the burden estimates for this collection of information.

[865] *See supra* Section II.C.10.

[866] *See* General Instruction C.3(h) of current Form N–4. As discussed above, some of the amended items will also require certain variable annuity issuers to provide a few additional disclosures, which though relatively minor, will also have to be tagged.

currently register non-variable annuities on Forms S–1 and S–3 also separately file Form N–4 to register variable annuities and variable life insurance products or currently tag their non-variable annuity registration statements and are thus familiar with the current Form N–4 tagging requirements.[867] In addition, insurance companies that register non-variable annuities on Forms S–1 and S–3 that file GAAP financial statements must tag them using Inline XBRL.[868] Given this prior experience, we do not expect the tagging requirements to be as burdensome to many insurance companies that issue non-variable annuities as it will be for issuers that will be going through the Inline XBRL tagging and submission process for the first time.

The Commission did not receive public comments regarding the PRA estimates associated with the Investment Company Interactive Data requirements in the Proposing Release. Commenters who referenced this aspect of our proposal did not mention the hourly or monetary cost burden of the interactive data requirement.[869] As discussed above, in a change from the proposal, we are requiring insurance companies that offer registered MVA annuities to use amended Form N–4, which includes additional interactive data requirements. However, as mentioned above, insurance companies that issue registered MVA annuities currently do so with Form S–1 or S–3, which also have structuring requirements, thereby reducing the likelihood that these insurance companies will lack familiarity with structured data requirements. We are updating our estimated number of insurance companies and related filings that likely would be impacted by the amended interactive data requirements on Form N–4 to accommodate the requirement that registered MVA annuities use the form. The Commission recognizes that certain RILAs and registered MVA annuities will be subject to different interactive data requirements given that they will be subject to different aspects of Form N–4 and its accompanying disclosure requirements. Although certain structured disclosure requirements in Form N–4 might not be applicable to some contracts, depending on the type of annuity being registered, the information collection estimates are average estimates reflecting that different filers could in practice incur different burdens relating to the Form N–4 disclosure requirements that are applicable to particular annuities.

In our most recent Paperwork Reduction Act submission for the Investment Company Interactive Data collection of information, we estimated a total annual hour burden of 327,571 hours, and a total annual external cost burden of $16,791,000.[870] Compliance with the interactive data requirements is mandatory, and the responses will not be confidential.

The table below summarizes our PRA estimates for the burdens associated with the tagging requirements that would apply to non-variable annuities that file with the Commission on Form N–4.

TABLE 16—INVESTMENT COMPANY INTERACTIVE DATA—PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours	Wage rate	Internal time costs	Annual external cost burden
Proposed Burdens					
Proposed disclosures for current N–4 filers	1	1	$406 (blended rate for compliance attorney and senior programmer).	$406	$50
Number of current N–4 filers		× 400		× 400	× 400
Total proposed new burden estimates for current N–4 filers		400		$162,400	$20,000
Proposed Form N–4 disclosures for RILAs	9	4	$406 (blended rate for compliance attorney and senior programmer).	$1,624	$700
Number of RILAs		× 90		× 90	× 90
Total proposed new burden estimates for RILAs		360		$146,160	$63,000
Total proposed new aggregate annual burden		760		$308,560	$63,000

Total Proposed Estimated Burdens Including Amendments

	Responses	Internal hour estimate		Internal hour cost estimate	External cost estimate
Current aggregate annual burden estimates	14,702	323,724		$27,066,240	$16,041,450
Proposed additional annual burdens	+ 90	+ 760		+ $308,560	+ $63,000
Revised aggregate annual burden estimates	14,792	324,484		$27,374,800	$16,124,450

Final Estimated Burdens

	Internal initial burden hours	Internal annual burden hours[1]	Wage rate[2]	Internal time costs	Annual external cost burden
Final disclosures for current N–4 filers[3]	1	[4] 1	$406 (blended rate for compliance attorney and senior programmer).	$406	[5] $50
Number of current N–4 filers[6]		× 416		× 416	× 416
Total final new burden estimates for current N–4 filers		416		$168,896	$20,800

[867] Based on analysis of Forms S–1, S–3, and POS AM filed by insurance companies that issue non-variable annuities, 32 of the 38 insurance companies that issue RILAs and registered MVA annuities also offer variable products registered on Forms N–3, N–4, or N–6, all of which are currently structured, or otherwise have experience tagging registration statements.

[868] *See* Inline XBRL Filing of Tagged Data, Securities Act Release No. 10514 (June 28, 2018) [83 FR 40846 (Aug. 16, 2018)].

[869] *See supra* footnote 496 and accompanying text.

[870] This estimate is based on the last time the PRA renewal for the Investment Company Interactive Data information collection was approved, on January 23, 2024. *See* ICR Reference No. 202212–3235–007, *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202212-3235-007.*

TABLE 16—INVESTMENT COMPANY INTERACTIVE DATA—PRA ESTIMATES—Continued

	Internal initial burden hours	Internal annual burden hours	Wage rate	Internal time costs	Annual external cost burden
Final Form N–4 disclosures for non-variable annuity issuers[7].	9	[8] 4 hours	$406 (blended rate for compliance attorney and senior programmer).	$1,624	[9] $700
Number of non-variable annuity issuers[10]		[11] × 38		× 38	× 38
Total final new burden estimates for non-variable annuity issuers.		152		$61,712	$26,600
Total final new aggregate annual burden		[12] 568		[13] $230,608	[14] $47,400

Total Final Estimated Burdens Including Amendments

	Responses	Internal hour estimate		Internal hour cost estimate	External cost estimate
Current aggregate annual burden estimates	15,498	327,571		$28,628,918	$16,791,000
Final additional annual burdens	+ 38	+ 568		+ $230,608	+ $47,400
Revised final aggregate annual burden estimates	15,536	328,139		$28,859,526	$16,838,400

Notes:

[1] Includes initial burden estimates annualized over a 3-year period.

[2] The PRA estimates assume that the types of professionals that will be involved in complying with the new interactive data requirements. The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report. The $406 wage rate reflects current estimates of the blended hourly rate for an in-house compliance attorney ($425) and a senior programmer ($386). $406 is based on the following calculation: ($425 + $386)/2 = $406. This estimate represents the average burden for a filer on Form N–4 that is currently subject to interactive data requirements.

[3] Estimated incremental burden for a variable annuity Form N–4 filer that is subject to the form's current interactive data requirements.

[4] Includes initial burden estimates annualized over a three-year period, plus 0.67 hour of ongoing annual burden hours. The estimate of 1 hour is based on the following calculation: ((1 initial hour/3) + 0.67 hour of additional ongoing burden hours) = 1 hour.

[5] Estimated incremental external cost for Form N–4 variable annuity registrants that already submit certain information using Inline XBRL.

[6] Based on a review of Form N–CEN reports through December 31, 2023, we estimate that 416 variable annuity registrants file on Form N–4.

[7] Estimated average burden for a RILA that files on Form N–4 that is currently subject to interactive data requirements on other Commission forms.

[8] Includes initial burden estimates annualized over a three-year period, plus 1 hour of ongoing annual burdens. The estimate of 4 hours is based on the following calculation: ((9 initial hours/3 = 3 hours) + 1 hour of additional ongoing burden hours) = 4 hours.

[9] We estimate an incremental external cost for RILAs that would be newly filing on Form N–4 of $700 to reflect one-time compliance and initial set-up costs. This estimate is based on past estimates of costs—including costs of outside legal services and other service providers—relating to issuers that are newly required to submit certain disclosures in Inline XBRL format. Because RILAs are currently subject to Inline XBRL tagging requirements on other forms, we do not estimate any burdens related to one-time costs associated with becoming familiar with structured data requirements (*e.g.,* the acquisition of new software or the services of consultants).

[10] This estimate is based on the number of insurance companies issuing non-variable annuities. *See supra* footnote 725. The proposal reflected an estimate of the number of RILAs, as opposed to the number of insurance companies issuing RILAs. We have updated this approach to better reflect the way that the burden for Investment Company Interactive Data has historically been calculated.

[11] In connection with variable and non-variable annuity products, insurance companies only need to tag filings for annuities that are offered to new investors. *See* VASP Adopting Release at Section II.D. As a result, many non-variable annuity issuers do not—and will not—need to tag their disclosures because their annuities are no longer offered to new investors. Here, because we are not distinguishing between filings associated with annuities offered to new investors and those that are not, we likely are over-estimating the burden.

[12] 568 hours = 416 hours + 152 hours.

[13] $230,608 internal time cost = $168,896 + $61,712.

[14] $47,400 annual external cost = $20,800 + $26,600.

VI. Regulatory Flexibility Act Certification

The Commission certified, pursuant to section 605(b) of the Regulatory Flexibility Act of 1980 (''Regulatory Flexibility Act'') [871] that, if adopted, the proposed amendments to Forms N–4 and 24F–2, rules 313 and 405 of Regulation S–T, and rules 156, 172, 405, 415, 424, 456, 457, 485, 497, and 498A under the Securities Act, would not, if adopted, have a significant economic impact on a substantial number of small entities. The Commission included this certification in Section V of the Proposing Release. Commenters did not respond to the Commission's requests for comment regarding the Commission's certification, and we continue to believe that there will not be a significant economic impact of the amendments on a substantial number of small entities. As discussed in the Proposing Release, RILA issuers are not investment companies and based on a review of EDGAR filings of existing RILA issuers, we do not expect any RILA issuers will be treated as small entities.[872] Similarly, while the analysis is different for existing N–4 filers (*i.e.,* variable annuity issuers) because the insurance company separate accounts registering variable annuities are deemed to be investment companies, we expect few, if any, separate account to be treated as small entities.[873]

While the final amendments include some modifications to the Commission's proposal, we do not believe that these modifications alter the basis upon which the certification in the Proposing Release was made. With regard to the specific changes from the proposal regarding registered MVA annuities, we do not believe these modifications alter the basis upon which the certification in the Proposing Release was made either, as we do not expect any insurance companies that issue registered MVA annuities to be treated as small entities. Similarly, because we do not expect any insurance companies that issue registered MVA annuities or RILAs to be treated as small entities, and the amendments to rule 433 will affect only a subset of those insurance companies, the amendments to rule 433 do not change the basis upon which the certification in the Proposing Release was made. Accordingly, we certify that

[871] 5 U.S.C. 605(b).

[872] For purposes of the Securities Act and the Regulatory Flexibility Act, generally, an issuer, other than an investment company, will be considered a small entity if it has net assets of $5 million or less as of the end of its most recent fiscal year, and the issuer's offering does not exceed $5 million. 5 U.S.C. 601 (defining ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction''); 17 CFR 230.157 (defining ''small business'' or ''small organization'' under the Securities Act for purposes of the Regulatory Flexibility Act).

[873] Generally, for purposes of the Investment Company Act and the Regulatory Flexibility Act, an investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year. 17 CFR 270.0–10(a). Because State law generally treats separate account assets as the property of the sponsoring insurance company, rule 0–10 aggregates each separate account's assets with the assets of the sponsoring insurance company, together with assets held in other sponsored separate accounts. 17 CFR 270.0–10(b).

the final amendments will not have a significant impact on a substantial number of small entities.

Statutory Authority

The amendments contained in this Release are being adopted under the authority set forth in the Securities Act, particularly sections 6, 7, 8, 10, 19, and 28 thereof [15 U.S.C. 77a *et seq.*]; the Exchange Act, particularly sections 3, 4, 10, 12, 13, 14, 15, 17, 23, 35A, and 36 thereof [15 U.S.C. 78a *et seq.*]; the Investment Company Act, particularly, Sections 8, 30, and 38 thereof, and the RILA Act, particularly section 101 thereof [Pub. L. 117–328, div. AA, title I, 136 Stat. 4459 (2022)].

List of Subjects

17 CFR Part 230

Advertising, Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Amendments

For reasons set forth in the preamble, we are amending title 17, chapter II of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78ll(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

Sections 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, and 85, as amended (15 U.S.C. 77f, 77h, 77j, 77s).

Sec. 230.457 also issued under secs. 6 and 7, 15 U.S.C. 77f and 77g.

* * * * *

■ 2. Revise § 230.156 to read as follows:

§ 230.156 Investment company and registered non-variable annuity sales literature.

(a) Under the Federal securities laws, including section 17(a) of the Securities Act of 1933 (15 U.S.C. 77q(a)) and section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and § 240.10b–5 of this chapter (Rule 10b–5) thereunder, it is unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, to use sales literature which is materially misleading in connection with the offer or sale of registered non-variable annuity securities or securities issued by an investment company. Under these provisions, sales literature is materially misleading if it:

(1) Contains an untrue statement of a material fact; or

(2) Omits to state a material fact necessary in order to make a statement made, in the light of the circumstances of its use, not misleading.

(b) Whether or not a particular description, representation, illustration, or other statement involving a material fact is misleading depends on evaluation of the context in which it is made. In considering whether a particular statement involving a material fact is or might be misleading, weight should be given to all pertinent factors, including, but not limited to, those listed below.

(1) A statement could be misleading because of:

(i) Other statements being made in connection with the offer of sale or sale of the securities in question;

(ii) The absence of explanations, qualifications, limitations or other statements necessary or appropriate to make such statement not misleading; or

(iii) General economic or financial conditions or circumstances.

(2) Representations about past or future investment performance could be misleading because of statements or omissions made involving a material fact, including situations where:

(i) Portrayals of past income, gain, or growth of assets convey an impression of the net investment results achieved by an actual or hypothetical investment which would not be justified under the circumstances, including portrayals that omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading; and

(ii) Representations, whether express or implied, about future investment performance, including:

(A) Representations, as to security of capital, possible future gains or income, or expenses associated with an investment;

(B) Representations implying that future gains or income may be inferred from or predicted based on past investment performance; or

(C) Portrayals of past performance, made in a manner which would imply that gains or income realized in the past would be repeated in the future.

(3) A statement involving a material fact about the characteristics or attributes of an investment company or registered non-variable annuity could be misleading because of:

(i) Statements about possible benefits connected with or resulting from services to be provided or methods of operation which do not give equal prominence to discussion of any risks or limitations associated therewith;

(ii) Exaggerated or unsubstantiated claims about management skill or techniques, characteristics of the investment company or registered non-variable annuity or an investment in such company or securities, services, security of investment or funds, effects of government supervision, or other attributes; and

(iii) Unwarranted or incompletely explained comparisons to other investment vehicles or to indexes.

(4) Representations about the fees or expenses associated with an investment in the fund or registered non-variable annuity could be misleading because of statements or omissions made involving a material fact, including situations where portrayals of the fees and expenses associated with an investment in the fund or registered non-variable annuity omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading.

(c) For purposes of this section, the term *sales literature* shall be deemed to include any communication (whether in writing, by radio, or by television) used by any person to offer to sell or induce the sale of securities of any investment company or registered non-variable annuity. Communications between issuers, underwriters and dealers are included in this definition of sales literature if such communications, or the information contained therein, can be reasonably expected to be communicated to prospective investors in the offer or sale of securities or are designed to be employed in either written or oral form in the offer or sale of securities.

(d) Nothing in this section may be construed to prevent a business development company or a registered closed-end investment company from

qualifying for an exemption under § 230.168 or § 230.169.

■ 3. Amend § 230.172 by revising paragraph (d) to read as follows:

§ 230.172 Delivery of prospectuses.

* * * * *

(d) *Exclusions.* This section shall not apply to any:

(1) Offering of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company;

(2) A business combination transaction as defined in § 230.165(f)(1);

(3) Offering registered on Form S–8 (§ 239.16b of this chapter); or

(4) Offering of any registered non-variable annuity securities.

■ 4. Amend § 230.405 by adding in alphabetical order definitions for ''Form available solely to investment companies registered under the Investment Company Act of 1940,'' ''Registered index-linked annuity,'' ''Registered market value adjustment annuity,'' and ''Registered non-variable annuity'' to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Form available solely to investment companies registered under the Investment Company Act of 1940. A form available solely to investment companies registered under the Investment Company Act of 1940 includes the form used to register the offering of securities of a registered non-variable annuity for purposes of the Securities Act of 1933.

* * * * *

Registered index-linked annuity. The term *registered index-linked annuity* means an annuity or an option available under an annuity:

(1) That is deemed a security;

(2) That is offered or sold in a registered offering;

(3) That is issued by an insurance company that is the subject to the supervision of either the insurance commissioner or bank commissioner of any State or any agency or officer performing like functions as such commissioner;

(4) That is not issued by an investment company; and

(5) Whose contract value, either during the accumulation period or after annuitization or both, will earn positive or negative interest based, in part, on the performance of any index, rate, or benchmark.

* * * * *

Registered market value adjustment annuity. The term *registered market value adjustment annuity* means an annuity or an option available under an annuity, that is not a registered index-linked annuity, and:

(1) That is deemed a security;

(2) That is offered or sold in a registered offering;

(3) That is issued by an insurance company that is subject to the supervision of either the insurance commissioner or bank commissioner of any State or any agency or officer performing like functions as such commissioner;

(4) That is not issued by an investment company; and

(5) Whose contract value may reflect a positive or negative adjustment (based on calculations using a predetermined formula, a change in interest rates, or some other factor or benchmark) if amounts are withdrawn before the end of a specified period.

* * * * *

Registered non-variable annuity. The term *registered non-variable annuity* means any registered index-linked annuity or registered market value adjustment annuity.

* * * * *

■ 5. Amend § 230.415 by revising paragraph (b) to read as follows:

§ 230.415 Delayed or continuous offering and sale of securities.

* * * * *

(b) This section shall not apply to any registration statement pertaining to a registered non-variable annuity, securities issued by a face-amount certificate company, or redeemable securities issued by an open-end management company or unit investment trust under the Investment Company Act of 1940 or any registration statement filed by any foreign government or political subdivision thereof.

■ 6. Amend § 230.424 by revising paragraph (f) to read as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(f) This section shall not apply with respect to prospectuses of an investment company registered under the Investment Company Act of 1940 (other than a registered closed-end investment company) or prospectuses that pertain to a registered non-variable annuity. References to ''form of prospectus'' in paragraphs (a), (b), and (c) of this section shall be deemed also to refer to the form of Statement of Additional Information.

* * * * *

■ 7. Amend § 230.433 by revising paragraph (b)(1) as follows:

§ 230.433 Conditions to permissible post-filing free writing prospectuses.

* * * * *

(b) * * *

(1) *Eligibility and prospectus conditions for seasoned issuers, well-known seasoned issuers, and offerings of registered non-variable annuity securities.* Subject to the provisions of Rule 164(e), (f), and (g), the issuer or any other offering participant may use a free writing prospectus in the following offerings after a registration statement relating to the offering has been filed that includes a prospectus that, other than by reason of this section or Rule 431, satisfies the requirements of section 10 of the Act:

(i) Offerings of securities registered on Form S–3 (§ 239.13 of this chapter) pursuant to General Instruction I.B.1, I.B.2, I.C., or I.D. thereof or on Form SF–3 (§ 239.45 of this chapter) or on Form N–2 (§§ 239.14 and 274.11a–1 of this chapter) pursuant to General Instruction A.2 with respect to the same transactions;

(ii) Offerings of securities registered on Form F–3 (§ 239.33 of this chapter) pursuant to General Instruction I.A.5, I.B.1, I.B.2, or I.C. thereof;

(iii) Any other offering not excluded from reliance on this section and Rule 164 of securities of a well-known seasoned issuer;

(iv) Any other offering not excluded from reliance on this section and Rule 164 of securities of an issuer eligible to use Form S–3 or Form F–3 for primary offerings pursuant to General Instruction I.B.1 of such Forms or an issuer eligible to use General Instruction A.2 of Form N–2 to register a primary offering described in General Instruction I.B.1 of Form S–3; and

(v) Offerings of registered non-variable annuity securities registered on Form N–4 (§ 239.17b of this chapter) where the issuer would otherwise be eligible to use Form S–3 (§ 239.13 of this chapter) pursuant to General Instruction I.B.1, I.B.2, I.C, or I.D.

* * * * *

■ 8. Amend § 230.456 by adding paragraph (e) to read as follows:

§ 230.456 Date of filing; timing of fee payment.

* * * * *

(e)(1) Notwithstanding paragraph (a) of this section, where a registration statement relates to an offering of registered non-variable annuity securities, an issuer shall be deemed to register an offering of an indeterminate amount of such securities and shall, not later than 90 days after the end of any fiscal year during which it has publicly offered such securities, pay a

registration fee to the Commission calculated in accordance with § 230.457(u) (Rule 457(u)) and file Form 24F–2 (referenced in 17 CFR 274.24) with the Commission.

Instruction 1 to paragraph (e)(1): To determine the date on which the registration fee must be paid, the first day of the 90-day period is the first calendar day of the fiscal year following the fiscal year for which the registration fee is to be paid. If the last day of the 90-day period falls on a Saturday, Sunday, or Federal holiday, the registration fee is due on the first business day thereafter.

(2) When registering an offering of an indeterminate amount of registered non-variable annuity securities pursuant to paragraph (e)(1) of this section, the securities sold will be considered registered, for purposes of section 6(a) of the Act, if the registration fee has been paid and the issuer has filed a Form 24F–2 filing pursuant to paragraph (e)(1) of this section not later than the end of the 90-day period.

(3) A registration statement filed in accordance with the registration fee payment provisions of paragraph (e)(1) of this section will be considered filed as to the securities identified in the registration statement for purposes of this section and section 5 of the Act when it is received by the Commission, if it complies with all other requirements under the Act, including this part.

(4) For purposes of this section, if an issuer ceases operations, the date the issuer ceases operations will be deemed to be the end of its fiscal year. In the case of a liquidation, merger, or sale of all or substantially all of the assets (''merger'') of the issuer, the issuer will be deemed to have ceased operations for the purposes of this section on the date the merger is consummated; provided, however, that in the case of a merger of an issuer or a series of an issuer (''Predecessor'') with another issuer or a series of an issuer (''Successor''), the Predecessor will not be deemed to have ceased operations and the Successor will assume the obligations, fees, and redemption credits of the Predecessor incurred pursuant to this section if the Successor:

(i) Had no assets or liabilities, other than nominal assets or liabilities, and no operating history immediately prior to the merger;

(ii) Acquired substantially all of the assets and assumed substantially all of the liabilities and obligations of the Predecessor; and

(iii) The merger is not designed to result in the Predecessor merging with, or substantially all of its assets being acquired by, an issuer (or a series of an issuer) that would not meet the conditions of paragraph (e)(4)(i) of this section.

(5) An issuer paying the fee required by paragraph (e)(1) of this section or any portion thereof more than 90 days after the end of the fiscal year of the issuer shall pay to the Commission interest on unpaid amounts, calculated based on the interest rate in effect at the time of the interest payment by reference to the ''current value of funds rate'' on the Treasury Department's Bureau of Fiscal Service internet site at *https://fiscal.treasury.gov/,* or by calling (202) 874–6995, and using the following formula: I = (X) (Y) (Z/365), where: I = Amount of interest due; X = Amount of registration fee due; Y = Applicable interest rate, expressed as a fraction; Z = Number of days by which the registration fee payment is late. The payment of interest pursuant to this paragraph (e)(5) shall not preclude the Commission from bringing an action to enforce the requirements of this paragraph (e).

(6) An immaterial or unintentional failure to comply with a requirement of this paragraph (e) will not result in a violation of section 6(a) of the Act (15 U.S.C. 77f(a)), so long as:

(i) A good faith and reasonable effort was made to comply with the requirement; and

(ii) In the case of a late payment of a registration fee, the issuer pays the registration fee and any interest due thereon as soon as practicable after discovery of the failure to pay the registration fee.

■ 9. Amend § 230.457 by revising paragraph (u) to read as follows:

§ 230.457 Computation of fee.

* * * * *

(u) Where an issuer elects or is required to register an offering of an indeterminate amount of exchange-traded vehicle securities in accordance with § 230.456(d) (Rule 456(d)) or registered non-variable annuity securities in accordance with § 230.456(e) (Rule 456(e)), the registration fee is to be calculated in the following manner:

(1) Determine the aggregate sale price of such securities sold during the fiscal year.

(2) Determine the sum of:

(i) The aggregate redemption or repurchase price of such securities redeemed or repurchased during the fiscal year; and

(ii) The aggregate redemption or repurchase price of such securities redeemed or repurchased during a prior fiscal year that were not used previously to reduce registration fees payable to the Commission, if the prior fiscal year ended no earlier than August 1, 2021 in the case of exchange traded vehicle securities, or September 23, 2024 in the case of registered non-variable annuity securities.

(3) Subtract the amount in paragraph (u)(2) of this section from the amount in paragraph (u)(1) of this section. If the resulting amount is positive, the amount is the net sales amount. If the resulting amount is negative, it is the amount of redemption credits available for use in future years to offset sales.

(4) The registration fee is calculated by multiplying the net sales amount by the fee payment rate in effect on the date of the fee payment. If the issuer determines that it had net redemptions or repurchases for the fiscal year, no registration fee is due.

■ 10. Amend § 230.485 by revising the section heading and paragraphs (a)(1) and (b) introductory text to read as follows:

§ 230.485 Effective date of post-effective amendments filed by certain registered investment companies or issuers offering registered non-variable annuities.

(a) * * *

(1) Except as otherwise provided in this section, a post-effective amendment to a registration statement filed by a registered open-end management investment company, unit investment trust or, separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(37)] or to register an offering of a registered non-variable annuity securities shall become effective on the sixtieth day after the filing thereof, or a later date designated by the registrant on the facing sheet of the amendment, which date shall be no later than eighty days after the date on which the amendment is filed.

* * * * *

(b) *Immediate effectiveness.* Except as otherwise provided in this section, a post-effective amendment to a registration statement filed by a registered open-end management investment company, unit investment trust or separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(37)] or to register an offering of a registered non-variable annuity securities shall become effective on the date upon which it is filed with the Commission, or a later date designated by the registrant on the facing sheet of the amendment, which date shall be not later than thirty days after the date on which the amendment is filed, except that a post-effective amendment

including a designation of a new effective date pursuant to paragraph (b)(1)(iii) of this section shall become effective on the new effective date designated therein, Provided, that the following conditions are met:

* * * * *

■ 11. Amend § 230.497 by revising the section heading and paragraphs (c) and (e) to read as follows:

§ 230.497 Filing of investment company or registered non-variable annuity prospectuses—number of copies

* * * * *

(c) For investment companies filing on §§ 239.15A and 274.11A of this chapter (Form N–1A), §§ 239.17a and 274.11b of this chapter (Form N–3), §§ 239.17b and 274.11c of this chapter (Form N–4), or §§ 239.17c and 274.11d of this chapter (Form N–6), or an offering of registered non-variable annuities being filed on Form N–4, within five days after the effective date of a registration statement or the commencement of a public offering after the effective date of a registration statement, whichever occurs later, 10 copies of each form of prospectus and form of Statement of Additional Information used after the effective date in connection with such offering shall be filed with the Commission in the exact form in which it was used. Investment companies filing on Forms N–1A, N–3, N–4, or N–6 and issuers of registered non-variable annuities filing on Form N–4 must, if applicable pursuant to General Instruction C.3.(g) of Form N–1A, General Instruction C.3.(h) of Form N–3, General Instruction C.3.(h) of Form N–4, or General Instruction C.3.(h) of Form N–6, submit an Interactive Data File (as defined in § 232.11 of this chapter).

* * * * *

(e) For investment companies filing on §§ 239.15A and 274.11A of this chapter (Form N–1A), §§ 239.17a and 274.11b of this chapter (Form N–3), §§ 239.17b and 274.11c of this chapter (Form N–4), or §§ 239.17c and 274.11d of this chapter (Form N–6), or an offering of registered non-variable annuities being filed on Form N–4, after the effective date of a registration statement, no prospectus that purports to comply with Section 10 of the Act (15 U.S.C. 77j) or Statement of Additional Information that varies from any form of prospectus or form of Statement of Additional Information filed pursuant to paragraph (c) of this section shall be used until five copies thereof have been filed with, or mailed for filing to the Commission. Investment companies filing on Forms N–1A, N–3, N–4, or N–6 and issuers of registered non-variable annuities filing on Form N–4 must, if applicable pursuant to General Instruction C.3.(g) of Form N–1A, General Instruction C.3.(h) of Form N–3, General Instruction C.3.(h) of Form N–4, or General Instruction C.3.(h) of Form N–6, submit an Interactive Data File (as defined in § 232.11 of this chapter).

* * * * *

■ 12. Revise § 230.498A to read as follows:

§ 230.498A Summary prospectuses for separate accounts offering variable annuity and variable life insurance contracts and for offering registered non-variable annuity contracts.

(a) *Definitions.* For purposes of this section:

Class means a class of a Contract that varies principally with respect to distribution-related fees and expenses.

Contract means a Variable Annuity Contract, a Variable Life Insurance Contract, a RILA Contract, or a Registered Market Value Adjustment Annuity Contract as defined in this section, respectively, as well as any Contract that offers a combination of Index-Linked Options, Variable Options, and/or Fixed Options (including Fixed Options subject to a Contract Adjustment).

Contract Adjustment means a positive or negative adjustment made to the value of the Contract by the Insurance Company if amounts are withdrawn from an Investment Option or from the Contract before the end of a specified period. This adjustment may be based on calculations using a predetermined formula, or a change in interest rates, or some other factor or benchmark.

Fixed Option means an Investment Option under a Contract pursuant to which the value of the Contract (for a Form N–3 or Form N–4 Registrant, either during an accumulation period or after annuitization, or both) will earn interest at a rate specified by the Company, subject to a minimum guaranteed rate under the Contract. The term Fixed Option includes Fixed Options that are subject to a Contract Adjustment.

Index-Linked Option means an Investment Option offered under a Contract, pursuant to which the value of the Contract, either during an accumulation period or after annuitization, or both, will earn positive or negative interest based, in part, on the performance of a specified index, rate, or benchmark (such as a registered exchange-traded fund that tracks an index).

Initial Summary Prospectus means the initial summary prospectus described in paragraph (b) of this section.

Insurance Company means the insurance company issuing the Contract, which company is subject to State supervision. The Insurance Company may also be the depositor or sponsor of any Registered Separate Account in which the Contract participates.

Investment Option means a Fixed Option, an Index-Linked Option, and/or a Variable Option, as applicable.

Portfolio Company means any company in which a Registrant on Form N–4 or Form N–6 invests and which may be selected as a Variable Option by the investor.

Portfolio Company Prospectus means the Statutory Prospectus of a Portfolio Company and a summary prospectus of a Portfolio Company permitted by § 230.498.

Registered Market Value Adjustment Annuity Contract means a registered market value adjustment annuity contract, any portion thereof, or any unit of interest or participation therein, issued by an Insurance Company.

Registered Separate Account means a separate account (as defined in section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) that has an effective registration statement on §§ 239.17a and 274.11b of this chapter (Form N–3), §§ 239.17b and 274.11c of this chapter (Form N–4), or §§ 239.17c and 274.11d of this chapter (Form N–6) and that has a current prospectus that satisfies the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)).

Registrant means, as applicable, a Registered Separate Account or the Insurance Company.

RILA Contract means any registered index-linked annuity contract, any portion thereof, or any unit of interest or participation therein, issued by an Insurance Company, that offers Index-Linked Options.

Statement of Additional Information means the statement of additional information required by Part B of Form N–1A, Form N–3, Form N–4, or Form N–6.

Statutory Prospectus means a prospectus that satisfies the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)).

Summary Prospectus refers to both the Initial Summary Prospectus and the Updating Summary Prospectus.

Updating Summary Prospectus means the updating summary prospectus described in paragraph (c) of this section.

Variable Annuity Contract means any accumulation contract or annuity contract, any portion thereof, or any unit of interest or participation therein, issued by an Insurance Company, pursuant to which the value of the contract, either during an accumulation period or after annuitization, or both, varies according to the investment experience of a Portfolio Company.

Variable Life Insurance Contract means a life insurance contract, issued by an Insurance Company, that provides for death benefits and cash values that may vary with the investment performance of any separate account.

Variable Option means:

(i) In the context of a Registrant on Form N–4 or Form N–6, an Investment Option under any Contract pursuant to which the value of the Contract (for a Form N–4 Registrant, either during an accumulation period or after annuitization, or both) varies according to the investment experience of a Portfolio Company;

(ii) In the context of a Registrant on Form N–3, any portfolio of investments in which a Registrant on Form N–3 invests and which may be selected as an option by the investor.

(b) *General Requirements for Initial Summary Prospectus.* An Initial Summary Prospectus that complies with this paragraph (b) will be deemed to be a prospectus that is authorized under section 10(b) of the Act (15 U.S.C. 77j(b)) and section 24(g) of the Investment Company Act (15 U.S.C. 80a–24(g)) for the purposes of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)).

(1) *Scope of Initial Summary Prospectus.* An Initial Summary Prospectus may only describe a single Contract (but may describe more than one Class of the Contract) currently offered by the Registrant under the Statutory Prospectus to which the Initial Summary Prospectus relates.

(2) *Cover Page or Beginning of Initial Summary Prospectus.* Include on the front cover page or the beginning of the Initial Summary Prospectus:

(i) The Insurance Company's name;

(ii) The name of the Contract, and the Class or Classes if any, to which the Initial Summary Prospectus relates;

(iii) A statement identifying the document as a ''Summary Prospectus for New Investors'';

(iv) The approximate date of the first use of the Initial Summary Prospectus;

(v) The following legend, which for Initial Summary Prospectuses of Contracts registered on Form N–4 would be included along with the statements described in Item 1(a)(6) through (8) of Form N–4:

This Summary Prospectus summarizes key features of the [Contract].

Before you invest, you should also review the prospectus for the [Contract], which contains more information about the [Contract's] features, benefits, and risks. You can find this document and other information about the [Contract] online at [_____]. You can also obtain this information at no cost by calling [_____] or by sending an email request to [_____].

You may cancel your [Contract] within 10 days of receiving it without paying fees or penalties [although we will apply the Contract Adjustment]. In some States, this cancellation period may be longer. Upon cancellation, you will receive either a full refund of the amount you paid with your application or your total contract value. You should review the prospectus, or consult with your investment professional, for additional information about the specific cancellation terms that apply.

Additional information about certain investment products, including [type of Contract], has been prepared by the Securities and Exchange Commission's staff and is available at *Investor.gov.*

(A) A Registrant may modify the legend so long as the modified legend contains comparable information.

(B) The legend must provide a website address, other than the address of the Commission's electronic filing system; toll-free telephone number; and email address that investors can use to obtain the Statutory Prospectus and other materials, request other information about the Contract, and make investor inquiries. The website address must be specific enough to lead investors directly to the Statutory Prospectus and other materials that are required to be accessible under paragraph (h)(1) of this section, rather than to the home page or other section of the website on which the materials are posted. The website could be a central site with prominent links to each document. The legend may indicate, if applicable, that the Statutory Prospectus and other information are available from a financial intermediary (such as a broker-dealer) through which the Contract may be purchased or sold. If a Registered Separate Account that has an effective registration statement on Form N–3 relies on § 270.30e–3 of this chapter to transmit a report, the legend must also include the website address required by § 270.30e–3(c)(1)(iii) of this chapter if different from the website address required by this paragraph (b)(2)(v)(B).

(C) The paragraph of the legend regarding cancellation of the Contract may be omitted if not applicable. If this paragraph is included in the legend, the paragraph must be presented in a manner reasonably calculated to draw investor attention to that paragraph.

(D) The legend may include instructions describing how a shareholder can elect to receive prospectuses or other documents and communications by electronic delivery.

(vi) For a RILA Contract and any Contract that offers Index-Linked Options along with other Investment Options, the statement required by rule 481(b)(1) under the Securities Act [17 CFR 230.481(b)(1)].

(3) *Back Cover Page or Last Page of Initial Summary Prospectus.* (i) If a Registrant incorporates any information by reference into the Summary Prospectus, include a legend identifying the type of document (*e.g.,* Statutory Prospectus) from which the information is incorporated and the date of the document. If a Registrant incorporates by reference a part of a document, the legend must clearly identify the part by page, paragraph, caption, or otherwise. If information is incorporated from a source other than the Statutory Prospectus, the legend must explain that the incorporated information may be obtained, free of charge, in the same manner as the Statutory Prospectus.

(ii) Include on the bottom of the back cover page or the last page of the Initial Summary Prospectus the EDGAR contract identifier for the contract in type size smaller than that generally used in the prospectus (*e.g.,* 8-point modern type).

(4) *Table of Contents.* An Initial Summary Prospectus may include a table of contents meeting the requirements of § 230.481(c).

(5) *Contents of Initial Summary Prospectus.* An Initial Summary Prospectus must contain the information required by this paragraph (b)(5) with respect to the applicable registration form, and only the information required by this paragraph (b)(5), in the order provided in paragraphs (b)(5)(i) through (ix) of this section, except that, for an Initial Summary Prospectus related to a Contract registered on Form N–4, provide the information provided in paragraph (b)(5)(ii) before the information provided by paragraph (b)(5)(i).

(i) Under the heading ''Important Information You Should Consider About the [Contract],'' the information required by Item 2 of Form N–3, Item 3 of Form N–4, or Item 2 of Form N–6.

(ii) Under the heading ''Overview of the [Contract],'' the information required by Item 3 of Form N–3, Item 2 of Form N–4, or Item 3 of Form N–6.

(iii) Under the heading ''Standard Death Benefits,'' the information required by Item 10(a) of Form N–6.

(iv) Under the heading ''Benefits Available Under the [Contract],'' the information required by Item 11(a) of Form N–3 or Item 10(a) of Form N–4. Under the heading ''Other Benefits Available Under the [Contract],'' the information required by Item 11(a) of Form N–6.

(v) Under the heading ''Buying the [Contract],'' the information required by Item 12(a) of Form N–3, Item 11(a) of Form N–4, or Item 9(a) through (c) of Form N–6.

(vi) Under the heading ''How Your [Contract] Can Lapse,'' the information required by Item 14(a) through (c) of Form N–6.

(vii) Under the heading ''Making Withdrawals: Accessing the Money in Your [Contract],'' the information required by Item 13(a) of Form N–3, Item 12(a) of Form N–4, or Item 12(a) of Form N–6.

(viii) Under the heading ''Additional Information About Fees,'' the information required by Item 4 of Form N–3, Item 4 of Form N–4, or Item 4 of Form N–6.

(ix) Under the heading ''Appendix: [Portfolio Companies][Investment Options] Available Under the Contract,'' include as an appendix the information required by Item 18 of Form N–3, Item 17 of Form N–4, or Item 18 of Form N–6. Alternatively, an Initial Summary Prospectus for a Contract registered on Form N–3 may include the information required by Item 19 of Form N–3, under the heading ''Additional Information About Investment Options Available Under the Contract.''

(c) *General Requirements for Updating Summary Prospectus.* An Updating Summary Prospectus that complies with this paragraph (c) will be deemed to be a prospectus that is authorized under section 10(b) of the Act (15 U.S.C. 77j(b)) and section 24(g) of the Investment Company Act (15 U.S.C. 80a–24(g)) for the purposes of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)).

(1) *Use of Updating Summary Prospectus.* A Registrant may only use an Updating Summary Prospectus if the Registrant uses an Initial Summary Prospectus for each currently offered Contract described under the Statutory Prospectus to which the Updating Summary Prospectus relates.

(2) *Scope of Updating Summary Prospectus.* An Updating Summary Prospectus may describe one or more Contracts (and more than one Class) described under the Statutory Prospectus to which the Updating Summary Prospectus relates.

(3) *Cover Page or Beginning of Updating Summary Prospectus.* Include on the front cover page or at the beginning of the Updating Summary Prospectus:

(i) The Insurance Company's name;

(ii) The name of the Contract(s) and the Class or Classes, if any, to which the Updating Summary Prospectus relates;

(iii) A statement identifying the document as an ''Updating Summary Prospectus'';

(iv) The approximate date of the first use of the Updating Summary Prospectus; and

(v) The following legend, which must meet the requirements of paragraphs (b)(2)(v)(A), (B), and (D) of this section, as applicable, and for Updating Summary Prospectuses of Contracts registered on Form N–4 would be included along with the statements described in Item 1(a)(6) through (8) of Form N–4:

The prospectus for the [Contract] contains more information about the [Contract], including its features, benefits, and risks. You can find the current prospectus and other information about the [Contract] online at [_____]. You can also obtain this information at no cost by calling [_____] or by sending an email request to [_____].

Additional information about certain investment products, including [type of Contract], has been prepared by the Securities and Exchange Commission's staff and is available at *Investor.gov.*

(vi) For a RILA Contract and any Contract that offers Index-Linked Options along with other Investment Options, the statement required by rule 481(b)(1) under the Securities Act [17 CFR 230.481(b)(1)].

(4) *Back Cover Page or Last Page of Updating Summary Prospectus.* Include on the bottom of the back cover page or the last page of the Updating Summary Prospectus:

(i) The legend required by paragraph (b)(3)(i) of this section; and

(ii) The EDGAR contract identifier(s) for each contract in type size smaller than that generally used in the prospectus (*e.g.,* 8-point modern type).

(5) *Table of Contents.* An Updating Summary Prospectus may include a table of contents meeting the requirements of § 230.481(c).

(6) *Contents of Updating Summary Prospectus.* An Updating Summary Prospectus must contain the information required by this paragraph (c)(6) with respect to the applicable registration form, in the order provided in paragraphs (c)(6)(i) through (iv) of this section.

(i) If any changes have been made with respect to the Contract after the date of the most recent Updating Summary Prospectus or Statutory Prospectus that was sent or given to investors with respect to the availability of Investment Options (for Registrants on Form N–3 and Form N–4) or Portfolio Companies (for Registrants on Form N–6) under the Contract (including, for RILA Contracts, a change to any of the features of the Index-Linked Options disclosed in the table that Item 17(b)(1) of Form N–4 requires, and for Contracts that offer Fixed Options, a change to any of the features of the Fixed Options disclosed in the table that Item 17(c) of Form N–4 requires), or the disclosure that the Registrant included in response to Item 2 (Key Information), Item 3 (Overview of the Contract), Item 4 (Fee Table), Item 11 (Benefits Available Under the Contract), Item 12 (Purchases and Contract Value), or Item 13 (Surrenders and Withdrawals) of Form N–3; Item 2 (Overview of the Contract), Item 3 (Key Information), Item 4 (Fee Table), Item 10 (Benefits Available Under the Contract), Item 11 (Purchases and Contract Value), or Item 12 (Surrenders and Withdrawals) of Form N–4; and Item 2 (Key Information), Item 3 (Overview of the Contract), Item 4 (Fee Table), Item 9 (Premiums), Item 10 (Standard Death Benefits), Item 11 (Other Benefits Available Under the Contract), Item 12 (Surrenders and Withdrawals), or Item 14 (Lapse and Reinstatement) of Form N–6, include the following as applicable, under the heading ''Updated Information About Your [Contract]'':

(A) The following legend: ''The information in this Updating Summary Prospectus is a summary of certain [Contract] features that have changed since the Updating Summary Prospectus dated [date]. This may not reflect all of the changes that have occurred since you entered into your [Contract].''

(B) As applicable, provide a concise description of each change specified in paragraph (c)(6)(i) of this section. Provide enough detail to allow investors to understand the change and how it will affect investors, including indicating whether the change only applies to certain Contracts described in the Updating Summary Prospectus.

(ii) In addition to the changes specified in paragraph (c)(6)(i) of this section, a Registrant may provide a concise description of any other information relevant to the Contract within the time period that paragraph (c)(6)(i) of this section specifies, under the heading ''Updated Information

About Your [Contract].'' Any additional information included pursuant to this paragraph (c)(6)(ii) should not, by its nature, quantity, or manner of presentation, obscure or impede understanding of the information that paragraph (c)(6)(i) of this section requires.

(iii) Under the heading ''Important Information You Should Consider About the [Contract],'' provide the information required by Item 2 of Form N–3, Item 3 of Form N–4, or Item 2 of Form N–6.

(iv) Under the heading ''Appendix: [Portfolio Companies][Investment Options] Available Under the [Contract],'' include as an appendix the information required by Item 18 of Form N–3, Item 17 of Form N–4, or Item 18 of Form N–6. Alternatively, an Updating Summary Prospectus for a Contract registered on Form N–3 may include, under the heading ''Additional Information About [Investment Options] Available Under the [Contract],'' the information required by Item 19 of Form N–3.

(d) *Incorporation by Reference into a Summary Prospectus.* (1) Except as provided by paragraph (d)(2) of this section, information may not be incorporated by reference into a Summary Prospectus. Information that is incorporated by reference into a Summary Prospectus in accordance with paragraph (d)(2) of this section need not be sent or given with the Summary Prospectus.

(2) A Registrant may incorporate by reference into a Summary Prospectus any or all of the information contained in the Registrant's Statutory Prospectus and Statement of Additional Information, and any information from the Registrant's reports under § 270.30e–1 of this chapter that the Registrant has incorporated by reference into the Registrant's Statutory Prospectus, provided that:

(i) The conditions of paragraphs (b)(2)(v)(B), (c)(3)(v), and (h) of this section are met;

(ii) A Registrant may not incorporate by reference into a Summary Prospectus information that paragraphs (b) and (c) of this section require to be included in an Initial Summary Prospectus or Updating Summary Prospectus, respectively; and

(iii) Information that is permitted to be incorporated by reference into the Summary Prospectus may be incorporated by reference into the Summary Prospectus only by reference to the specific document that contains the information, not by reference to another document that incorporates such information by reference.

(3) For purposes of § 230.159, information is conveyed to a person not later than the time that a Summary Prospectus is received by the person if the information is incorporated by reference into the Summary Prospectus in accordance with paragraph (d)(2) of this section.

(e) *Terms used in the Summary Prospectus.* Define special terms used in the Initial Summary Prospectus and Updating Summary Prospectus using any presentation style that clearly conveys their meaning to investors, such as the use of a glossary or list of definitions.

(f) *Transfer of the Contract Security.* Any obligation under section 5(b)(2) of the Act (15 U.S.C. 77e(b)(2)) to have a Statutory Prospectus precede or accompany the carrying or delivery of a Contract security in an offering registered on Form N–3, Form N–4, or Form N–6 is satisfied if:

(1) A Summary Prospectus is sent or given no later than the time of the carrying or delivery of the Contract security (an Initial Summary Prospectus in the case of a purchase of a new Contract, or an Updating Summary Prospectus in the case of additional purchase payments in an existing Contract);

(2) The Summary Prospectus is not bound together with any materials except Portfolio Company Prospectuses for Portfolio Companies available as Variable Options under the Contract, provided that:

(i) All of the Portfolio Companies are available as investment options to the person to whom such documents are sent or given; and

(ii) A table of contents identifying each Portfolio Company Prospectus that is bound together, and the page number on which each document is found, is included at the beginning or immediately following a cover page of the bound materials.

(3) The Summary Prospectus that is sent or given satisfies the requirements of paragraph (b) or (c) of this section, as applicable, at the time of the carrying or delivery of the Contract security; and

(4) The conditions set forth in paragraph (h) of this section are satisfied.

(g) *Sending Communications.* A communication relating to an offering registered on Form N–3, Form N–4, or Form N–6 sent or given after the effective date of a Contract's registration statement (other than a prospectus permitted or required under section 10 of the Act) shall not be deemed a prospectus under section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) if:

(1) It is proved that prior to or at the same time with such communication a Summary Prospectus was sent or given to the person to whom the communication was made;

(2) The Summary Prospectus is not bound together with any materials, except as permitted by paragraph (f)(2) of this section;

(3) The Summary Prospectus that was sent or given satisfies the requirements of paragraph (b) or (c) of this section, as applicable, at the time of such communication; and

(4) The conditions set forth in paragraph (h) of this section are satisfied.

(h) *Availability of the Statutory Prospectus and Certain Other Documents.* (1) The current Initial Summary Prospectus, Updating Summary Prospectus, Statutory Prospectus, Statement of Additional Information, and in the case of a Registrant on Form N–3, the Registrant's most recent annual and semi-annual reports to shareholders under § 270.30e–1 of this chapter, are publicly accessible, free of charge, at the website address specified on the cover page or beginning of the Summary Prospectuses, on or before the time that the Summary Prospectuses are sent or given and current versions of those documents remain on the website through the date that is at least 90 days after:

(i) In the case of reliance on paragraph (f) of this section, the date that the Contract security is carried or delivered; or

(ii) In the case of reliance on paragraph (g) of this section, the date that the communication is sent or given.

(2) The materials that are accessible in accordance with paragraph (h)(1) of this section must be presented on the website in a format, or formats, that:

(i) Are human-readable and capable of being printed on paper in human-readable format;

(ii) Permit persons accessing the Statutory Prospectus or Statement of Additional Information for the Contract to move directly back and forth between each section heading in a table of contents of such document and the section of the document referenced in that section heading; provided that, in the case of the Statutory Prospectus, the table of contents is either required by § 230.481(c) or contains the same section headings as the table of contents required by § 230.481(c); and

(iii) Permit persons accessing a Summary Prospectus to move directly back and forth between:

(A) Each section of the Summary Prospectus and any section of the Statutory Prospectus and Contract

Statement of Additional Information that provides additional detail concerning that section of the Summary Prospectus; or

(B) Links located at both the beginning and end of the Summary Prospectus, or that remain continuously visible to persons accessing the Summary Prospectus, and tables of contents of both the Statutory Prospectus and the Contract Statement of Additional Information that meet the requirements of paragraph (h)(2)(ii) of this section.

(iv) Permit persons accessing the Summary Prospectus to view the definition of each special term used in the Summary Prospectus (as required by paragraph (e) of this section) upon command (*e.g.,* by moving or ''hovering'' the computer's pointer or mouse over the term, or selecting the term on a mobile device); or permits persons accessing the Contract Summary Prospectus to move directly back and forth between each special term and the corresponding entry in any glossary or list of definitions in the Contract Summary Prospectus (as described in paragraph (e) of this section).

(3) Persons accessing the materials specified in paragraph (h)(1) of this section must be able to permanently retain, free of charge, an electronic version of such materials in a format, or formats, that meet each of the requirements of paragraphs (h)(2)(i) and (ii) of this section.

(4) The conditions set forth in paragraphs (h)(1) through (3) of this section shall be deemed to be met, notwithstanding the fact that the materials specified in paragraph (h)(1) of this section are not available for a time in the manner required by paragraphs (h)(1) through (3) of this section, provided that:

(i) The Registrant has reasonable procedures in place to ensure that the specified materials are available in the manner required by paragraphs (h)(1) through (3) of this section; and

(ii) The Registrant takes prompt action to ensure that the specified documents become available in the manner required by paragraphs (h) through (3) of this section, as soon as practicable following the earlier of the time at which it knows or reasonably should have known that the documents are not available in the manner required by paragraphs (h)(1) through (3) of this section.

(i) *Other Requirements* (1) *Delivery upon request.* If paragraph (f) or (g) of this section is relied on with respect to a Contract, the Registrant (or a financial intermediary through which the Contract may be purchased) must send, at no cost to the requestor and by U.S. first class mail or other reasonably prompt means, a paper copy of the Contract Statutory Prospectus, Contract Statement of Additional Information, and in the case of a Registrant on Form N–3, the Registrant's most recent annual and semi-annual reports to shareholders under § 270.30e–1 of this chapter, to any person requesting such a copy within three business days after receiving a request for a paper copy. If paragraph (f) or (g) of this section is relied on with respect to a Contract, the Registrant (or a financial intermediary through which Contract may be purchased) must send, at no cost to the requestor, and by email, an electronic copy of any of the documents listed in this paragraph (i)(1) to any person requesting a copy of such document within three business days after receiving a request for an electronic copy. The requirement to send an electronic copy of a document may be satisfied by sending a direct link to the online document; provided that a current version of the document is directly accessible through the link from the time that the email is sent through the date that is six months after the date that the email is sent and the email explains both how long the link will remain useable and that, if the recipient desires to retain a copy of the document, he or she should access and save the document.

(2) *Greater prominence.* If paragraph (f) or (g) of this section is relied on with respect to a Contract, the Summary Prospectus shall be given greater prominence than any materials that accompany the Summary Prospectus.

(3) *Convenient for reading and printing.* If paragraph (f) or (g) of this section is relied on with respect to a Contract:

(i) The materials that are accessible in accordance with paragraph (h)(1) of this section must be presented on the website in a format, or formats, that are convenient for both reading online and printing on paper; and

(ii) Persons accessing the materials that are accessible in accordance with paragraph (h)(1) of this section must be able to permanently retain, free of charge, an electronic version of such materials in a format, or formats, that are convenient for both reading online and printing on paper.

(4) *Website addresses.* If paragraph (f) or (g) of this section is relied on with respect to a Contract, any website address that is included in an electronic version of the Summary Prospectus must include an active hyperlink or provide another means of facilitating access through equivalent methods or technologies that lead directly to the relevant website address. This paragraph (i)(4) does not apply to electronic versions of a Summary Prospectus that are filed on the EDGAR system.

(5) *Compliance with this paragraph (i) not a condition to reliance on paragraph (f) or (g) of this section.* Compliance with this paragraph (i) is not a condition to the ability to rely on paragraph (f) or (g) of this section with respect to a Contract, and failure to comply with this paragraph (i) does not negate the ability to rely on paragraph (f) or (g) of this section.

(j) *Portfolio Company Prospectuses*—(1) *Transfer of the Portfolio Company security.* Any obligation under section 5(b)(2) of the Act to have a Statutory Prospectus precede or accompany the carrying or delivery of a Portfolio Company security is satisfied if, and information contained in the documents referenced in paragraph (j)(1)(ii) of this section is conveyed for purposes of § 230.159 when:

(i) An Initial Summary Prospectus is used for each currently offered Contract described under the related registration statement;

(ii) A summary prospectus is used for the Portfolio Company (if the Portfolio Company is registered on Form N–1A); and

(iii) The current summary prospectus, Statutory Prospectus, Statement of Additional Information, and most recent annual and semi-annual reports to shareholders under § 270.30e–1 of this chapter for the Portfolio Company are publicly accessible, free of charge, at the same website address referenced in paragraph (h)(1) of this section, and are accessible under the conditions set forth in paragraphs (h)(1), (h)(2)(i) and (ii), and (h)(3) and (4) of this section, with respect to the availability of documents relating to the Contract.

(2) *Communications.* Any communication relating to a Portfolio Company (other than a prospectus permitted or required under section 10 of the Act) shall not be deemed a prospectus under section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) if the conditions set forth in paragraph (j)(1) of this section are satisfied.

(3) *Other requirements.* The materials referenced in paragraph (j)(1)(iii) of this section must be delivered upon request, presented, and able to be retained under the conditions set forth in paragraphs (i)(1) and (3) of this section. Compliance with this paragraph (j)(3) is not a condition to the ability to rely on paragraph (j)(1) or (2) of this section, and failure to comply with this paragraph (j)(3) does not negate the

ability to rely on paragraph (j)(1) or (2) of this section.

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

■ 13. 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), 78*l,* 78m, 78n, 78n–1, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 14. Amend § 232.313 by revising paragraphs (a) and (b) to read as follows:

§ 232.313 Identification of investment company type and series and/or class (or contract).

(a) Registered investment companies, business development companies, and offerings of registered non-variable annuities must indicate their investment company type, based on whether the registrant's last effective registration statement or amendment (other than a merger/proxy filing on Form N–14 (§ 239.23 of this chapter) was filed on Form N–1 (§§ 239.15 and 274.11 of this chapter), Form N–1A (§§ 239.15A and 274.11A of this chapter), Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), Form N–3 (§§ 239.17A and 274.11b of this chapter), Form N–4 (§§ 239.17b and 274.11c of this chapter), Form N–5 (§§ 239.24 and 274.5 of this chapter), Form N–6 (§§ 239.17c and 274.11d of this chapter), Form S–1 (§ 239.11 of this chapter), Form S–3 (§ 239.13 of this chapter), or Form S–6 (§ 239.16 of this chapter) in those EDGAR submissions identified in the EDGAR Filer Manual.

(b) Registered investment companies or offerings of registered non-variable annuities whose last effective registration statement or amendment (other than a merger/proxy filing on Form N–14 (§ 239.23 of this chapter) was filed on Form N–1A (§§ 239.15A and 274.11A of this chapter), Form N–3 (§§ 239.17A and 274.11b of this chapter), Form N–4 (§§ 239.17b and 274.11c of this chapter), or Form N–6 (§§ 239.17c and 274.11d of this chapter) must, under the procedures set forth in the EDGAR Filer Manual:

(1) Provide electronically, and keep current, information concerning their existing and new series and/or classes (or contracts, in the case of separate accounts), including series and/or class (contract) name and ticker symbol, if any, and be issued series and/or class (or contract) identification numbers;

(2) Deactivate for EDGAR purposes any series and/or class (or contract, in the case of separate accounts) that are no longer offered, go out of existence, or deregister following the last filing for that series and/or class (or contract, in the case of separate accounts), but the registrant must not deactivate the last remaining series unless the registrant deregisters; and

(3) For those EDGAR submissions identified in the EDGAR Filer Manual, include all series and/or class (or contract) identifiers of each series and/or class (or contract) on behalf of which the filing is made.

* * * * *

■ 15. Amend § 232.405 by revising paragraphs (a)(3), (b)(1), (b)(2), and Note 1 to the section to read as follows:

§ 232.405 Interactive Data File Submissions.

* * * * *

(a) * * *

(3) Be submitted using Inline XBRL:

(i) If the electronic filer is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a separate account as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, a registered non-variable annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 230.405), a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), a clearing agency that provides a central matching service, or is subject to §§ 242.800 through 242.835 (Regulation SE), and is not within one of the categories specified in paragraph (f)(1)(i) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to:

(A) A filing that contains the disclosure this section requires to be tagged; or

(B) An amendment to a filing that contains the disclosure this section requires to be tagged if the amendment is filed no more than 30 days after the earlier of the due date or filing date of the filing and the Interactive Data File is the first Interactive Data File the electronic filer submits; or

(ii) If the electronic filer is a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a separate account (as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, a registered non-variable annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 230.405), a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), a clearing agency that provides a central matching service, or is subject to §§ 242.800 through 242.835 (Regulation SE), and is not within one of the categories specified in paragraph (f)(1)(ii) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to a filing that contains the disclosure this section requires to be tagged; and

* * * * *

(b) * * *

(1) If the electronic filer is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a separate account (as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, a registered non-variable annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 230.405), a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), or a clearing agency that provides a central matching service, an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from all of the following categories:

(i) The complete set of the electronic filer's financial statements (which includes the face of the financial statements and all footnotes);

(ii) As applicable, all schedules set forth in Article 6A of Regulation S–X (§§ 210.6A–01–210.6A–05) and Article 12 of Regulation S–X (§§ 210.12–01–210.12–29), and all schedules prepared by plans in accordance with the financial reporting requirements of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 *et seq.*) and filed with the Commission on Form 11–K (§ 249.311); and

(iii) The disclosure set forth in paragraph (b)(4) of this section.

Note to paragraph (b)(1): It is not permissible for the Interactive Data File to present only partial face financial statements, such as by excluding

comparative financial information for prior periods.

(2) If the electronic filer is an open-end management investment company registered under the Investment Company Act of 1940, a separate account (as defined in Section 2(a)(14) of the Securities Act) registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a registered non-variable annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 230.405), a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), or a clearing agency that provides a central matching service, an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from the information set forth in:

(i) Items 2, 3, and 4 of §§ 239.15A and 274.11A of this chapter (Form N–1A), as well as any information provided in response to Item 27A(b)–(h) of Form N–1A included in any report to shareholders filed on §§ 249.331 and 274.128 of this chapter (Form N–CSR);

(ii) Items 2, 4, 5, 11, 18 and 19 of §§ 239.17a and 274.11b of this chapter (Form N–3);

(iii) Items 2(b)(2), 2(d), 3, 4, 5, 6(a) (instruction), 6(d), 6(e), 7(e), 10, 17, 26(c), or 31A of §§ 239.17b and 274.11c of this chapter (Form N–4);

(iv) Items 2, 4, 5, 10, 11, and 18 of §§ 239.17c and 274.11d of this chapter (Form N–6);

(v) Any disclosure provided in response to Item 18 of §§ 249.331 and 274.128 of this chapter (Form N–CSR), or

(vi) Item 11 of § 274.12 of this chapter (Form N–8B–2) pursuant to Instruction 2, including to the extent required by § 239.16 of this chapter (Form S–6); as applicable.

* * * * *

Note 1 to § 232.405: Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to §§ 239.11 (Form S–1), 239.13 (Form S–3), 239.25 (Form S–4), 239.18 (Form S–11), 239.31 (Form F–1), 239.33 (Form F–3), 239.34 (Form F–4), 249.310 (Form 10–K), 249.308a (Form 10–Q), and 249.308 (Form 8–K) of this chapter. General Instruction F of § 249.311 of this chapter (Form 11–K) specifies the circumstances under which an Interactive Data File must be submitted, and the 556 circumstances under which it is permitted to be submitted, with respect to Form 11–K. Paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of § 239.40 of this chapter (Form F–10) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form F–10. Paragraph 101 of the Instructions as to Exhibits of § 249.220f of this chapter (Form 20–F) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form 20–F. Paragraph B.(15) of the General Instructions to § 249.240f of this chapter (Form 40–F) and Paragraph C.(6) of the General Instructions to § 249.306 of this chapter (Form 6–K) specify the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to §§ 249.240f (Form 40–F) and 249.306 (Form 6–K) of this chapter. Section 240.17Ad–27(d) of this chapter (Rule 17Ad27(d) under the Exchange Act) specifies the circumstances under which an Interactive Data File must be submitted with respect to the reports required under Rule 17Ad–27. Note D.5 of § 240.14a–101 of this chapter (Schedule 14A) and Item 1 of § 240.14c–101 of this chapter (Schedule 14C) specify the circumstances under which an Interactive Data File must be submitted with respect to Schedules 14A and 14C. General Instruction L of § 240.14d–100 of this chapter (Schedule TO) specifies the circumstances under which an Interactive Data File must be submitted with respect to Schedule TO. Section 240.13a–21 of this chapter (Rule 13a–21 under the Exchange Act) and General Instruction I to § 249.333 of this chapter (Form F–SR) specify the circumstances under which an Interactive Data File must be submitted, with respect to Form F–SR. §§ 242.829 and 242.831 of this chapter (Rules 829 and 831 of Regulation SE) and the Registration Instructions to § 249.1701 of this chapter (Form SBSEF), as applicable, specify 557 the circumstances under which an Interactive Data File must be submitted with respect to filings made under Regulation SE. Item 601(b)(101) of Regulation S–K, paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of Form F–10, paragraph 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.(15) of the General Instructions to Form 40–F, and paragraph C.(6) of the General Instructions to Form 6–K all prohibit submission of an Interactive Data File by an issuer that prepares its financial statements in accordance with §§ 210.6–01 through 210.6–10 of this chapter (Article 6 of Regulation S–X). For an issuer that is a management investment company or separate account registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a registered non-variable annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 230.405), a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), General Instruction 2.(l) of Form N–8B–2 (§ 274.12 of this chapter), General Instruction 5 of § 239.16 of this chapter (Form S–6), and General Instruction C.4 of §§ 249.331 and 274.128 of this chapter (Form N–CSR), specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in note 1 to this section and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 16. The general authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78o–7 note, 78u–5, 78w(a), 78ll, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, 80a–37; and sec. 71003 and sec. 84001, Pub. L. 114–94, 129 Stat. 1321, unless otherwise noted.

* * * * *

■ 17: Revise Form N–3 (referenced in §§ 239.17a and 274.11b).

Note: Form N–3 is attached as Appendix B to this document. Form N–3 does not appear in the Code of Federal Regulations.

■ 18. Revise Form N–4 (referenced in §§ 239.17b and 274.11c).

Note: Form N–4 is attached as Appendix A to this document. Form N–4 does not appear in the Code of Federal Regulations.

■ 19. Revise Form N–6 (referenced in §§ 239.17c and 274.11d).

Note: Form N–6 is attached as Appendix C to this document. Form N–6 will not appear in the Code of Federal Regulations.

■ 20. Add § 239.66 to read as follows:

§ 239.66 Form 24F–2, annual filing of securities sold pursuant to registration of certain investment company securities and registered non-variable annuities.

Form 24F–2 shall be used as the annual report filed by face amount certificate companies, open-end management companies, unit investment trusts, and registered non-variable annuities pursuant to §§ 230.456, 230.457, or 270.24f–2 of this chapter for reporting securities sold during the fiscal year.

■ 21. Revise Form 24F–2 (referenced in §§ 239.66 and 274.24).

Note: Form 24F–2 is attached as Appendix D to this document. Form 24F–2 will not appear in the Code of Federal Regulations.

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

■ 22. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78n–1, 78*o*(d), 80a–8, 80a–24, 80a–26, 80a–29, and sec. 939A, Pub. L. 111–203, 124 Stat. 1376, unless otherwise noted.

* * * * *

■ 23. Revise § 274.24 to read as follows:

§ 274.24 Form 24F–2, annual filing of securities sold pursuant to registration of certain investment company securities and registered non-variable annuities.

Form 24F–2 shall be used as the annual report filed by face amount certificate companies, open-end management companies, unit investment trusts, and registered non-variable annuities pursuant to §§ 230.456, 230.457, or 270.24f–2 of this chapter for reporting securities sold during the fiscal year.

By the Commission.

Dated: July 1, 2024.

Vanessa A. Countryman,

Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

Appendix A—Form N–4

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM N-4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Pre-Effective Amendment No. _____ ☐

Post-Effective Amendment No. _____ ☐

and/or

REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940

Amendment No. _____ ☐

(Check appropriate box or boxes.)

_____

(Exact Name of Registered Separate Account)

_____

(Name of Insurance Company)

_____

(Address of Insurance Company's Principal Executive Offices) (Zip Code)

_____

(Insurance Company's Telephone Number, including Area Code)

_____

(Name and Address of Agent for Service)

Approximate Date of Proposed Public Offering: _____

It is proposed that this filing will become effective (check appropriate box):

☐ immediately upon filing pursuant to paragraph (b)

☐ on (date) pursuant to paragraph (b)

☐ 60 days after filing pursuant to paragraph (a)(1)

☐ on (date) pursuant to paragraph (a)(1) of rule 485 under the Securities Act of 1933 ("Securities Act").

If appropriate, check the following box:

☐ This post-effective amendment designates a new effective date for a previously filed post-effective amendment.

Check each box that appropriately characterizes the Registrant:

☐ New Registrant (as applicable, a Registered Separate Account or Insurance Company that has not filed a Securities Act registration statement or amendment thereto within 3 years preceding this filing)

☐ Emerging Growth Company (as defined by Rule 12b-2 under the Securities Exchange Act of 1934 ("Exchange Act"))

☐ If an Emerging Growth Company, indicate by check mark if the Registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of Securities Act

☐ Insurance Company relying on Rule 12h-7 under the Exchange Act

☐ Smaller reporting company (as defined by Rule 12b-2 under the Exchange Act)

Omit from the facing sheet reference to the other Act if the registration statement or amendment is filed under only one of the Acts. Include the "Approximate Date of Proposed Public Offering" only where securities are being registered under the Securities Act.

Form N-4 is to be used by (1) separate accounts that are unit investment trusts that offer variable annuity contracts to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act, (2) insurance companies to register the offerings of registered index-linked annuity contracts, as defined in rule 405 under the Securities Act [17 CFR 230.405], (3) insurance companies to register the offerings of registered market value adjustment annuity contracts, as defined in rule 405 under the Securities Act, and (4) insurance companies to register the offerings of annuity contracts that have any combination of these options under the applicable statutes. The Commission has designed Form N-4 to provide investors with information that will assist them in making a decision about investing in these contracts. The Commission also may use the information provided on Form N-4 in its regulatory, disclosure review, inspection, and policy making roles.

A Registrant is required to disclose the information specified by Form N-4, and the Commission will make this information public. A Registrant is not required to respond to the collection of information contained in Form N-4 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.

CONTENTS OF FORM N-4

GENERAL INSTRUCTIONS

A. Definitions

References to sections and rules in this Form N-4 are to the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] (the "Investment Company Act"), unless otherwise indicated. Terms used in this Form N-4 have the same meaning as in the Investment Company Act or the related rules, unless otherwise indicated. As used in this Form N-4, the terms set out below have the following meanings:

"Class" means a class of a Contract that varies principally with respect to distribution-related fees and expenses.

"Contract" means any accumulation contract or annuity contract, any portion thereof, or any unit of interest or participation therein issued by an Insurance Company that offers Index-Linked Options, Variable Options, and/or Fixed Options, as applicable, pursuant to the registration statement prepared on this Form.

"Contract Adjustment" means a positive or negative adjustment made to the value of the Contract by the Insurance Company if amounts are withdrawn from an Investment Option or from the Contract before the end of a specified period. This adjustment may be based on calculations using a predetermined formula, or a change in interest rates, or some other factor or benchmark.

"Crediting Period" means the period of time over which an Index's performance is measured, subject to applicable limits on Index gains and losses, to determine the amount of positive or negative interest that will be credited to an Index-Linked Option at the end of the period.

"Fixed Option" means an Investment Option under the Contract pursuant to which the value of the Contract, either during an accumulation period or after annuitization, or both, will earn interest at a rate specified by the Insurance Company, subject to a minimum guaranteed rate under the Contract. The term Fixed Option includes Fixed Options that are subject to a Contract Adjustment.

"Index" or "Indexes" means any index, rate, or benchmark (such as a registered exchange-traded fund that tracks an index) used in the calculation of positive or negative interest credited to an Index-Linked Option.

"Index-Linked Option" means an Investment Option offered under any Contract, pursuant to which the value of the Contract, either during an accumulation period or after annuitization, or both, will earn positive or negative interest based, in part, on the performance of a specified Index.

"Insurance Company" means the insurance company issuing the Contract, which company is subject to State supervision. The Insurance Company may be the depositor or sponsor of any Registered Separate Account in which the Contract participates. If there is more than one Insurance Company, the information called for in this Form about the Insurance Company shall be provided for each Insurance Company.

"Investment Option" means a Fixed Option, an Index-Linked Option, and/or a Variable Option, as applicable.

"Platform Charge" means any fee charged by the Insurance Company to make a Portfolio Company available in connection with a Variable Option under the Contract, and that varies solely on the basis of the Portfolio Company selected.

"Portfolio Company" means any investment company in which the Registered Separate Account invests and which may be selected by the investor in connection with a Variable Option.

"Registered Separate Account" means a separate account (as defined in section 2(a)(37) of the Investment Company Act [15 U.S.C. 80a-2(a)(37)]) in which the Contract participates with respect to Variable Options offered under the Contract.

"Registrant" means, as applicable, a Registered Separate Account or the Insurance Company.

"SAI" means the Statement of Additional Information required by Part B of this Form.

"Securities Act" means the Securities Act of 1933 [15 U.S.C. 77a *et seq.*].

"Securities Exchange Act" means the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*].

"Statutory Prospectus" means a prospectus that satisfies the requirements of section 10(a) of the Securities Act [15 U.S.C. 77j(a)].

"Summary Prospectus" has the meaning provided by paragraph (a) of rule 498A under the Securities Act [17 CFR 230.498A(a)].

"Variable Option" means an Investment Option under any Contract pursuant to which the value of the Contract, either during an accumulation period or after annuitization, or both, varies according to the investment experience of a Portfolio Company.

B. Filing and Use of Form N-4

1. What is Form N-4 used for?

Form N-4 is used by all separate accounts organized as unit investment trusts and offering Contracts with Variable Options and all Insurance Companies that offer Contracts with Variable Options, Index-Linked Options, and/or Contract Adjustments to file:

(a) An initial registration statement under the Investment Company Act and any amendments to the registration statement;

(b) An initial registration statement required under the Securities Act and any amendments to the registration statement, including amendments required by section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)]; or

(c) Any combination of the filings in paragraph (a) or (b).

2. What is included in the registration statement?

(a) For registration statements or amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, include the facing sheet of the Form, Parts A, B, and C, and the required signatures.

(b) For registration statements or amendments filed only under the Investment Company Act, include the facing sheet of the Form, responses to all Items of Parts A (except Items 1, 4, 5, 9, and 16), B, and C (except Items 27(c), (k), (l), and (m)), and the required signatures.

3. What are the fees for Form N-4?

No registration fees are required with the filing of Form N-4 to register as an investment company under the Investment Company Act or to register securities under the Securities Act. If a filing on Form N-4 is

made to register securities under the Securities Act and securities are sold to the public, registration fees must be paid on an ongoing basis after the end of the Registrant's fiscal year. *See* section 24(f) [15 U.S.C. 80a-24(f)] and rules 24f-2 [17 CFR 270.24f-2], 456 [17 CFR 230.456], and 457 [17 CFR 230.457].

4. What rules apply to the filing of a registration statement on Form N-4?

(a) For registration statements and amendments filed under both the Investment Company Act and the Securities Act or under only the Securities Act, the general rules under the Securities Act, particularly the rules regarding the filing of registration statements in Regulation C [17 CFR 230.400 – 230.498A], apply to the filing of registration statements on Form N-4. Specific requirements concerning investment companies, registered index-linked annuities, and registered market value adjustment annuities appear in rules 480, 488 and 495 - 498A of Regulation C.

(b) For registration statements and amendments filed only under the Investment Company Act, the general rules under the Investment Company Act, particularly the provisions in rules 8b-1 – 8b-31 [17 CFR 270.8b-1 to 8b-31], apply to the filing of registration statements on Form N-4.

(c) The plain English requirements of rule 421(d) under the Securities Act [17 CFR 230.421(d)] apply to prospectus disclosure in Part A of Form N-4.

(d) Regulation S-T [17 CFR 232.10 – 232.501] applies to all filings on the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR").

C. Preparation of the Registration Statement

1. Administration of the Form N-4 Requirements

(a) The requirements of Form N-4 are intended to promote effective communication between the Registrant and prospective investors. A Registrant's prospectus should clearly disclose the fundamental features and risks of the Contracts, using concise, straightforward, and easy to understand language. A Registrant should use document design techniques that promote effective communication.

(b) The prospectus disclosure requirements in Form N-4 are intended to elicit information for an average or typical investor who may not be sophisticated in legal or financial matters. The prospectus should help investors to evaluate the risks of an investment and to decide whether to invest in a Contract by providing a balanced disclosure of positive and negative factors. Disclosure in the prospectus should be designed to assist an investor in comparing and contrasting a Contract with other Contracts.

(c) Responses to the Items in Form N-4 should be as simple and direct as reasonably possible and should include only as much information as is necessary to enable an average or typical investor to understand the particular characteristics of the Contracts. The prospectus should avoid including lengthy legal and technical discussions and simply restating legal or regulatory requirements to which Contracts generally are subject. Brevity is especially important in describing the practices or aspects of the Registrant's operations that do not differ materially from those of other separate accounts or insurance companies. Avoid excessive detail, technical or legal terminology, and complex language, including the use of formulas as the primary means of communicating certain terms or features of the Contract. Also avoid lengthy sentences and paragraphs that may make the prospectus difficult for investors to understand and detract from its usefulness.

(d) The requirements for prospectuses included in registration statements on Form N-4 will be administered by the Commission in a way that will allow variances in disclosure or presentation if appropriate for the circumstances involved while remaining consistent with the objectives of Form N-4.

2. Form N-4 is divided into three parts:

(a) *Part A*. Part A includes the information required in a Registrant's prospectus under section 10(a) of the Securities Act. The purpose of the prospectus is to provide essential information about the Registrant and the Contracts in a way that will help investors to make informed decisions about whether to purchase the securities described in the prospectus. In responding to the Items in Part A, avoid cross-references to the SAI unless otherwise prescribed by the Form. Cross-references within the prospectus are most useful when their use assists investors in understanding the information presented and does not add complexity to the prospectus.

(b) *Part B.* Part B includes the information required in a Registrant's SAI. The purpose of the SAI is to provide additional information about the Registrant and the Contracts that the Commission has concluded is not necessary or appropriate in the public interest or for the protection of investors to be in the prospectus, but that some investors may find useful. Part B affords the Registrant an opportunity to expand discussions of the matters described in the prospectus by including additional information that the Registrant believes may be of interest to some investors. The Registrant should not duplicate in the SAI information that is provided in the prospectus, unless necessary to make the SAI comprehensible as a document independent of the prospectus.

(c) *Part C.* Part C includes other information required in a Registrant's registration statement.

3. Additional Matters

(a) *Organization of Information.* Organize the information in the prospectus and SAI to make it easy for investors to understand. Notwithstanding rule 421(a) under the Securities Act [17 CFR 230.421(a)] regarding the order of information required in a prospectus, disclose the information required by Item 2 (Overview of the Contract), Item 3 (Key Information), and Item 4 (Fee Table) in numerical order at the front of the prospectus. Do not precede Items 2, 3, and 4 with any other Item except the Cover Page (Item 1), a glossary, if any (General Instruction C.3.(d)), or a table of contents meeting the requirements of rule 481(c) under the Securities Act [17 CFR 230.481(c)].

(b) *Other Information.* A Registrant may include, except in response to Items 2 and 3, information in the prospectus or the SAI that is not otherwise required so long as the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of the information that is required to be included. For example, Registrants are free to include in the prospectus financial statements required to be in the SAI, and may include in the SAI financial statements that may be placed in Part C. However, information regarding non-principal risks that is not otherwise required to be in the prospectus must be disclosed in the SAI and not the prospectus, in accordance with Items 5 and 20.

(c) *Presentation of Information.* To aid investor comprehension, Registrants are encouraged to use, as appropriate, question-and-answer formats, tables, side-by-side comparisons, captions, bullet points, numeric examples, illustrations or similar presentation methods. For example, such presentation methods would be appropriate when presenting disclosure for similar Contract features, prospectuses describing multiple Contracts, or the operation of optional benefits or annuitization.

(d) *Use of Terms.*

(i) *Definitions*. Define the special terms used in the prospectus (*e.g.*, accumulation unit, participant, Crediting Period, etc.) in any presentation that clearly conveys meaning to investors. If the Registrant elects to include a glossary or list of definitions, only special terms used throughout the prospectus must be defined or listed. If a special term is used in only one section of the prospectus, it may be defined there (and need not be included in any glossary or list of definitions that the Registrant includes).

(ii) *Alternate Terminology*. A Registrant may use alternate terminology other than that used in the form so long as the terminology used by the Registrant clearly conveys the meaning of, or provides comparable information as, the terminology included in the form.

(e) *Use of Form N-4 to Register Multiple Contracts*

(i) A single prospectus may describe multiple Contracts that are essentially identical. Whether the prospectus describes Contracts that are "essentially identical" will depend on the facts and circumstances. For example, a Contract that does not offer optional benefits would not be essentially identical to one that does for a charge. Similarly, group and individual Contracts would not be essentially identical. However, Contracts that vary only due to State regulatory requirements would be essentially identical.

(A) Paragraph (a) of General Instruction C.3 requires Registrants to disclose the information required by Items 2, 3, and 4 in numerical order at the front of the prospectus and generally not to precede the Items with other information. As a general matter, Registrants providing disclosure in a single prospectus for more than one Contract, may depart from the requirement of paragraph (a) as necessary to present the required information clearly and effectively (although the order of information required by each Item must remain the same). For example, the prospectus may present all of the Item 2 information for the Contracts, followed by all of the Item 3 information for several Contracts (*e.g.*, by providing several Key Information Tables sequentially or by providing a single Key Information Table containing separate disclosures for each Contract to the extent that such disclosures would vary by Contract), and followed by all of the Item 4 information for the Contracts. Alternatively, the prospectus may present Items 2, 3, and 4 for each of several Contracts sequentially. Other presentations also would be acceptable if they are consistent with the Form's intent to disclose the information required by Items 2, 3, and 4 in a standard order at the beginning of the prospectus. Registrants that present Items 2, 3, and 4 for each of several Contracts sequentially or that utilize another presentation should consider whether investors might benefit from a brief explanation about how the information in the prospectus is presented, such as headings for each contract in the prospectus' table of contents and/or a brief narrative at the beginning of the prospectus explaining the presentation. Registrants are encouraged to present information in a manner that limits repetition.

(B) The Registrant should generally include appropriate titles, headings, or any other information to promote clarity and facilitate understanding regarding which disclosures apply to which Contract, if such disclosures would vary based on the Contract.

(ii) Multiple prospectuses may be combined in a single registration statement on Form N-4 when the prospectuses describe Contracts that are substantially similar. For example, a Registrant could determine it is appropriate to include multiple prospectuses in a registration statement

in the following situations: (i) the prospectuses describe the same Contract that is sold through different distribution channels; (ii) the prospectuses describe Contracts that differ only with respect to Portfolio Companies offered; or (iii) the prospectuses describe both the original and a modified version of the same Contract (where the "modified" version differs in the features or options that the Registrant offers under that Contract).

(f) *Dates.* Rule 423 under the Securities Act [17 CFR 230.423] applies to the dates of the prospectus and the SAI. The SAI should be made available at the same time that the prospectus becomes available for purposes of rules 430 and 460 under the Securities Act [17 CFR 230.430 and 230.460].

(g) *Sales Literature.* A Registrant may include sales literature in the prospectus so long as the amount of this information does not add substantial length to the prospectus and its placement does not obscure essential disclosure.

(h) Interactive Data File

(i) An Interactive Data File (see rule 232.11 of Regulation S-T [17 CFR 232.11]) is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S-T [17 CFR 232.405] for any registration statement or post-effective amendment thereto on Form N-4 that includes or amends information provided in response to Items 2(b)(2), 2(d), 3, 4, 5, 6(a) (instruction), 6(d), 6(e), 7(e), 10, 17, 26(c), or 31A with regard to Contracts that are being sold to new investors.

(A) Except as required by paragraph (h)(i)(B), the Interactive Data File must be submitted as an amendment to the registration statement to which the Interactive Data File relates. The amendment must be submitted on or before the date the registration statement or post-effective amendment that contains the related information becomes effective.

(B) In the case of a post-effective amendment to a registration statement filed pursuant to paragraphs (b)(1)(i), (ii), (v), (vi), or (vii) of rule 485 under the Securities Act [17 CFR 230.485(b)], the Interactive Data File must be submitted either with the filing, or as an amendment to the registration statement to which the Interactive Data Filing relates that is submitted on or before the date the post-effective amendment that contains the related information becomes effective.

(ii) An Interactive Data File is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S-T for any form of prospectus filed pursuant to paragraphs (c) or (e) of rule 497 under the Securities Act [17 CFR 230.497(c) or (e)] that includes information provided in response to Items 2(b)(2), 2(d), 3, 4, 5, 6(a) (instruction), 6(d), 6(e), 7(e), 10, 17, 26(c), or 31A that varies from the registration statement with regard to Contracts that are being sold to new investors. The Interactive Data File must be submitted with the filing made pursuant to rule 497.

(iii) The Interactive Data File must be submitted in accordance with the specifications in the EDGAR Filer Manual, and in such a manner that will permit the information for each Contract, and, for any information that does not relate to all of the Classes in a filing, each Class of the Contract to be separately identified.

(i) *Website Addresses.* Any website address included in an electronic version of the Statutory Prospectus must include an active hyperlink or other means of facilitating access that leads

directly to the relevant website address. This requirement does not apply to an electronic Statutory Prospectus filed on the EDGAR system.

D. Incorporation by Reference

1. General Requirements

All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: rule 411 under the Securities Act [17 CFR 230.411] (general rules on incorporation by reference in a prospectus); rule 303 of Regulation S-T [17 CFR 232.303] (specific requirements for electronically filed documents); and rule 0-4 under the Investment Company Act [17 CFR 270.0-4] (additional rule on incorporation by reference for investment companies). In general, a Registrant may incorporate by reference, in the answer to any item of Form N-4 not required to be in the prospectus, any information elsewhere in the registration statement or in other statements, applications, or reports filed with the Commission.

2. Specific Rules for Incorporation by Reference in Form N-4:

(a) A Registrant may not incorporate by reference into a prospectus information that Part A of this Form requires to be included in a prospectus, except as specifically permitted by Part A of the Form.

(b) A Registrant may incorporate by reference any or all of the SAI into the prospectus (but not to provide any information required by Part A to be included in the prospectus) without delivering the SAI with the prospectus.

(c) A Registrant may incorporate by reference into the SAI or its response to Part C information that Parts B and C require to be included in the Registrant's registration statement.

PART A - INFORMATION REQUIRED IN A PROSPECTUS

Item 1. Front and Back Cover Pages

(a) *Front Cover Page*. Include the following information on the outside front cover page of the prospectus:

(1) The Registered Separate Account's name.

(2) The Insurance Company's name.

(3) The types of Contracts offered by the prospectus (*e.g.*, group, individual, single premium immediate, flexible premium deferred).

(4) The name of the Contract and the Class or Classes, if any, to which the Contract relates.

(5) The types of Investment Options offered under the Contract, and a cross-reference to the prospectus appendix providing additional information about each option.

(6) A statement that the Contract is a complex investment and involves risks, including potential loss of principal. For a Contract with Index-Linked Options:

(a) Prominently state as a percentage the maximum amount of loss an investor could experience from negative Index performance after taking into account the current limits on Index loss provided under the Contract. The Insurance Company may provide a range of the maximum amount of loss if the Contract offers different limits on Index loss. Prominently disclose any minimum limits on Index losses that will always be available under the Contract or, alternatively, prominently state that the Insurance Company does not guarantee that the Contract will always offer Index-Linked Options that limit Index losses, which would mean risk of loss of the entire amount invested; and

(b) Prominently state that the Insurance Company limits the amount an investor can earn on an Index-Linked Option. Prominently state, for each type of limit offered (*e.g.*, cap, participation rate, etc.), the lowest limit on Index gains that may be established under the Contract.

(7) A statement that the Contract is not a short-term investment and is not appropriate for an investor who needs ready access to cash. Briefly state that withdrawals could result in surrender charges, negative Contract Adjustments, taxes, and tax penalties, as applicable. Prominently state as a percentage the maximum potential loss resulting from a negative Contract Adjustment, if applicable.

(8) A statement that the Insurance Company's obligations under the Contract are subject to its financial strength and claims-paying ability.

(9) The date of the prospectus.

(10) The statement required by rule 481(b)(1) under the Securities Act [17 CFR 230.481(b)(1)].

(11) The statement that additional information about certain investment products, including [type of Contract], has been prepared by the Securities and Exchange Commission's staff and is available at Investor.gov.

(12) If applicable, the legend: "If you are a new investor in the Contract, you may cancel your Contract within 10 days of receiving it without paying fees or penalties[, although we will apply the Contract Adjustment]. In some States, this cancellation period may be longer. Upon cancellation, you will receive either a full refund of the amount you paid with your application or your total Contract value. You should review this prospectus, or consult with your investment professional, for additional information about the specific cancellation terms that apply."

Instruction. A Registrant may include on the front cover page any additional information, subject to the requirements of General Instruction C.3.(b) and (c).

(b) *Back Cover Page*. Include the following information on the outside back cover page of the prospectus:

(1) A statement that the SAI includes additional information about the Registrant. Explain that the SAI is available, without charge, upon request, and explain how investors may make inquiries about their Contracts. Provide a toll-free (or collect) telephone number for investors to call to request the SAI, to request other information about the Contracts, and to make investor inquiries.

Instructions.

1. A Registrant may indicate, if applicable, that the SAI and other information are available on its website and/or by email request.

2. A Registrant may indicate, if applicable, that the SAI and other information are available from an insurance agent or financial intermediary (such as a broker-dealer or bank) through which the Contracts may be purchased or sold.

3. When a Registrant (or an insurance agent or financial intermediary through which Contracts may be purchased or sold) receives a request for the SAI, the Registrant (or insurance agent or financial intermediary) must send the SAI within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(2) A statement whether and from where information is incorporated by reference into the prospectus as permitted by General Instruction D. Unless the information is delivered with the prospectus, explain that the Registrant will provide the information without charge, upon request (referring to the telephone number provided in response to paragraph (b)(1)).

Instruction. The Registrant may combine the information about incorporation by reference with the statements required under paragraph (b)(1).

(3) A statement that reports and other information about the Registered Separate Account, and, if applicable, the Insurance Company, are available on the Commission's website at http://www.sec.gov, and that copies of this information may be obtained, upon payment of a duplicating fee, by electronic request at the following email address: publicinfo@sec.gov.

(4) The EDGAR contract identifier for the Contract on the bottom of the back cover page in type size smaller than that generally used in the prospectus (*e.g.*, 8-point modern type).

Item 2. Overview of the Contract

Provide a concise description of the Contract including the following information:

(a) *Purpose.* Briefly describe the purpose(s) of the Contract (*e.g.*, to help the investor accumulate assets through an investment portfolio, to provide or supplement the investor's retirement income, to provide death and/or other benefits). State for whom the Contract may be appropriate (*e.g.*, by discussing a representative investor's time horizon, liquidity needs, and financial goals).

(b) *Phases of Contract.* Briefly describe the accumulation (savings) phase and annuity (income) phase of the Contract.

(1) This discussion should include a brief overview of the Investment Options available under the Contract.

Instructions.

1. Prominently disclose that additional information about each Investment Option is provided in an appendix to the prospectus and provide a cross-reference to the appendix.

2. A detailed explanation of the Registered Separate Account, Portfolio Companies, Indexes, and Investment Options is not necessary and should be avoided.

(2) With respect to any Index-Linked Option currently offered under the Contract, include the following information.

(i) State that the Insurance Company will credit positive or negative interest at the end of a Crediting Period to amounts allocated to an Index-Linked Option based, in part, on the performance of the Index.

(ii) Disclose that an investor could lose a significant amount of money if the Index declines in value.

(iii) Briefly explain that the Insurance Company limits the negative Index return used in calculating interest credited to an Index-Linked Option at the end of its Crediting Period. Briefly describe the manner(s) in which the Insurance Company limits negative returns through the use of a floor, buffer, or some other rate or measure. Provide an example of how such rate could operate to limit a negative Index return (*e.g.*, "if the Index return is -25% and the buffer rate is -10%, we will credit -15% (the amount that exceeds the buffer rate) at the end of the Crediting Period, meaning your Contract value will decrease by 15%"). Prominently disclose any minimum limits on Index losses that will always be available under the Contract or, alternatively, prominently state that the Insurance Company does not guarantee that the Contract will always offer Index-Linked Options that limit Index losses.

(iv) Briefly explain that the Insurance Company limits the positive Index return used in calculating interest credited to an Index-Linked Option at the end of its Crediting Period. Briefly describe the manner(s) in which the Insurance Company limits positive returns through the use of a cap, participation rate, or some other rate or measure. Provide an example of how such rate could operate to limit a positive Index return (*e.g.*, "if the Index return is 12% and the cap rate is 4%, we will credit 4% in interest at the end of the Crediting Period, meaning your Contract value will increase by 4%"). Prominently state, for each type of limit offered (*e.g.*, cap, participation rate, etc.), the lowest limit on Index gains that may be established under the Contract.

(3) State, if applicable, that if an investor annuitizes, the investor will receive a stream of income payments, however (i) the investor will be unable to make withdrawals, and (ii) death benefits and living benefits will terminate.

(c) *Contract Features*. Summarize the Contract's primary features, including death benefits, withdrawal options, loan provisions, and Contract benefits. If applicable, state that the investor will incur an additional fee for selecting a particular benefit.

(d) *Contract Adjustment*. If applicable, state that an investor could lose a significant amount of money due to the Contract Adjustment if amounts are removed from an Investment Option or from the Contract prior to the end of a specified period. Briefly describe transactions subject to a Contract Adjustment.

Item 3. Key Information

Include the following information:

Important Information You Should Consider About the [Contract]

FEES, EXPENSES, AND ADJUSTMENTS	
Are There Charges or Adjustments for Early Withdrawals?	
Are There Transaction Charges?	
Are There Ongoing Fees and Expenses?	
RISKS	
Is There a Risk of Loss from Poor Performance?	
Is this a Short-Term Investment?	
What Are the Risks Associated with the Investment Options?	
What Are the Risks Related to the Insurance Company?	
RESTRICTIONS	
Are There Restrictions on the	

Investment Options?	
Are There any Restrictions on Contract Benefits?	
TAXES	
What Are the Contract's Tax Implications?	
CONFLICTS OF INTEREST	
How Are Investment Professionals Compensated?	
Should I Exchange My Contract?	

Instructions.

1. *General.*

   (a) Disclose the required information in the tabular presentation(s) reflected herein, in the order specified. A Registrant may exclude any disclosures that are not applicable, or modify any of the statements required to be included, so long as the modified statement contains comparable information. Notwithstanding this instruction and General Instruction C.3.(d)(ii), the title, headings, and sub-headings for this tabular presentation may not be modified or substituted with alternate terminology unless otherwise provided.

   (b) Provide cross-references to the location in the Statutory Prospectus where the subject matter is described in greater detail. Cross-references in electronic versions of the Summary Prospectus and/or Statutory Prospectus should link directly to the location in the Statutory Prospectus where the subject matter is discussed in greater detail, or should provide a means of facilitating access to that information through equivalent methods or technologies. The cross-reference should be adjacent to the relevant disclosure, either within the table row, or presented in an additional table column.

   (c) All disclosures provided in response to this Item should be short and succinct, consistent with the limitations of a tabular presentation.

   (d) All disclosures provided in this tabular presentation also must be presented in a question and answer format. Unless the context otherwise requires, when answering a question presented on a given row of the table, begin the response with "Yes" or "No" in bold text.

2. *Fees, Expenses, and Adjustments.*

   (a) *Are There Charges or Adjustments for Early Withdrawals?* Include a statement that if the investor withdraws money from the Contract within [x] years following the investor's last purchase

payment, the investor will be assessed a surrender charge. Include in this statement the maximum surrender charge (as a percentage of [purchase payment or amount surrendered]), and the maximum number of years that a surrender charge may be assessed since the last purchase payment under the Contract. Provide an example of the maximum surrender charge an investor could pay (in dollars) under the Contract assuming a $100,000 investment (*e.g.*, "[i]f you make an early withdrawal, you could pay a surrender charge of up to $9,000 on a $100,000 investment. This loss will be greater if there is a negative Contract Adjustment, taxes, or tax penalties.").

If applicable, include a statement that if all or a portion of Contract value is removed from an Investment Option or from the Contract before the expiration of a specified period, the Insurance Company will apply a Contract Adjustment, which may be negative. Include in this statement the maximum potential loss (as a percentage of the investment) resulting from a negative adjustment (*e.g.*, "[y]ou could lose up to XX% of your investment due to the contract adjustment"). Provide an example of the maximum negative adjustment that could be applied (in dollars) assuming a $100,000 investment (*e.g.*, "[i]f you allocate $100,000 to an investment option with a 3-year Crediting Period and later withdraw the entire amount before the 3 years have ended, you could lose up to $90,000 of your investment. This loss will be greater if you also have to pay a surrender charge, taxes, and tax penalties."). Provide a brief narrative description of the Contract transactions subject to the Contract Adjustment (*e.g.*, withdrawals, surrender, annuitization, etc.).

(b) *Are There Transaction Charges?* State that in addition to surrender charges and Contract Adjustments (if applicable), the investor may also be charged for other transactions, and provide a brief narrative description of the types of such charges (*e.g.*, front-end loads, charges for transferring cash value between Investment Options, charges for wire transfers, etc.).

(c) *Are There Ongoing Fees and Expenses?*

Include the following information, in the order specified:

(i) *Minimum and Maximum Annual Fee Table.*

(A) The legend: "The table below describes the fees and expenses that you may pay *each year*, depending on the Investment Options and optional benefits you choose. Please refer to your Contract specifications page for information about the specific fees you will pay each year based on the options you have elected."

(B) Provide Minimum and Maximum Annual Fees in substantially the following tabular format, in the order specified.

Annual Fee	**Minimum**	**Maximum**
Base Contract (varies by Contract Class)	[ ]%	[ ]%
Portfolio Company fees and expenses	[ ]%	[ ]%
Optional benefits available for an additional charge (for a single optional benefit, if elected)	[ ]%	[ ]%

(C) Explain, in a parenthetical or footnote to the table or each caption, the basis for each percentage (*e.g.*, % of separate account value or benefit base, or % of net asset value).

(D) Calculate Base Contract fees by dividing the total amount of Base Contract fees (including dollar-based Contract expenses) collected during the year that are attributable to the Contract by the total average net assets that are attributable to the Contract.

(E) If the Insurance Company offers multiple Portfolio Companies under the Contract, it should disclose the minimum and maximum "Annual Portfolio Company Expenses" calculated in accordance with Item 3 of Form N-1A [17 CFR §§ 239.15A and 274.11A] (before expense reimbursements or fee waiver arrangements). If the Insurance Company charges a Platform Charge to make any of the Portfolio Companies available as investment options under the Contract, the Insurance Company should include the maximum Platform Charge associated with each Portfolio Company when calculating minimum and maximum Annual Portfolio Company Expenses.

(F) The Minimum Annual Fee means the lowest current fee for each annual fee category (*i.e.*, the least expensive Contract Class, the lowest Portfolio Company Total Annual Operating Expenses, and the least expensive optional benefit available for an additional charge). The Maximum Annual Fee means the highest current fee for each annual fee category (*i.e.*, the most expensive Contract Class, the highest Portfolio Company Total Annual Operating Expenses, and the most expensive optional benefit available for an additional charge).

(G) For Contracts that offer Index-Linked Options and impose ongoing fees and expenses on the Index-Linked Options, Variable Options, and/or Fixed Options, precede the table with a prominent statement explaining that: (1) there is an implicit ongoing fee on Index-Linked Options to the extent that an investor's participation in Index gains is limited by the Insurance Company through the use of a cap, participation rate, or some other rate or measure; (2) this means that the investor's returns may be lower than the Index's returns; (3) in return for accepting this limit on Index gains, an investor will receive some protection from Index losses; and (4) this implicit ongoing fee is not reflected in the tables below.

(ii) *Lowest and Highest Annual Cost Table.*

(A) The legend: "Because your Contract is customizable, the choices you make affect how much you will pay. To help you understand the cost of owning your Contract, the following table shows the lowest and highest cost you could pay *each year*, based on current charges. This estimate assumes that you do not take withdrawals from the Contract, **which could add surrender charges and negative Contract Adjustments that substantially increase costs**."

(B) Provide Lowest and Highest Annual Costs in substantially the following tabular format, in the order specified.

Lowest Annual Cost: **$[ ]**	**Highest Annual Cost:** **$[ ]**
Assumes: • Investment of $100,000 • 5% annual appreciation • Least expensive combination of	Assumes: • Investment of $100,000 • 5% annual appreciation • Most expensive combination of

Lowest Annual Cost: $[ ]	**Highest Annual Cost:** $[ ]
Contract Classes and Portfolio Company fees and expenses • No optional benefits • No sales charges • No additional purchase payments, transfers or withdrawals	Contract Classes, optional benefits, and Portfolio Company fees and expenses • No sales charges • No additional purchase payments, transfers or withdrawals

(C) Calculate the Lowest and Highest Annual Cost estimates in the following manner:

a. Calculate the dollar amount of fees that would be assessed based on the assumptions described in the table above for each of the first 10 Contract years.

b. Total each year's fees (discounted to the present value using a 5% annual discount rate) and divide by 10 to calculate the estimated dollar amounts that are required to be set forth in the table above.

c. Sales loads, other than ongoing sales charges, should be excluded from the Lowest and Highest Annual Cost estimates.

d. Amounts of any bonus payment should be excluded from the Lowest and Highest Annual Cost estimates.

e. Unless otherwise provided, the least and most expensive combination of Contract Classes, Portfolio Company fees and expenses, and optional benefits should be based on the disclosures provided in the Example in Item 4. If a different combination of Contract Classes, Annual Portfolio Company Expenses, and/or optional benefits would result in different Minimum or Maximum fees in different years, use the least expensive and most expensive combination of Contract Classes, Annual Portfolio Company Expenses, and optional benefits each year.

(iii) For Contracts that offer Index-Linked Options and that do not impose any ongoing fees and expenses under the Contract, prominently state, in lieu of the disclosure required by Instructions 2(c)(i) and (ii), that (1) there is an implicit ongoing fee on Index-Linked Options to the extent that an investor's participation in index gains is limited by the Insurance Company through the use of a cap, participation rate, or some other rate or measure; (2) this means that the investor's returns may be lower than the Index's returns; and (3) in return for accepting this limit on Index gains, an investor will receive some protection from Index losses.

3. *Risks.*

(a) *Is There a Risk of Loss from Poor Performance?* State that an investor can lose money by investing in the Contract. For a Contract with Index-Linked Options, prominently state as a percentage the maximum amount of loss an investor could experience from negative Index performance after taking into account the current limits on Index loss provided under the Contract. The Insurance Company may provide a range of the maximum amount of loss if the Contract

offers different limits on Index loss. Prominently disclose any minimum limits on Index losses that will always be available under the Contract or, alternatively, prominently state that the Insurance Company does not guarantee that the Contract will always offer Index-Linked Options that limit Index losses, which would mean risk of loss of the entire amount invested.

(b) *Is This a Short-Term Investment*? State that a Contract is not a short-term investment and is not appropriate for an investor who needs ready access to cash, accompanied by a brief explanation. State that amounts withdrawn from the Contract may result in surrender charges, taxes, and tax penalties. If applicable, state that amounts removed from an Investment Option or from the Contract before the end of a specified period may also result in a negative Contract Adjustment and loss of positive Index performance.

For Investment Options that mature at the end of a specified period, state that Contract value will be reallocated at the end of the period according to the investor's instructions, and disclose the default reallocation in the absence of such instructions.

(c) *What Are the Risks Associated with the Investment Options?* State that an investment in the Contract is subject to the risk of poor investment performance and can vary depending on the performance of the Investment Options available under the Contract (*e.g.*, Portfolio Companies, if a Variable Option, or the Index, if an Index-Linked Option), that each Investment Option (including any Fixed Option) will have its own unique risks, and that the investor should review the available Investment Options before making an investment decision. For Index-Linked Options, also state that:

(A) The cap, participation rate, or some other rate or measure, as applicable, will limit positive Index returns (*e.g.*, limited upside). Provide an example for each type of limit imposed under the Contract (*e.g.*, "if the Index return is 12% and the cap rate is 4%, we will credit 4% in interest at the end of the Crediting Period"), and prominently state that this may result in the investor earning less than the Index return;

(B) The floor, buffer, or some other rate or measure, as applicable, will limit negative Index returns (*e.g.*, limited protection in the case of market decline). Provide an example for each type of limit imposed under the Contract (*e.g.*, "if the Index return is -25% and the buffer rate is -10%, we will credit -15% (the amount that exceeds the buffer rate) at the end of the Crediting Period"); and

(C) If applicable, the Index is a "price return index," not a "total return index," and therefore does not reflect dividends paid on the securities composing the Index, and/or the Index deducts fees and costs when calculating Index performance. In these cases, state that this will reduce the Index return and will cause the Index to underperform a direct investment in the securities composing the Index.

(d) W*hat Are the Risks Related to the Insurance Company?* State that an investment in the Contract is subject to the risks related to the Insurance Company, including that any obligations (including under any Fixed Options and Index-Linked Options), guarantees, or benefits are subject to the claims-paying ability of the Insurance Company. Further state that more information about the Insurance Company, including if applicable its financial strength ratings, is available upon request, and indicate how such requests can be made (*e.g.*, via toll-free telephone number).

Instruction. A Registrant may include the Insurance Company's financial strength rating(s) and omit the portion of the disclosures regarding the availability of the Insurance Company's financial strength ratings specified by the last sentence of Instruction 3.(d).

4. *Restrictions.*

(a) *Are There Limits on the Investment Options?* State whether there are any restrictions that may limit the Investment Options that an investor may choose, as well as any limitations on the transfer of Contract value among Investment Options. State any reservation of rights by the Insurance Company or the Registered Separate Account under the Contract, including if applicable, the right to remove or substitute Portfolio Companies, add or remove Index-Linked Options and change the features of an Index-Linked Option from one Crediting Period to the next, including the Index and the current limits on Index gains and losses (subject to any contractual minimum guarantees), substitute the Index of an Index-Linked Option during its Crediting Period, and stop accepting additional purchase payments.

(b) *Are There Any Restrictions on Contract Benefits?* State whether there are any restrictions or limitations relating to benefits offered under the Contract (*e.g.,* death benefits, living benefits, Contract loans, performance "locks" relating to the Contract Adjustment, etc.), and/or whether a benefit may be modified or terminated by the Insurance Company. If applicable, state that withdrawals that exceed limits specified by the terms of a Contract benefit may affect the availability of the benefit by reducing the benefit by an amount greater than the value withdrawn, and/or could terminate the benefit.

5. *Taxes—What are the Contract's Tax Implications?* State that an investor should consult with a tax professional to determine the tax implications of an investment in and purchase payments received under the Contract, and that there is no additional tax benefit to the investor if the Contract is purchased through a tax-qualified plan or individual retirement account (IRA). Explain that withdrawals will be subject to ordinary income tax and may be subject to tax penalties.

6. *Conflicts of Interest.*

(a) *How Are Investment Professionals Compensated?* State that some investment professionals may receive compensation for selling the Contract to investors, and briefly describe the basis upon which such compensation is typically paid (*e.g.*, commissions, revenue sharing, compensation from affiliates and third parties). State that these investment professionals may have a financial incentive to offer or recommend the Contract over another investment.

(b) *Should I Exchange My Contract?* State that some investment professionals may have a financial incentive to offer an investor a new contract in place of the one the investor already owns, and that an investor should only exchange their contract if the investor determines, after comparing the features, fees, and risks of both contracts, and any fees or penalties to terminate the existing contract, that it is preferable for the investor to purchase the new contract rather than continue to own the existing contract.

Instruction. A Registrant may omit these line-items if neither the Registrant nor any of its related companies pay financial intermediaries for the sale of the Contract or related services.

Item 4. Fee Table

Include the following information:

The following tables describe the fees, expenses, and adjustments that you will pay when buying, owning, and surrendering or making withdrawals from an Investment Option or from the Contract. Please refer to your Contract specifications page for information about the specific fees you will pay each year based on the options you have elected.

The first table describes the fees and expenses that you will pay at the time that you buy the Contract, surrender or make withdrawals from an Investment Option or from the Contract, or transfer Contract value between Investment Options. State premium taxes may also be deducted.

Transaction Expenses

Sales Load Imposed on Purchases (as a percentage of purchase payments)	__%
Deferred Sales Load (or Surrender Charge) (as a percentage of purchase payments or amount surrendered, as applicable)	__%
Transfer Fee	__%

The next table describes the adjustments, in addition to any transaction expenses, that apply if all or a portion of the Contract value is removed from an Investment Option or from the Contract before the expiration of a specified period.

Adjustments

Contract Adjustment Maximum Potential Loss (as a percentage of Contract value at the start of the Crediting Period or amount withdrawn, as applicable)	__%

The next table describes the fees and expenses that you will pay *each year* during the time that you own the Contract (not including Portfolio Company fees and expenses).

If you choose to purchase an optional benefit, you will pay additional charges, as shown below.

Annual Contract Expenses

Administrative Expenses	$__
Base Contract Expenses (as a percentage of average account value or Contract value)	__%
Optional Benefit Expenses (as a percentage of benefit base or other (*e.g.*, average account value))	__%

Annual Contract Expenses

In addition to the fees described above, we limit the amount you can earn on [certain of] the Index-Linked Options. This means your returns may be lower than the Index's returns. In return for accepting this limit on Index gains, you will receive some protection from Index losses.

The next item shows the minimum and maximum total operating expenses charged by the Portfolio Companies that you may pay periodically during the time that you own the Contract. Expenses shown may change over time and may be higher or lower in the future. These amounts also include applicable Platform Charges if you choose to invest in certain Portfolio Companies. A complete list of Portfolio Companies available under the Contract, including their annual expenses, may be found at the back of this document.

Annual Portfolio Company Expenses	***Minimum***	***Maximum***
(expenses that are deducted from Portfolio Company assets, including management fees, distribution and/or service (12b-1) fees, and other expenses)	__%	__%

Example

This Example is intended to help you compare the cost of investing in the Variable Options with the cost of investing in other annuity contracts that offer variable options. These costs include transaction expenses, annual Contract expenses, and Annual Portfolio Company Expenses.

The Example assumes all Contract value is allocated to the Variable Options. The Example does not reflect the Contract Adjustment. Your costs could differ from those shown below if you invest in Index-Linked Options or Fixed Options.

The Example assumes that you invest $100,000 in the Variable Options for the time periods indicated. The Example also assumes that your investment has a 5% return each year and assumes the most expensive combination of Annual Portfolio Company Expenses and optional benefits available for an additional charge. Although your actual costs may be higher or lower, based on these assumptions, your costs would be:

	1 year	3 years	5 years	10 years
If you surrender your Contract at the end of the applicable time period:	$___	$___	$___	$___
If you annuitize at the end of the applicable time period:	1 year	3 years	5 years	10 years
	$___	$___	$___	$___

	1 year	3 years	5 years	10 years
If you surrender your Contract at the end of the applicable time period:	$___	$___	$___	$___
If you do *not* surrender your Contract:	1 year	3 years	5 years	10 years
	$___	$___	$___	$___

Instructions

1. Include the narrative explanations in the order indicated. A Registrant may modify a narrative explanation if the explanation contains comparable information to that shown, and may omit a narrative explanation that is not applicable under the Contract.

2. Assume that the Contract is owned during the accumulation period for purposes of the table (including the Example). If an annuitant would pay different fees or be subject to different expenses, disclose this in a brief narrative and provide a cross-reference to those portions of the prospectus describing these fees.

3. A Registrant may omit captions if the Registrant does not charge or reserve the right to charge the fees or expenses covered by the captions.

4. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

5. In the Transaction Expenses, Adjustments, and Annual Contract Expenses tables, the Registrant must disclose the maximum guaranteed charge, unless a specific instruction directs otherwise. If a fee other than a Contract Adjustment is calculated based on a benchmark (*e.g.*, a fee that varies according to volatility levels or Treasury yields), the Registrant must also disclose the maximum guaranteed charge as a single number. The Registrant may disclose the current charge, in addition to the maximum charge, if the disclosure of the current charge is no more prominent than, and does not obscure or impede understanding of, the disclosure of the maximum charge. In addition, the Registrant may include in a footnote to the table a tabular, narrative, or other presentation providing further detail regarding variations in the charge. For example, if deferred sales charges decline over time, the Registrant may include in a footnote a presentation regarding the scheduled reductions in the deferred sales charges.

6. Provide a separate fee table (or separate column within the table) for each Contract offered by the prospectus that has different fees.

7. For a Contract with more than one Class, provide a separate response for each Class.

Transaction Expenses

8. "Sales Load Imposed on Purchases" includes the maximum sales load imposed upon purchase payments and may include a tabular presentation, within the larger table, of the range of such sales loads.

9. "Deferred Sales Load" includes the maximum contingent deferred sales load (or surrender charge), expressed as a percentage of the original purchase price or amount surrendered, and may include a tabular presentation, within the larger table, of the range of contingent deferred sales loads over time.

10. "Transfer Fee" includes the maximum fee charged for any exchange or transfer of Contract value between Investment Options or from the Registered Separate Account to another investment company or from the Registered Separate Account to the insurance company's general account. The Registrant may include a tabular presentation of the range of transfer fees unless such a presentation would be so lengthy as to encumber the larger table, in which case the Registrant should only provide a cross-reference to the narrative portion of the prospectus discussing the transfer fee.

11. If the Registrant (or any other party pursuant to an agreement with the Registrant) charges any other transaction fee, add another caption describing it and list the (maximum) amount or basis on which the fee is deducted.

Adjustments

12. "Contract Adjustment Maximum Potential Loss" includes the maximum negative Contract Adjustment that may be imposed, expressed as a percentage of Contract value at the start of the Crediting Period or of the amount withdrawn, as applicable. The Registrant should list in a footnote the Contract transactions subject to a Contract Adjustment.

Annual Contract Expenses

13. Administrative Expenses include any Contract, account, or similar fee imposed on a dollar basis and charged on any recurring basis (*e.g.*, $50 per year).

14. Base Contract Expenses include mortality and expense risk fees and account fees and expenses. Account fees and expenses include all fees and expenses charged to any Investment Option (except sales loads, mortality and expense risk fees, and optional benefits expenses) that are deducted on a percentage basis.

15. Optional Benefits Expenses include any optional features (*e.g.*, enhanced death benefits and living benefits) offered under the Contract for an additional charge.

16. If the Registrant (or any other party pursuant to an agreement with the Registrant) imposes any other recurring charge (other than Annual Portfolio Company Expenses), add another caption describing it and list the (maximum) amount or basis on which the charge is deducted.

Annual Portfolio Company Expenses

17. If a Registrant offers multiple Portfolio Companies, it should disclose the minimum and maximum "Annual Portfolio Company Expenses" for any Portfolio Company calculated in accordance with Item 3 of Form N-1A [17 CFR §§ 239.15A and 274.11A (before expense reimbursements or fee waiver arrangements). If the Insurance Company charges a Platform Charge to make any of the Portfolio Companies available as investment options under the Contract, the Registrant should include the maximum Platform Charge associated with each Portfolio Company when calculating minimum and maximum Annual Portfolio Company Expenses.

18. A Registrant may also reflect, in an additional line-item to the range of Annual Portfolio Company Expenses, minimum and maximum Annual Portfolio Company Expenses calculated in accordance with Item 3 of Form N-1A that include expense reimbursements or fee waiver arrangements that are in place and reflected in the Portfolio Company's registration statement pursuant to Item 3 of Form N-1A. If the Registrant provides this disclosure, also disclose the period for which the expense reimbursements or fee waiver arrangement is expected to continue, and, if applicable, that it can be terminated at any time at the option of a Portfolio Company. If the Registrant charges a Platform Charge to make any of the Portfolio Companies available as investment options under the Contract, the Registrant should include the current Platform Charge associated with each Portfolio Company when calculating minimum and maximum Annual Portfolio Company Expenses that include expense reimbursements or fee waiver arrangements.

Example

19. For purposes of the Example(s) in the table, provide the following for each Variable Option Contract Class:

(a) Assume that the percentage amounts listed under "Annual Contract Expenses" remain the same in each year of the 1-, 3-, 5-, and 10-year periods;

(b) The most expensive combination of Contract features must be shown first. Additional expense presentations are permitted, but not required;

(c) Assume the maximum sales load that may be deducted from purchase payments is deducted;

(d) For any breakpoint in any fee, assume that the amount of Variable Option (and Portfolio Company) assets remains constant as of the level at the end of the most recently completed fiscal year;

(e) Assume no exchanges or other transactions;

(f) Reflect any Contract expenses by dividing the total amount of Contract expenses (including dollar-based Contract expenses) collected during the year that are attributable to the Contract by the total average net assets that are attributable to the Contract. Add the resulting percentage to Base Contract expenses and assume that it remains the same in each year of the 1-, 3-, 5-, and 10-year periods;

(g) Reflect any deferred sales load (or surrender charge) by assuming a complete surrender on the last day of the year;

(h) Provide the information required in the second section of the Example only if Variable Option fees upon annuitization are different from those charged upon surrender; and

(i) Provide the information required in the third section of the Example only if a sales load or other fee is charged upon a complete surrender.

Item 5. Principal Risks of Investing in the Contract

Summarize the principal risks of purchasing a Contract, including as applicable:

(a) *Market Risk.* Explain the principal risks of investing in an Investment Option, including the risks of

negative investment performance and, for a Contract with Index-Linked Options, prominently state as a percentage the maximum amount of loss an investor could experience from negative Index performance after taking into account the current limits on Index loss provided under the Contract. The Insurance Company may provide a range of the maximum amount of loss if the Contract offers different limits on Index loss. Prominently disclose any minimum limits on Index losses that will always be available under the Contract or, alternatively, prominently state that the Insurance Company does not guarantee that the Contract will always offer Index-Linked Options that limit Index losses, which would mean risk of loss of the entire amount invested.

(b) *Early Withdrawal Risk.* State that Contracts are unsuitable as short-term savings vehicles. Explain the limitations on access to cash value through withdrawals, including, as applicable, surrender charges, negative Contract Adjustments, loss of interest, and the possibility of adverse tax consequences. State the maximum potential loss resulting from a negative Contract Adjustment, as a percentage.

(c) *Index-Linked Option Risk.* In addition to the potential loss from negative Index performance, describe the principal risks of investing in any Index-Linked Option offered under the Contract. State that an investor is not invested in the Index or in the securities tracked by the Index.

Instructions. Include in this discussion, as applicable:

(1) The principal risks relating to limiting positive Index returns , the possibility of losses despite limits on negative Index returns, interest crediting methodologies, the impact of Contract fees on the amount of interest credited, and the reallocation of Contract value at the end of an Index-Linked Option's Crediting Period,

(2) The principal risks associated with the Index, including risks relating to type (*e.g.*, market risk, small-cap risk, foreign securities risk, emerging market risk, etc.), the exclusion of dividends from Index return, and market volatility. Specify which risks relate to each Index offered under the Contract. Describe the principal risks related to the possible substitution of the Index before the end of an Index-Linked Option's Crediting Period.

(d) *Contract Benefits Risk.* Describe the principal risks associated with any benefits under the Contract, including the impact of excess withdrawals, if applicable.

(e) *Insurance Company Risk.* Explain the principal risks associated with the Insurance Company's ability to meet its guarantees under the Contract, including risks relating to its financial strength and claims-paying ability.

(f) *Contract Changes Risk.* Describe the principal risks relating to any material reservation of rights under the Contract, including if applicable, the right to remove or substitute Portfolio Companies, add or remove Index-Linked Options and change the features of an Index-Linked Option from one Crediting Period to the next, stop accepting additional purchase payments, and impose investment restrictions or limitations on transfers.

Item 6. Description of Insurance Company, Registered Separate Account, and Investment Options

Concisely discuss the organization and operation or proposed operation of the Insurance Company, Registered Separate Account, Variable Options, Index-Linked Options, and Fixed Options. Include the information specified below, as applicable.

(a) *Insurance Company.* Provide the name and address of the Insurance Company. State that the Insurance

Company is obligated to pay all amounts promised to investors under the Contracts, subject to its financial strength and claims-paying ability.

Instruction. If applicable, indicate that the Insurance Company is relying on the exemption provided by rule 12h-7 under the Securities Exchange Act (17 CFR 240.12h-7).

(b) *Registered Separate Account*. Briefly describe the Registered Separate Account. Include a statement indicating that:

(1) income, gains, and losses credited to, or charged against, the separate account reflect the separate account's own investment experience and not the investment experience of the Insurance Company's other assets; and

(2) the assets of the separate account may not be used to pay any liabilities of the Insurance Company other than those arising from the Contracts.

(c) *Variable Options.* Briefly describe the Variable Options currently offered under the Contract, including statements indicating that:

(1) Contract value allocated to a Variable Option will vary based on the investment experience of the corresponding Portfolio Company in which the Variable Option invests. There is a risk of loss of the entire amount invested.

(2) Information regarding each Portfolio Company, including (i) its name, (ii) its type (*e.g.*, money market fund, bond fund, balanced fund, etc.) or a brief statement concerning its investment objectives, (iii) its investment adviser and any sub-investment adviser, (iv) current expenses, and (v) performance is available in an appendix to the prospectus, and provide cross-references. State that each Portfolio Company has issued a prospectus that contains more detailed information about the Portfolio Company, and provide instructions regarding how investors may obtain paper or electronic copies.

(3) Concisely discuss the rights of investors to instruct the Insurance Company on the voting of shares of the Portfolio Companies, including the manner in which votes will be allocated.

(d) *Index-Linked Options.*

(1) Describe the Index-Linked Options currently offered under the Contract, including statements indicating that:

(i) The Insurance Company will credit positive or negative interest at the end of a Crediting Period to amounts allocated to an Index-Linked Option based, in part, on the performance of the Index. An investment in an Index-Linked Option is not an investment in the Index or in any Index fund.

(ii) An investor could lose a significant amount of money if the Index declines in value.

(iii) An investor could lose a significant amount of money due to the Contract Adjustment if amounts are removed from an Index-Linked Option prior to the end of its Crediting Period.

(iv) The Insurance Company can add or remove Index-Linked Options and change the features of an Index-Linked Option from one Crediting Period to the next, including the Index and the current limits on Index gains and losses (subject to any contractual minimum guarantees).

(v) Information regarding the features of each currently offered Index-Linked Option, including (i)

its name, (ii) its type (*e.g.*, market Index, exchange-traded fund, etc.), or a brief statement describing the assets that the Index seeks to track (*e.g.*, U.S. large-cap equities), (iii) its Crediting Period, (iv) its Index crediting methodology, (v) its current limit on Index loss, and (vi) its minimum limit on Index gain, is available in an appendix to the prospectus, and provide cross-references.

Instruction. This statement may be modified to conform to the table provided in response to Item 17(b).

(2) Describe how interest is calculated and credited for each Index-Linked Option.

(i) *Limits on Index Losses*

(A) State that the Insurance Company will limit the negative Index return used in calculating interest credited to an Index-Linked Option at the end of its Crediting Period. Describe the manner(s) in which the Insurance Company will limit negative returns through the use of a floor, buffer, or some other rate or measure. Provide an example of how such rate could operate to limit a negative Index return (*e.g.*, "if the Index return is -25% and the buffer rate is -10%, we will credit -15% (the amount that exceeds the buffer rate) at the end of the Crediting Period, meaning your Contract value will decrease by 15%").

(B) Disclose the current limit on Index losses for each Index-Linked Option, and state that the current limit on Index losses will not change during an Index-Linked Option's Crediting Period. Prominently disclose any minimum limits on Index losses that will always be available under the Contract or, alternatively, prominently state that the Insurance Company does not guarantee that the Contract will always offer Index-Linked Options that limit Index losses.

(C) Describe the factors the Insurance Company considers in determining the current limit on Index losses for an Index-Linked Option, and how that choice may impact other features of the option set by the Insurance Company. Explain what an investor should consider regarding limits on Index losses before selecting an Index-Linked Option for investment.

(ii) *Limits on Index Gains.*

(A) State that the Insurance Company will limit the positive Index return used in calculating interest credited to an Index-Linked Option at the end of its Crediting Period. Describe the manner(s) in which the Insurance Company will limit positive returns through the use of a cap, participation rate, or some other rate or measure. Provide an example of how such rate could operate to limit a positive Index return (*e.g.*, "if the Index return is 12% and the cap rate is 4%, we will credit 4% in interest at the end of the Crediting Period, meaning your Contract value will increase by 4%").

(B) State the current limit on Index gains for each Index-Linked Option, and state that the current limit on Index gains will not change during an Index-Linked Option's Crediting Period. Prominently state, for each type of limit offered (*e.g.*, cap, participation rate, etc.), the lowest limit on Index gains that may be established under the Contract.

Instructions.

1. An insurer may post the current limit on Index gains for each Index-Linked Option on

a website that is publicly accessible, free of charge, and incorporate this information by reference into the prospectus. An insurer that relies on this approach must state in the prospectus at the place where the information required by this Item would normally appear that the information about current limits on Index gains is incorporated by reference from [provide website address].

2. The website address must be specific enough to lead investors directly to the current limits on Index gains, rather than to the home page or other section of the website on which the limits are posted. Include on the website current limits that are available for all Contract investors, including variations in limits (*e.g.*, due to distribution channel, state requirements, optional benefits, date of Contract purchase, etc.). Only include those limits that are currently available for the Index-Linked Options offered under the Contract.

(C) Describe the factors the Insurance Company considers in determining the current limit on Index gains for an Index-Linked Option, and how that choice may impact other features of the option set by the Insurance Company. Explain what an investor should consider regarding limits on Index gains before selecting an Index-Linked Option for investment.

(iii) *Crediting Period.*

(A) Generally describe the Index-Linked Option Crediting Periods available under the Contract (*e.g.*, 1, 3, and 6 years) and the factors an investor should consider regarding different Crediting Period lengths before selecting an Index-Linked Option for investment.

(B) Prominently state that amounts must remain in an Index-Linked Option until the end of its Crediting Period to be credited with all or partial interest, as applicable, and to avoid a possible Contract Adjustment in addition to potential surrender charges and tax consequences. Describe the transactions subject to a Contract Adjustment. Provide cross-references to related disclosure in the prospectus.

(iv) *Methodology and Examples.*

(A) For each Index crediting methodology, describe how interest is calculated and credited at the end of a Crediting Period based on the interest crediting formula or performance measure (*e.g.* point-to-point, step-up calculations, enhanced performance).

(B) For each Index, provide a bar chart showing the annual return for each of the last 10 calendar years (or for the life of the Index if less than 10 years). Provide a hypothetical example alongside each Index return that reflects the return after applying a 5% cap and a -10% buffer.

Include the following legend before the bar chart, in the format specified:

The bar chart shown below provides the Index's annual returns for the last 10 calendar years (or for the life of the Index if less than 10 years), as well as the Index returns after applying a hypothetical 5% cap and a hypothetical -10% buffer. The chart illustrates the variability of the returns from year to year and shows how hypothetical limits on Index gains and losses may affect these returns. Past performance is not necessarily an indication of future performance.

The performance below is NOT the performance of *any* Index-Linked Option. Your performance under the Contract will differ, perhaps significantly. The performance below may reflect a different return calculation, time period, and limit on Index gains and losses than the Index-Linked Options, and does not reflect Contract fees and charges, including surrender charges and the Contract Adjustment, which reduce performance.

Instructions.

1. Include only one legend if bar charts for multiple Indexes are presented.

2. Provide the corresponding numerical return adjacent to each bar.

3. If the Contract does not offer any Index-Linked Option that uses a cap in its Index crediting methodology, the Insurance Company may reflect the rate or measure used to limit Index gains under the Contract assuming a hypothetical percentage comparable to a 5% cap. If the Contract does not offer any Index-Linked Option that uses a buffer in its Index crediting methodology, the Insurance Company may reflect the rate or measure used to limit Index losses under the Contract assuming a hypothetical percentage comparable to a -10% buffer.

4. If applicable, disclose in a footnote to the table that the Index is a "price return index," not a "total return index," and therefore does not reflect the dividends paid on the assets composing the Index, which will reduce the Index return and cause the Index to underperform a direct investment in the securities composing the Index.

5. If applicable, disclose in a footnote to the table that the Index provider deducts fees and costs when calculating the Index return, which will reduce the Index return and will cause the Index to underperform a direct investment in the securities composing the Index.

6. Do not include additional performance presentations or historical Index performance that precedes the inception of the Index.

(C) Provide a numerical example to illustrate the mechanics of each type of Index crediting methodology in a clear, concise, and understandable manner.

Include the following legend, in the format specified:

The following examples illustrate how we calculate and credit interest under each Index crediting methodology assuming hypothetical Index returns and hypothetical limits on Index gains and losses. The examples assume no withdrawals.

Instructions.

1. Assume hypothetical returns and limits that are reasonable based on current and anticipated market conditions and Contract sales.

2. Include in the example a positive Index return above the limit on Index gains and a negative Index return below the limit on Index losses.

3. Reflect any charges subtracted from interest credited or deducted from Contract value in the Index-Linked Options.

4. Additional examples, charts, graphs, or other presentations may be included if clear, concise, and understandable.

(v) *Indexes.*

(A) For each Index, briefly describe the types of investments that compose the Index. Direct the investor to additional information about the Index.

Instructions.

1. Where there is more than one version of an Index (for example a total return version, price return version), it should be clear which Index relates to the Index-Linked Option.

2. If the Index is an exchange-traded fund ("ETF"), clarify whether the Index performance is based on the ETF's Net Asset Value or closing value. Also clarify if the performance is based on the share price of the ETF and the impact of using share price as opposed to total return.

3. If applicable, state that the Index is a "price return index," not a "total return index," and therefore does not reflect dividends paid on the securities composing the Index. If applicable, state that the Index deducts fees and costs when calculating Index performance. In these cases, state that this will reduce the Index return and cause the Index to underperform a direct investment in the securities composing the Index.

(B) State that the Insurance Company reserves the right to substitute an Index prior to the end of a Crediting Period. Explain: (a) all circumstances that could necessitate a substitution; (b) how the Insurance Company would choose a replacement Index; (c) when and how investors will be notified of any such change; (d) how Index return will be calculated at the end of the Crediting Period; and (e) what would happen if a suitable replacement Index were not found, including whether the Index-Linked Option will be discontinued prior to the end of the Crediting Period.

(vi) *Maturity.* State whether investors will receive advance notice of a maturing Index-Linked Option. Disclose how an investor may provide instructions on reallocating Contract value at the end of the Crediting Period, and any automatic default reallocation in the absence of such instructions.

Instruction. Explain how investors will be informed of Index-Linked Options available for allocation at the end of a Crediting Period, including any changes to currently offered Index-Linked Options, and the discontinuance or addition of Index-Linked Options.

(vii) *Other Material Features.* Describe any other material aspect of the Index-Linked Options, including limitations on transfers to or from the Index-Linked Options, rate holds, "bail-out" provisions, start dates, and holding accounts. If applicable, briefly describe how charges may impact Index-Linked Option value.

(e) *Fixed Options.*

(1) Describe the Fixed Options currently offered under the Contract. State that information regarding the features of each currently offered Fixed Option, including (i) its name, (ii) its term, and (iii) its minimum guaranteed interest rate, is available in an appendix to the prospectus, and provide cross-references.

Instruction. This statement may be modified to conform to the table provided in response to Item 17(c).

(2) Describe how interest is calculated and when it is credited for each Fixed Option. Disclose the length of the term and the minimum guaranteed interest rate.

Instruction. Disclose the minimum guaranteed interest rate as a numeric rate, rather than referring to any minimums permitted under State law.

(i) *Contract Adjustment.* If applicable, state that an investor could lose a significant amount of money due to the Contract Adjustment if amounts are removed from a Fixed Option prior to the end of its term. Describe the transactions subject to a Contract Adjustment. Provide cross references to related disclosure in the prospectus.

(ii) *Maturity.* If applicable, state whether investors will receive advance notice of a maturing Fixed Option. Disclose how an investor may provide instructions on reallocating Contract value at the end of the term, and any automatic default reallocation in the absence of such instructions.

Instruction. Explain how investors will be informed of Fixed Options available for allocation at the end of a term, including how current rates may be obtained and any changes to currently offered Fixed Options, and the discontinuance or addition of Fixed Options.

(iii) *Other Material Features.* Describe any other material aspect of the Fixed Options, including limitations on transfers to or from the Fixed Options, rate holds, start dates, and holding accounts.

Item 7. Charges and Adjustments

(a) *Description.* Briefly describe all current charges deducted from purchase payments, Contract value, or Investment Option assets, or any other source (*e.g.*, sales loads, premium taxes and other taxes, administrative and transaction charges, risk charges, Contract loan charges, and optional benefit charges). Indicate whether each charge will be deducted from purchase payments, Contract value, or Investment Option assets, the proceeds of withdrawals or surrenders, or some other source. When possible, specify the amount of any charge as a percentage or dollar figure (*e.g.*, 0.95% of average daily net assets or $5 per exchange). For recurring charges, specify the frequency of the deduction (*e.g.*, daily, monthly, annually). Identify the person who receives the amount deducted, briefly explain what is provided in consideration for the charges, and explain the extent to which any charge can be modified. Where it is possible to identify what is provided in consideration for a particular charge (*e.g.*, use of sales load to pay distribution costs), explain what is provided in consideration for that charge separately.

Instructions.

1. Describe the sales loads applicable to the Contract and how sales loads are charged and calculated, including the factors affecting the computation of the amount of the sales load. If the Contract has a front-end sales load, describe the sales load as a percentage of the applicable measure of purchase payments and as a percentage of the net amount invested for each breakpoint. For Contracts with a deferred sales load, describe the sales load as a percentage of the applicable measure of purchase

payments (or other basis) that the deferred sales load may represent. Percentages should be shown in a table. Identify any events on which a deferred sales load is deducted (*e.g.*, surrender or withdrawal). The description of any deferred sales load should include how the deduction will be allocated among Investment Options and when, if ever, the sales load will be waived (*e.g.*, if the Contract provides a free withdrawal amount).

2. Unless set forth in response to Instruction 1, list any special purchase plans or methods established pursuant to a rule or an exemptive order that reflect scheduled variations in, or elimination of, the sales load (*e.g.*, group discounts, waiver of sales load upon annuitization or attainment of a certain age, waiver of deferred sales load for a certain percentage of Contract value ("free corridor"), investment of proceeds from another policy, exchange privileges, employee benefit plans, or the terms of a merger, acquisition or exchange offer made pursuant to a plan of reorganization); identify each class of individuals or transactions to which such plans apply; state each different sales charge available as a percentage of the public offering price and as a percentage of the net amount invested; and state from whom additional information may be obtained. Describe any other special purchase plans or methods established pursuant to a rule that reflect other variations in, or elimination of, the sales load or in any administrative charge or other deductions from purchase payments, and generally describe the basis for the variation or elimination in the sales load or other deduction (*i.e.*, the size of the purchaser, a prior or existing relationship with the purchaser, the purchaser's assumption of certain administrative functions, or other characteristics that result in differences in costs or services).

3. If proceeds from sales loads will not cover the expected costs of distributing the Contracts, identify from what source the shortfall, if any, will be paid. If any shortfall is to be made from assets from the Insurance Company's general account, disclose, if applicable, that any amounts paid by the Insurance Company may consist, among other things, of proceeds derived from Base Contract Expenses.

4. If the Contract's charge for premium or other taxes varies according to jurisdiction, identification of the range of current premium or other taxes is sufficient.

(b) *Commissions Paid to Dealers*. State the commissions paid to dealers as a percentage of purchase payments.

(c) *Portfolio Company Charges.* State that charges are deducted from and expenses paid out of the assets of the Portfolio Companies that are described in the prospectuses for those companies.

(d) *Operating Expenses.* Describe any type of operating expenses for which the Registered Separate Account is responsible. If organizational expenses of the Registered Separate Account are to be paid out of its assets, explain how the expenses will be amortized and the period over which the amortization will occur.

(e) *Contract Adjustment.* Describe any Contract Adjustment under the Contract.

Instructions.

1. State the maximum potential loss, as a percentage, that could result from a negative Contract Adjustment.
2. Define the period during which the Contract Adjustment applies.
3. Describe all transactions subject to the Contract Adjustment. For example, as applicable, state whether an adjustment will be applied if amounts are transferred or withdrawn from an Investment Option or from the Contract due to a partial withdrawal, surrender, election of an annuity option, payment of death

benefit proceeds, etc., or where a particular Contract option (such as a withdrawal under a guaranteed living benefit) is utilized. Describe any circumstances under which the adjustment will be waived.

4. Briefly describe in simple terms the manner in which the Contract Adjustment is determined, including: (i) whether the adjustment results from the application of a particular formula or set of factors (*e.g.*, a change in value of hypothetical derivative instruments); (ii) the factors that may cause a positive or negative adjustment (*e.g.*, timing of withdrawal, Index volatility, increase in external interest rates, etc.); (iii) a description of any proportionate withdrawal calculations; and (iv) how a positive or negative adjustment is applied (*e.g.*, allocated among the Investment Options, applied to a withdrawal amount). Detailed disclosure on the method of calculating the Contract Adjustment should be placed in the SAI in response to Item 22(d). Provide a cross-reference to the SAI for more information about the Contract Adjustment, including examples illustrating the operation of the adjustment.
5. State how the Contract Adjustment will affect the Contract value, surrender value, death benefit, and any living benefits, and disclose that a negative adjustment could reduce the values under the Contract by an amount greater than the value withdrawn. If applicable, state the impact of the Contract Adjustment on interest to be credited to an Index-Linked Option at the end of its Crediting Period.
6. Describe the relationship between the Contract Adjustment and any other charges, fees, or adjustments applied under the Contract, including, for example, the sequence in which charges, fees, and adjustments are applied.
7. Briefly describe the purpose of the Contract Adjustment (*e.g.*, to transfer risk from the Insurance Company to the investor to protect the Insurance Company from losses on its own investments supporting Contract guarantees if amounts are withdrawn prematurely).
8. Disclose how an investor can obtain information about the current value of a Contract Adjustment. State that this value can fluctuate daily, and the current value quoted to the investor may differ from the actual value calculated at the time of adjustment.

Item 8. General Description of Contracts

(a) *Contract Rights.* Identify the person or persons (*e.g.*, the investor, participant, annuitant, or beneficiary) who have material rights under the Contracts, and the nature of those rights (1) during the accumulation period, (2) during the annuity period, and (3) after the death of the annuitant or investor.

Instruction. Disclose all material state variations and intermediary-specific variations (*e.g.*, variations resulting from different brokerage channels) to the offering.

(b) *Contract Provisions and Limitations.* Briefly describe any provisions and limitations for:

(1) minimum Contract value, and the consequences of falling below that amount;

(2) allocation of purchase payments among Investment Options;

(3) transfer of Contract value between Investment Options, including transfer programs (*e.g.*, dollar cost averaging, portfolio rebalancing, asset allocation programs, and automatic transfer programs);

(4) conversion or exchange of Contracts for another contract, including a fixed or variable annuity or life insurance contract; and

Instruction. In discussing conversion or exchange of Contracts, the Registrant should include any time limits on conversion or exchange, the name of the company issuing the other contract and whether that company is affiliated with the issuer of the Contract, and how the cash value of the Contract will be affected by the conversion or exchange.

(5) buyout offers, including interests or participations therein.

(c) *General Account.* Describe the obligations under the Contract that are funded by the Insurance Company's general account (*e.g.*, Index-Linked or Fixed Options, death benefits, living benefits, or other benefits available under the Contract), and state that these amounts are subject to the Insurance Company's claims-paying ability and financial strength.

(d) *Contract or Registered Separate Account Changes*. Briefly describe the changes that can be made in the Contracts or the operations of the Registered Separate Account by the Registered Separate Account or the Insurance Company, including:

(1) why a change may be made (*e.g.*, changes in applicable law or interpretations of law);

(2) who, if anyone, must approve any change (*e.g.*, the investor or the Commission); and

(3) who, if anyone, must be notified of any change.

Instruction. Describe only those changes that would be material to a purchaser of the Contracts, such as a reservation of the right to deregister the Registered Separate Account under the Investment Company Act or to substitute one Portfolio Company for another. Do not describe possible non-material changes, such as changing the time of day at which accumulation unit values are determined.

(e) *Class of Purchasers*. Disclose any limitations on the class or classes of purchasers to whom the Contract is being offered.

(f) Frequent Transfers among Variable Options.

(1) Describe the risks, if any, that frequent transfers of Contract value among Variable Options may present for other investors and other persons (*e.g.*, participants, annuitants, or beneficiaries) who have material rights under the Contract.

(2) State whether or not the Registered Separate Account or Insurance Company has adopted policies and procedures with respect to frequent transfers of Contract value among Variable Options.

(3) If neither the Registered Separate Account nor the Insurance Company has adopted any such policies and procedures, provide a statement of the specific basis for the view of the Insurance Company that it is appropriate for the Registered Separate Account and Insurance Company not to have such policies and procedures.

(4) If the Registered Separate Account or Insurance Company has any such policies and procedures, describe those policies and procedures, including:

(i) whether or not the Registered Separate Account or Insurance Company discourages frequent transfers of Contract value among Variable Options;

(ii) whether or not the Registered Separate Account or Insurance Company accommodates frequent transfers of Contract value among Variable Options; and

(iii) any policies and procedures of the Registered Separate Account or Insurance Company for deterring frequent transfers of Contract value among Variable Options, including any restrictions imposed by the Registered Separate Account or Insurance Company to prevent or minimize frequent transfers. Describe each of these policies, procedures, and restrictions with specificity.

Indicate whether each of these restrictions applies uniformly in all cases or whether the restriction will not be imposed under certain circumstances, including whether each of these restrictions applies to trades that occur through omnibus accounts at intermediaries, such as investment advisers, broker-dealers, transfer agents, and third party administrators. Describe with specificity the circumstances under which any restriction will not be imposed. Include a description of the following restrictions, if applicable:

(A) any restrictions on the volume or number of transfers that may be made within a given time period;

(B) any transfer fee;

(C) any costs or administrative or other fees or charges that are imposed on persons deemed to be engaged in frequent transfers of Contract value among Variable Options, together with a description of the circumstances under which such costs, fees, or charges will be imposed;

(D) any minimum holding period that is imposed before a transfer may be made from a Variable Option into another;

(E) any restrictions imposed on transfer requests submitted by overnight delivery, electronically, or via facsimile or telephone; and

(F) any right of the Registered Separate Account or Insurance Company to reject, limit, delay, or impose other conditions on transfers or to terminate or otherwise limit Contracts based on a history of frequent transfers among Variable Options, including the circumstances under which such right will be exercised.

(5) If applicable, include a statement, adjacent to the disclosure required by paragraphs (f)(1) through (f)(4) of this Item, that the Statement of Additional Information includes a description of all arrangements with any person to permit frequent transfers of Contract value among Variable Options.

Item 9. Annuity Period

Briefly describe the annuity options available. The discussion should include:

(a) Material factors that determine the level of annuity benefits;

(b) The annuity commencement date (give the earliest and latest possible dates);

(c) Frequency and duration of annuity payments, and the effect of these on the level of payment;

(d) The effect of assumed investment return;

(e) Any minimum amount necessary for an annuity option and the consequences of an insufficient amount; and

(f) Rights, if any, to change annuity options or to effect a transfer of investment base after the annuity commencement date.

Instructions:

1. Describe the choices, if any, available to a prospective annuitant, and the effect of not specifying a

choice. Where an annuitant is given a choice in assumed investment return, explain the effect of choosing a higher, as opposed to a lower, assumed investment return.

2. Detailed disclosure on the method of calculating annuity payments should be placed in the SAI in response to Item 25.

(g) If applicable, state that the investor will not be able to withdraw any Contract value amounts after the annuity commencement date.

Item 10. Benefits Available Under the Contract

(a) Include the following information:

The following table[s] summarize information about the benefits available under the contract.

Name of Benefit	Purpose	Is Benefit Standard or Optional	Maximum Fee	Brief Description of Restrictions/ Limitations
			[ ]%	
			[ ]%	

Instructions.

1. *General.*

(a) The table required by paragraph (a) of this Item is meant to provide a tabular summary overview of the benefits described in paragraph (b) of this Item (*e.g.*, standard or optional death benefits, standard or optional living benefits, etc.).

(b) If the Contract offers multiple benefits of the same type (*e.g.*, death benefit, accumulation benefit, withdrawal benefit, long-term care benefit), the Registrant may include multiple tables in response to paragraph (a) of this Item, if doing so might better permit comparisons of different benefits of the same type. Registrants that choose to use a single table should consider whether grouping together multiple benefits of the same type, with appropriate headings, might similarly permit better comparisons of those benefits.

(c) The Registrant should include appropriate titles, headings, or any other information to promote clarity and facilitate understanding of the table(s) presented in response to paragraph (a) of this Item. For example, if certain optional benefits are only available to certain investors (*e.g.*, investors who invested during specific time periods), the table could include footnotes or headings to identify which optional benefits are affected and to whom those optional benefits are available.

2. *Name of Benefit.* State the name of each benefit included in the table(s).

3. *Purpose*. Briefly describe the purpose of each benefit included in the table(s).

4. *Is Benefit Standard or Optional.* State whether the benefit is standard or optional. If the Registrant includes titles or headings for the table(s) specifying whether the benefit is standard or optional, the Registrant does not need to include the "Is Benefit Standard or Optional" column in the table(s).

5. *Maximum Fee*. State the maximum fee associated with each benefit included in the table(s). Include parentheticals providing information about what the stated percentage refers to (*e.g.*, percentage of

Contract value, percentage of benefit base, etc.).

6. *Current Fee*. The Registrant may disclose the current charge in a separate column titled "Current Charge," if the disclosure of the current charge is no more prominent than, and does not obscure or impede understanding of, the disclosure of the maximum charge.

7. *Brief Description of Restrictions/Limitations*. Briefly describe the restriction(s) or limitation(s) associated with each benefit. Registrants are encouraged to use short phrases (*e.g.*, "benefit limits investment options available," "withdrawals could terminate benefit") to describe the restriction(s) or limitation(s).

(b) Briefly describe any benefits (*e.g.*, death benefits, living benefits, etc.) offered under a Contract, including:

(1) Whether the benefit is standard or optional;

(2) The operation of the benefit, including the amount of the benefit and how the benefit amount may vary, the circumstances under which the value of the benefit may increase or be reduced (including the effect of withdrawals), and how the benefit may be terminated;

(3) Fees and costs, if any, associated with the benefit; and

(4) How the benefit amount is calculated and payable and the effect of choosing a specific method of payment on calculation of the benefit.

(c) Briefly describe any limitations, restrictions and risks associated with any benefit offered under the Contract (*e.g.*, restrictions on which Portfolio Companies or Investment Options may be selected; risk of reduction or termination of benefit or of additional costs resulting from excess withdrawals).

Instruction. In responding to paragraphs (b) and (c) of this Item, provide one or more examples illustrating the operation of each benefit in a clear, concise, and understandable manner.

Item 11. Purchases and Contract Value

(a) Briefly describe the procedures for purchasing a Contract. Include a concise explanation of:

(1) the minimum initial and subsequent purchase payments required and any limitations on the amount of purchase payments that will be accepted (if there are separate limits for each Investment Option, state these limits);

(2) a statement of when initial and subsequent purchase payments are credited; and

(3) a description of how purchase payments are allocated to the Investment Options, including how such allocation would take place in the absence of instructions from the investor.

(b) For Variable Options:

(1) Describe the manner in which purchase payments are credited, including: (A) an explanation that purchase payments are credited on the basis of accumulation unit value; (B) how accumulation unit value is determined; and (C) how the number of accumulation units credited to a Contract is determined.

(2) Explain that investment performance of the Portfolio Companies, expenses, and deduction of

certain charges affect accumulation unit value and/or the number of accumulation units.

(3) Describe when calculations of accumulation unit value are made and that purchase payments are credited to a Contract on the basis of accumulation unit value next determined after receipt of a purchase payment.

(c) Identify each principal underwriter (other than the Insurance Company) of the Contracts and state its principal business address. If the principal underwriter is affiliated with the Registrant or any affiliated person of the Registrant, identify how they are affiliated (*e.g.*, the principal underwriter is controlled by the Insurance Company).

Item 12. Surrenders and Withdrawals

(a) *Surrender and Withdrawal*. Briefly describe how surrenders and withdrawals can be made from a Contract, including any limits on the ability to surrender, how the proceeds are calculated, and when they are payable. Briefly describe the potential effect of such surrenders and withdrawals.

(b) *Additional Information Regarding Surrender and Withdrawal*. Indicate generally whether and under what circumstances surrenders and withdrawals are available under a Contract, including the minimum and maximum amounts that may be surrendered or withdrawn, any limits on their availability, how the proceeds are calculated, and when the proceeds are payable.

(c) *Effect of Surrender and Withdrawal*. Indicate generally whether and under what circumstances surrenders or withdrawals will affect a Contract's cash value, death benefit(s), and/or any living benefits, and whether any charge(s) and Contract Adjustment will apply.

(d) *Investment Option Allocation*. Describe how surrenders and withdrawals will be allocated to the Investment Options, including how such allocation would take place in the absence of instructions from the investor.

Instruction. The Registrant should generally describe the terms and conditions that apply to surrender and withdrawal transactions. Technical information regarding the determination of amounts available to be surrendered or withdrawn should be included in the SAI.

(e) *Involuntary Redemption*. Briefly describe any provision for involuntary redemptions under the Contract and the reasons for it, such as the size of the account or infrequency of purchase payments.

(f) *Revocation Rights*. Briefly describe any revocation rights (*e.g.*, "free look" provisions), including a description of how the amount refunded is determined. Disclose the method for crediting Variable Option earnings to purchase payments during the free look period, and whether Investment Options are limited during the free look period.

Item 13. Loans

Briefly describe the loan provisions of the Contract, including any of the following that are applicable.

(a) *Availability of Loans*. State that a portion of the Contract's cash surrender value may be borrowed. State how the amount available for a loan is calculated.

(b) *Limitations*. Describe any limits on availability of loans (*e.g.*, a prohibition on loans during the first Contract year).

(c) *Interest*. Describe how interest accrues on the loan, when it is payable, and how interest is treated if not

paid. Explain how interest on the amount in the collateral account is credited to the Contract and allocated to the investment options.

(d) *Effect on Contract Value and Death Benefit*. Describe how loans and loan repayments affect Contract value and how they are allocated among the investment options, including, if applicable, how such allocation would take place in the absence of instructions from the investor. Include (i) a brief explanation that amounts borrowed under a Contract do not participate in the investment experience of an Investment Option and that loans, therefore, can affect the Contract value and death benefit whether or not the loan is repaid, and (ii) a brief explanation that the Contract value at surrender and the death proceeds payable will be reduced by the amount of any outstanding Contract loan plus accrued interest.

(e) *Other Effects*. Describe any other effect that a loan could have on the Contract (*e.g.*, the effect of a Contract loan in excess of Contract value).

(f) *Procedures*. Describe the loan procedures, including how and when amounts borrowed are transferred out of the Investment Options and how and when amounts repaid are credited to the Investment Options.

Item 14. Taxes

(a) *Tax Consequences*. Describe the material tax consequences to the investor and beneficiary of buying, holding, exchanging, or exercising rights under the Contract.

Instruction. Discuss the taxation of annuity payments, death benefit proceeds, periodic and non-periodic withdrawals, loans, and any other distribution that may be received under the Contract, as well as the tax benefits accorded the Contract, and other material tax consequences. Describe, if applicable, whether the tax consequences vary with different uses of the Contract.

(b) *Qualified Plans*. Identify the types of qualified plans for which the Contracts are intended to be used.

Instructions:

1. Identify the types of persons who may use the plans (*e.g.*, corporations, self-employed individuals) and disclose, if applicable, that the terms of the plan may limit the rights otherwise available under the Contracts.

2. Do not describe the Internal Revenue Code requirements for qualifications of plans or the non-annuity tax consequences of qualification (*e.g.*, the effect on employer taxation).

(c) *Effect*. Describe the effect, if any, of taxation on the determination of cash values or Contract values.

Item 15. Legal Proceedings

Describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Registered Separate Account, the principal underwriter, or the Insurance Company is a party. Include the name of the court where the case is pending, the date instituted, the principal parties involved, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any proceedings instituted, or known to be contemplated, by a governmental authority.

Instruction. For purposes of this requirement, legal proceedings are material only to the extent that they are likely to have a material adverse effect on the Registered Separate Account, the ability of the principal

underwriter to perform its contract with the Registrant, or the ability of the Insurance Company to meet its obligations under the Contracts.

Item 16. Financial Statements

If all of the required financial statements of the Registered Separate Account and the Insurance Company (see Item 26 and General Instruction C.3.(b)) are not in the prospectus, state, under a separate caption, where the financial statements may be found. Briefly explain how investors may obtain any financial statements not in the Statement of Additional Information.

Item 17. Investment Options Available Under the Contract

Include the following information as an Appendix under the heading **"Appendix: Investment Options Available Under the Contract."** A Registrant may modify the Appendix heading as appropriate under the Contract.

(a) *Variable Options.* Include the following legend, in the format specified below:

The following is a list of Portfolio Companies available under the Contract. More information about the Portfolio Companies is available in the prospectuses for the Portfolio Companies, which may be amended from time to time and can be found online at [___]. You can also request this information at no cost by calling [____] or by sending an email request to [___].

The current expenses and performance information below reflects fee and expenses of the Portfolio Companies, but do not reflect the other fees and expenses that your Contract may charge [, such as Platform Charges]. Expenses would be higher and performance would be lower if these other charges were included. Each Portfolio Company's past performance is not necessarily an indication of future performance.

Type/Investment Objective	**Portfolio Company and Adviser/ Subadviser**	**Current Expenses**	**Average Annual Total Returns** *(as of 12/31/_)*		
			1 year	**5 year**	**10 year**
[Insert]	[Names of Portfolio Company and *adviser/subadviser*]	[_]%	[_]%	[_]%	[_]%

Instructions.

1. *General.*

   (a) Only include Portfolio Companies that are investment options under the Contract. Indicate if investments in any of the Portfolio Companies are restricted (*e.g.*, because of a "hard" or "soft" close).

   (b) The introductory legend to the table must provide a website address, other than the address of the Commission's electronic filing system; toll free telephone number; and email address that investors can use to obtain the prospectuses of the Portfolio Companies and to request other

information about the Portfolio Companies. The website address must be specific enough to lead investors directly to the prospectuses of the Portfolio Companies, rather than to the home page or other section of the website on which the materials are posted. The website could be a central site with prominent links to each document.

(c) The legend may indicate, if applicable, that the prospectuses and other information are available from a financial intermediary (such as an insurance sales agent or broker-dealer) through which the Contract may be purchased or sold.

(d) Registrants not relying upon rule 498A(j) under the Securities Act [17 CFR 230.498A(j)] with respect to the Portfolio Companies that are investment options under the Contract may, but are not required to, provide the next-to-last sentence of the first paragraph of the introductory legend to the table regarding online availability of the prospectuses.

(e) If applicable, include a statement explaining that updated performance information is available and providing a website address and/or toll-free (or collect) telephone number where the updated information may be obtained.

(f) Registrants may include additional rows to the table to group Portfolio Companies belonging to the same fund complex, or otherwise modify the tabular presentation, provided that the presentation does not obscure or impede understanding of the information that is required to be included, or substantially alter the required format of the table.

2. *Type/Investment Objective*. Briefly describe each Portfolio Company's type (*e.g.*, money market fund, bond fund, balanced fund, etc.), or include a brief statement describing the Portfolio Company's investment objectives.

3. *Portfolio Company and Adviser/Subadviser*. State the name of each Portfolio Company and its adviser/subadviser, as applicable. The adviser's/sub-adviser's name may be omitted if it is incorporated into the name of the Portfolio Company. A Registrant also need not identify a sub-adviser whose sole responsibility for the Portfolio Company is limited to day-to-day management of the Portfolio Company's holdings of cash and cash equivalent instruments, unless the Portfolio Company is a money market fund or other Portfolio Company with a principal investment strategy of regularly holding cash and cash equivalent instruments. If the Portfolio Company has three or more sub-advisers, each of which manages a portion of the Portfolio Company's portfolio, the Registrant need not identify each such sub-adviser, except that the Registrant must identify any sub-adviser that is (or is reasonably expected to be) responsible for the management of a significant portion of the Portfolio Company's net assets. For purposes of this paragraph, a significant portion of a Portfolio Company's net assets generally will be deemed to be 30% or more of the Portfolio Company's net assets.

4. *Current Expenses*. Report "Total Annual Fund Operating Expenses" as calculated pursuant to Item 3 of Form N-1A [17 CFR §§ 239.15A and 274.11A], reflecting any expense reimbursements or fee waiver arrangements that are in place and reported in the Portfolio Company's registration statement pursuant to Item 3 of Form N-1A. If applicable, identify each Portfolio Company subject to an expense reimbursement or fee waiver arrangement and provide a footnote stating that their annual expenses reflect temporary fee reductions.

5. *Platform Charge.* If the Insurance Company charges a Platform Charge to make any of the Portfolio Companies available as investment options under the Contract, add a column titled "Platform Charge" disclosing the current Platform Charge for each Portfolio Company. If applicable, also provide a

footnote indicating the highest level to which any relevant Platform Charge may be increased.

6. *Current Expenses + Platform Charge*. If the Insurance Company charges a Platform Charge to make any of the Portfolio Companies available as investment options under the Contract, add a column titled "Current Expenses + Platform Charge." The column contemplated by this Instruction must be presented in a manner reasonably calculated to draw investor attention to that column.

7. *Average Annual Total Returns.* For purposes of this Item, "average annual total returns" means the "average annual total return" (before taxes) as calculated pursuant to Item 4(b)(2)(iii) of Form N-1A.

(b) *Index-Linked Options*.

(1) Include the following legend, in the format specified below:

The following is a list of Index-Linked Options currently available under the Contract. We may change the features of the Index Linked Options listed below (including the Index and the current limits on Index gains and losses), offer new Index-Linked Options, and terminate existing Index-Linked Options. We will provide you with written notice before making any changes other than changes to current limits on Index gains. Information about current limits on Index gains is available at [website address].

Note: If amounts are removed from an Index-Linked Option before the end of its Crediting Period, we [may/will] apply a Contract Adjustment. This may result in a significant reduction in your Contract value that could exceed any protection from Index loss that would be in place if you held the option until the end of the Crediting Period.

Index	Type of Index	Crediting Period	Index Crediting Methodology	Current Limit on Index Loss (if held until end of Crediting Period)	Minimum Limit on Index Gain (for the life of the Index-Linked Option)
[Name of Index]	[Insert]	[ ] Year	[ ]	[ ]%	[ ]%

(2) Immediately below the table required by paragraph (b)(1) of Item 17, prominently disclose any minimum limits on Index losses that will always be available under the Contract or, alternatively, prominently state that the Insurance Company does not guarantee that the Contract will always offer Index-Linked Options that limit Index losses. Prominently state, for each type of limit offered (*e.g.*, cap, participation rate, etc.), the lowest limit on Index gains that may be established under the Contract.

Instructions.

1. *General.*

(a) Include appropriate cross-references in the legend to the section(s) of the prospectus that describe the features of the Index-Linked Options as well as the Contract Adjustment.

(b) Only include those Index Linked Options that are available under the Contract. Indicate if

investments in any of the Index-Linked Options are restricted (*e.g.*, because of a "hard" or "soft" close).

(c) An Insurance Company may add, modify, or exclude table headings only as necessary to describe the material features of an Index-Linked Option.

(d) If an Index provider calculates the Index return in a manner that does not reflect the full investment performance of the assets tracked by the Index (*e.g.*, the return does not reflect dividends paid on the assets composing the Index, the return reflects a fee or cost, etc.), then include a footnote to the table stating that the Index is a "price return index," not a "total return index," and therefore does not reflect dividends paid on the securities composing the Index, and/or the Index deducts fees and costs when calculating Index performance, as applicable. In these cases, state that this will reduce the Index return and cause the Index to underperform a direct investment in the securities composing the Index.

(e) A website address should be provided in the legend only if the Insurance Company incorporates current limits on Index gains by reference as provided in Instruction 1 to Item 6(d)(2)(ii)(B). This website address in the legend must be the website provided in response to Instruction 1 to Item 6(d)(2)(ii)(B).

(f) If the Insurance Company does not incorporate current limits on Index gains by reference, the legend should provide (in lieu of the website address) a cross-reference to the current limits on Index gains disclosed elsewhere in the prospectus pursuant to Item 6(d)(2)(ii)(B).

2. *Index.* Provide the name of the Index.

3. *Type.* Briefly describe the type of Index (*e.g.*, market index, exchange-traded fund, etc.), or include a brief statement describing the assets that the Index seeks to track (*e.g.*, U.S. large-cap equities).

4. *Crediting Period.* State the duration of the Index-Linked Option.

5. *Index Crediting Methodology.* If the Insurance Company utilizes multiple index crediting methodologies under the Contract (*e.g.*, point-to-point, step-up, enhanced upside, etc.), include a column indicting the type of methodology used for each Index-Linked Option.

6. *Current Limit on Index Loss (if held until end of Crediting Period).* State the current percentage used by the Insurance Company in its interest crediting methodology to limit the amount of negative Index return credited to the Index-Linked Option. Identify in the table whether this limit is a buffer, floor, or some other rate or measure.

7. *Minimum Limit on Index Gain (for the life of the Index-Linked Option).* State the minimum percentage the Insurance Company may use in its interest crediting methodology to limit the amount of positive Index return credited to the Index-Linked Option. Identify in the table whether this limit is a cap, participation rate, or some other rate or measure.

(c) *Fixed Options*. Include the following legend, in the format specified below:

The following is a list of Fixed Options currently available under the Contract. We may change the features of the Fixed Options listed below, offer new Fixed Options, and terminate existing Fixed Options. We will provide you with written notice before doing so.

Note: If amounts are withdrawn from a Fixed Option before the end of its term, we [may/will] apply a Contract Adjustment. This may result in a significant reduction in your Contract value.

Name	Term	Minimum Guaranteed Interest Rate
[Name of Fixed Option]	[ ] Year	[ ]%

Instructions.

1. *General.*

   (a) Include appropriate cross-references in the legend to the section(s) of the prospectus that describe the features of the Fixed Options as well as the Contract Adjustment.

   (b) Only include those Fixed Options that are available under the Contract.

   (c) A Company may add, modify, or exclude table headings only as necessary to describe the material features of a Fixed Option.

2. *Term.* State the duration of the Fixed Option.

3. *Minimum Guaranteed Interest Rate.* Disclose the minimum guaranteed interest rate as a numeric rate, rather than referring to any minimums permitted under State law.

(d) *Restrictions*. If the availability of one or more Investment Options varies by benefit offered under the Contract:

(1) The following sentence should be added to the first paragraph of the legend preceding each table above, as applicable: "Depending on the [optional] benefits you choose, you may not be able to invest in certain Investment Options, as noted below."; and

(2) Indicate which Investment Options are available (or are restricted) under the benefits offered under the Contract. The Appendix could incorporate a separate table that is structured pursuant to the following example, or could use any other presentation that might promote clarity and facilitate understanding:

[Investment Option]	[Benefit #1]	[Benefit #2]	[Benefit #3]	[Benefit #4]
Investment Option A	□	□	□	□
Investment Option B	□	□	□	
Investment Option C	□	□		

[Investment Option]	**[Benefit #1]**	**[Benefit #2]**	**[Benefit #3]**	**[Benefit #4]**
Investment Option D	□			

PART B - INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL INFORMATION

Item 18. Cover Page and Table of Contents

(a) *Front Cover Page*. Include the following information on the outside front cover page of the SAI:

(1) The Registered Separate Account's name.

(2) The Insurance Company's name.

(3) The name of the Contract and the Class or Classes, if any, to which the Contract relates.

(4) A statement or statements:

(i) That the SAI is not a prospectus;

(ii) How the prospectus may be obtained; and

(iii) Whether and from where information is incorporated by reference into the SAI, as permitted by General Instruction D.

Instruction. Any information incorporated by reference into the SAI must be delivered with the SAI.

(5) The date of the SAI and the prospectus to which the SAI relates.

(b) *Table of Contents*. Include under appropriate captions (and subcaptions) a list of the contents of the SAI and, when useful, provide cross-references to related disclosure in the prospectus.

Item 19. General Information and History

(a) *Insurance Company.* Provide the date and form of organization of the Insurance Company, the name of the State or other jurisdiction in which the Insurance Company is organized, and a description of the general nature of the Insurance Company's business.

Instruction. The description of the Insurance Company's business should be short and need not list all of the businesses in which the Insurance Company engages or identify the jurisdictions in which it does business if a general description (*e.g.*, "variable annuity" or "reinsurance") is provided.

(b) *Registered Separate Account.* Provide the date and form of organization of the Registered Separate Account and the Registered Separate Account's classification pursuant to section 4 of the Investment Company Act [15 U.S.C. 80a-4] (*i.e.*, a separate account and a unit investment trust).

(c) *History of Insurance Company and Registered Separate Account.* If the Insurance Company's name was changed during the past five years, state its former name and the approximate date on which it was changed. If, at the request of any State, sales of contracts offered by the Registered Separate Account have been suspended at any time, or if sales of contracts offered by the Insurance Company have been suspended during the past five years, briefly describe the reasons for and results of the suspension. Briefly describe the nature and results of any bankruptcy, receivership, or similar proceeding, or any other material reorganization, readjustment, or succession of the Insurance Company during the past five years.

(d) *Ownership of Registered Separate Account Assets.* If 10 percent or more of the assets of any Variable Option are not attributable to Contracts or to accumulated deductions or reserves (*e.g.*, initial capital contributed by the Insurance Company), state what percentage those assets are of the total assets of the

Registered Separate Account. If the Insurance Company, or any other person controlling the assets, has any present intention of removing the assets from the Registered Separate Account, so state.

(e) *Control of Insurance Company.* State the name of each person who controls the Insurance Company and the nature of its business.

Instruction. If the Insurance Company is controlled by another person that, in turn, is controlled by another person, give the name of each control person and the nature of its business.

Item 20. Non-Principal Risks of Investing in the Contract

Summarize the non-principal risks of purchasing a Contract to the extent not disclosed in the prospectus.

Item 21. Services

(a) *Expenses Paid by Third Parties.* Describe all fees, expenses, and costs of the Registered Separate Account that are to be paid by persons other than the Insurance Company or the Registered Separate Account, and identify those persons.

(b) *Service Agreements.* Summarize the substantive provisions of any management-related service contract that may be of interest to a purchaser of the Contracts, under which services are provided to the Registrant in connection with the Contracts, unless the contract is described in response to some other item of the form. Indicate the parties to the contract, and the total dollars paid and by whom for each of the past three years.

Instructions:

1. The term "management-related service contract" includes any contract with the Registrant to keep, prepare, or file accounts, books, records, or other documents required under Federal or State law, or to provide any similar services with respect to the daily administration of the Registered Separate Account, but does not include the following:

   (a) Any agreement with the Registrant to act as custodian or agent to administer purchases and redemptions under the Contracts, and

   (b) Any contract with the Registrant for outside legal or auditing services, or contract for personal employment entered into with the Registrant in the ordinary course of business.

2. In summarizing the substantive provisions of any management-related service contract, include the following:

   (a) The name of the person providing the service;

   (b) The direct or indirect relationships, if any, of the person with the Registered Separate Account, the Insurance Company, or the principal underwriter; and

   (c) The nature of the services provided, and the basis of the compensation paid for the services for the Registrant's last three fiscal years.

(c) Other Service Providers.

(1) Unless disclosed in response to paragraph (b) or another item of this form, identify and state the principal business address of any person who provides significant administrative or business affairs

management services for the Registrant in connection with the Contracts (*e.g.*, an "Administrator," "Sub-Administrator," "Servicing Agent"), describe the services provided, and the compensation paid for the services.

(2) State the name and principal business address of the Registered Separate Account's custodian and Registrant's independent public accountant and describe generally the services performed by each.

(3) If the Registered Separate Account's assets are held by a person other than the Insurance Company, a commercial bank, trust company, or depository registered with the Commission as custodian, state the nature of the business of each such person.

(4) If an affiliated person of the Registered Separate Account or the Insurance Company, or an affiliated person of such an affiliated person, acts as administrative or servicing agent for the Registrant in connection with the Contracts, describe the services the person performs and the basis for remuneration. State, for the past three years, the total dollars paid for the services, and by whom.

Instruction. No disclosure need be given in response to paragraph (c)(4) of this Item for an administrative or servicing agent who is also the Insurance Company.

(5) If the Insurance Company is the principal underwriter of the Contracts, so state.

Item 22. Purchase of Securities Being Offered

(a) Describe the manner in which Registrant's securities are offered to the public. Include a description of any special purchase plans and any exchange privileges not described in the prospectus.

Instruction. Address exchange privileges between Investment Options, between the Registered Separate Account and other separate accounts, and between the Registered Separate Account and contracts offered through the Insurance Company's general account.

(b) Describe the method that will be used to determine the sales load on the Contracts offered by the Registrant.

Instruction. Explain fully any difference in the price at which Contracts are offered to members of the public, as individuals or as groups, and the prices at which the Contracts are offered for any class of transactions or to any class of individuals, including officers, directors, members of the board of managers, or employees of the Insurance Company, underwriter, Portfolio Company, or investment adviser to the Portfolio Company.

(c) *Frequent Transfer Arrangements*. Describe any arrangements with any person to permit frequent transfers of Contract value among Variable Options, including the identity of the persons permitted to engage in frequent transfers pursuant to such arrangements, and any compensation or other consideration received by the Registered Separate Account, the Insurance Company, or any other party pursuant to such arrangements.

Instructions:

1. The consideration required to be disclosed by paragraph (c) of this Item includes any agreement to maintain assets in the Registered Separate Account or in other investment companies or accounts managed or sponsored by the Insurance Company, any investment adviser of a Portfolio Company, or any affiliated person of the Insurance Company or of any such investment adviser.

2. If the Registrant has an arrangement to permit frequent transfers of Contract value among Variable

Options by a group of individuals, such as the participants in a defined contribution plan that meets the requirements for qualification under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), the Registrant may identify the group rather than identifying each individual group member.

(d) *Contract Adjustment.* Fully explain the operation of any Contract Adjustment under the Contract, including any formulas used to calculate the adjustment.

Instruction. Include one or more numeric examples to illustrate the application of the Contract Adjustment. The example should include a negative adjustment, reflect surrender charges, if applicable, and disclose the percentage change in Contract value as a result of the adjustment.

Item 23. Underwriters

(a) *Identification*. Identify each principal underwriter (other than the Insurance Company) of the Contracts, and state its principal business address. If the principal underwriter is affiliated with the Registered Separate Account, the Insurance Company, or any affiliated person of the Registered Separate Account or the Insurance Company, identify how they are affiliated (*e.g.*, the principal underwriter is controlled by the Insurance Company).

(b) *Offering and Commissions*. For each principal underwriter distributing Contracts of the Registrant, state:

(1) whether the offering is continuous; and

(2) the aggregate dollar amount of underwriting commissions paid to, and the amount retained by, the principal underwriter for each of the Registrant's last three fiscal years.

(c) *Other Payments*. With respect to any payments made by the Registrant to an underwriter of or dealer in the Contracts during the Registrant's last fiscal year, disclose the name and address of the underwriter or dealer, the amount paid and basis for determining that amount, the circumstances surrounding the payments, and the consideration received by the Registrant. Do not include information about:

(1) Payments made through deduction from purchase payments made at the time of sale of the Contracts; or

(2) Payments made from Contract values upon surrender of or withdrawal from the Contracts

Instructions.

1. Information need not be given about the service of mailing proxies or periodic reports of the Registered Separate Account.

2. Exclude information about bona fide contracts with the Registered Separate Account or the Insurance Company for outside legal or auditing services, or bona fide contracts for personal employment entered into with the Registered Separate Account or the Insurance Company in the ordinary course of business.

3. Information need not be given about any service for which total payments of less than $15,000 were made during each of the Registrant's last three fiscal years.

4. Information need not be given about payments made under any contract to act as administrative or servicing agent.

5. If the payments were made under an arrangement or policy applicable to dealers generally, describe only the arrangement or policy.

Item 24. Calculation of Performance Data

(a) *Money Market Funded Sub-Accounts.* Yield quotation(s) included in the prospectus for an account or sub-account of a Registered Separate Account that holds itself out as a "money market" account or sub-account should be calculated according to paragraphs (a)(1) - (2).

(1) *Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet of the Registered Separate Account included in the registration statement, calculate the yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the account or sub-account at the beginning of the period, subtracting a hypothetical charge reflecting deductions from Contracts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent.

(2) *Effective Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet of the Registered Separate Account included in the registration statement, calculate the effective yield, carried to at least the nearest hundredth of one percent, by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the account or sub-account at the beginning of the period, subtracting a hypothetical charge reflecting deductions from Contracts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then compounding the base period return by adding 1, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula:

$$\text{EFFECTIVE YIELD} = [(\text{BASE PERIOD RETURN} + 1)^{365/7}] - 1.$$

Instructions:

1. When calculating the yield or effective yield quotations, the calculation of net change in account value must include all deductions that are charged to all Contracts in proportion to the length of the base period. For any account fees that vary with the size of the account, assume an account size equal to the sub-account's mean (or median) account size.

2. Deductions from purchase payments and sales loads assessed at the time of redemption or annuitization should not be reflected in the computation of yield and effective yield. However, the amount or specific rate of such deductions must be disclosed.

3. Exclude realized gains and losses from the sale of securities and unrealized appreciation and depreciation from the calculation of yield and effective yield. Exclude income other than investment income.

4. If applicable, disclose that the performance information may not reflect all Contract charges (contracts may impose certain charges that are not reflected in the performance of the sub-account, but reduce the value of an investment in the sub-account, such as optional benefit charges). Performance would be lower if these charges were included.

(b) *Other Sub-Accounts.* Performance information included in the prospectus for the Registered Separate

Account should be calculated according to paragraphs (b)(i) – (iii).

(1) *Average Annual Total Return Quotation*. For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet of the Registered Separate Account included in the registration statement, calculate the average annual total return by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods that would equate the initial amount invested to the ending redeemable value, according to the following formula:

$$P(1+T)^n = ERV$$

Where:

P = a hypothetical initial purchase payment of $1,000

T = average annual total return

n = number of years

ERV = ending redeemable value of a hypothetical $1,000 purchase payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10- year periods (or fractional portion).

Instructions:

1. Assume the maximum sales load (or other charges deducted from purchase payments) is deducted from the initial $1,000 purchase payment.

2. Include all recurring fees that are charged to all Contracts. For any account fees that vary with the size of the account, assume an account size equal to the sub-account's mean (or median) account size. If recurring fees charged to Contracts are paid other than by redemption of accumulation units, they should be appropriately reflected.

3. Determine the ending redeemable value by assuming a complete redemption at the end of the 1-, 5-, or 10- year periods and the deduction of all nonrecurring charges deducted at the end of each period.

4. If the Registered Separate Account's registration statement has been in effect less than one, five, or ten years, the time period during which the registration statement has been in effect should be substituted for the period stated.

5. Carry the total return quotation to the nearest hundredth of one percent.

6. Total return information in the prospectus need only be current to the end of the Registered Separate Account's most recent fiscal year.

7. If applicable, disclose that the performance information may not reflect all Contract charges and provide one or more examples of such charges (contracts may impose certain charges that are not reflected in the performance of the sub-account, but reduce the value of an investment in the sub-account, such as optional benefit charges). State that performance would be lower if these charges were included.

(2) *Yield Quotation.* Based on a 30-day (or one month) period ended on the date of the most recent balance sheet of the Registered Separate Account included in the registration statement, calculate yield by dividing the net investment income per accumulation unit earned during the period by the maximum offering price per unit on the last day of the period, according to the following formula:

$$\text{YIELD} = 2[(\frac{a-b}{cd} + 1)^6 - 1]$$

Where:

a = net investment income earned during the period by the Portfolio Company attributable to shares owned by the sub-account

b = expenses accrued for the period (net of reimbursements)

c = the average daily number of accumulation units outstanding during the period

d = the maximum offering price per accumulation unit on the last day of the period.

Instructions:

1. Include among the expenses accrued for the period all recurring fees that are charged to all Contracts. For any account fees that vary with the size of the account, assume an account size equal to the sub-account's mean (or median) account size.

2. If a broker-dealer or an affiliate (as defined in paragraph (b) of rule 1-02 of Regulation S-X [17 CFR 210.1-02(b)]) of the broker-dealer has, in connection with directing the Portfolio Company's brokerage transactions to the broker-dealer, provided, agreed to provide, paid for, or agreed to pay for, in whole or in part, services provided to the Portfolio Company (other than brokerage and research services as these terms are defined in section 28(e) of the Securities Exchange Act [15 U.S.C. 78bb(e)]), add to expenses accrued for the period an estimate of additional amounts that would have been accrued for the period if the Portfolio Company had paid for the services directly in an arms-length transaction.

3. Net investment income must be calculated by the Portfolio Company as prescribed by Item 26(b)(4) of Form N-1A.

NOTE: (a-b) = net investment income in the Item 26(b)(4) equation.

4. Disclose the amount or specific rate of any nonrecurring account or sales charges.

5. If applicable, disclose that the performance information may not reflect all Contract charges (contracts may impose certain charges that are not reflected in the performance of the sub-account, but reduce the value of an investment in the sub-account, such as optional benefit charges). State that performance would be lower if these charges were included.

(3) *Non-Standardized Performance Quotation.* A Registered Separate Account may calculate performance using any other historical measure of performance (not subject to any prescribed method of computation) if the measurement reflects all elements of return.

Item 25. Annuity Payments

Describe the method for determining the amount of annuity payments if not described in the prospectus. In

addition, describe how any change in the amount of a payment after the first payment is determined.

Item 26. Financial Statements

(a) *Registered Separate Account*. Provide financial statements of the Registered Separate Account.

Instructions. Include, in a separate section, the financial statements and schedules required by Regulation S-X [17 CFR 210]. Financial statements of the Registered Separate Account may be limited to:

(i) An audited balance sheet or statement of assets and liabilities as of the end of the most recent fiscal year;

(ii) An audited statement of operations of the most recent fiscal year conforming to the requirements of rule 6-07 of Regulation S-X [17 CFR 210.6-07];

(iii) An audited statement of cash flows for the most recent fiscal year if necessary to comply with generally accepted accounting principles;

(iv) Audited statements of changes in net assets conforming to the requirements of rule 6-09 of Regulation S-X [17 CFR 210.6-09] for the two most recent fiscal years; and

(v) When the anticipated effective date of a registration statement falls within 90 days subsequent to the end of the fiscal year of the Registered Separate Account, the registration statement need not include financial statements of the Registered Separate Account more current than as of the end of the third fiscal quarter of the most recently completed fiscal year of the Registered Separate Account unless the audited financial statements for such fiscal year are available. The exception contained in this Instruction does not apply when the financial statements of the Registered Separate Account have never been included in an effective registration statement for annuity contracts or life insurance contracts under the Securities Act.

(b) *Insurance Company*. Provide financial statements of the Insurance Company.

Instructions:

1. Include, in a separate section, the financial statements and schedules of the Insurance Company required by Regulation S-X. If the Insurance Company would not have to prepare financial statements in accordance with generally accepted accounting principles except for use in this registration statement or other registration statements filed on Forms N-3, N-4, or N-6, its financial statements may be prepared in accordance with statutory requirements. The Insurance Company's financial statements must be prepared in accordance with generally accepted accounting principles if the Insurance Company prepares financial information in accordance with generally accepted accounting principles for use by the Insurance Company's parent, as defined in rule 1-02(p) of Regulation S-X [17 CFR 210.1-02(p)], in any report under sections 13(a) and 15(d) of the Securities Exchange Act [15 U.S.C. 78m(a) and 78*o*(d)] or any registration statement filed under the Securities Act.

2. All statements and schedules of the Insurance Company required by Regulation S-X, except for the consolidated balance sheets described in rule 3-01 of Regulation S-X [17 CFR 210.3-01], and any notes to these statements or schedules, may be omitted from Part B and instead included in Part C of the registration statement. If any of this information is omitted from Part B and included in Part C, the consolidated balance sheets included in Part B should be accompanied by a statement that additional financial information about the Insurance Company is available, without charge, upon

request. When a request for the additional financial information is received, the Registrant should send the information within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. Notwithstanding rule 3-12 of Regulation S-X [17 CFR 210.3-12], the financial statements of the Insurance Company need not be more current than as of the end of the most recent fiscal year of the Insurance Company. In addition, when the anticipated effective date of a registration statement falls within 90 days subsequent to the end of the fiscal year of the Insurance Company, the registration statement need not include financial statements of the Insurance Company more current than as of the end of the third fiscal quarter of the most recently completed fiscal year of the Insurance Company unless the audited financial statements for such fiscal year are available. The exceptions to rule 3-12 of Regulation S-X contained in this Instruction 3 do not apply when:

   (a) The Insurance Company's financial statements have never been included in an effective registration statement for annuity contracts or life insurance contracts under the Securities Act; or

   (b) The balance sheet of the Insurance Company at the end of either of the two most recent fiscal years included in response to this Item shows a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than $2,500,000; or

   (c) The balance sheet of the Insurance Company at the end of a fiscal quarter within 135 days of the expected date of effectiveness under the Securities Act (or a fiscal quarter within 90 days of filing if the registration statement is filed solely under the Investment Company Act) would show a combined capital surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than $2,500,000. If two fiscal quarters end within the 135 day period, the Insurance Company may choose either for purposes of this test.

Any interim financial statements required by this Item need not be comparative with financial statements for the same interim period of an earlier year.

(c) *Changes in and Disagreements with Accountants*. For Contracts with Index-Linked Options and/or Fixed Options subject to a Contract Adjustment, include the information required by Item 304 of Regulation S-K [17 CFR 229.304].

PART C - OTHER INFORMATION

Item 27. Exhibits

Subject to General Instruction D regarding incorporation by reference and rule 483 under the Securities Act [17 CFR 230.483], file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated and file copies rather than originals, unless otherwise required by rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material.

(a) *Board of Directors Resolution.* The resolution of the board of directors of the Insurance Company authorizing the establishment of the Registered Separate Account.

(b) *Custodian Agreements*. All agreements for custody of securities and similar investments of the Registered Separate Account, including the schedule of remuneration.

(c) *Underwriting Contracts*. Underwriting or distribution contracts between the Registered Separate Account or Insurance Company and a principal underwriter and agreements between principal underwriters or the Insurance Company and dealers.

(d) *Contracts*. The form of each Contract, including any riders or endorsements.

(e) *Applications*. The form of application used with any Contract provided in response to (d) above.

(f) *Insurance Company's Certificate of Incorporation and By-Laws*. The Insurance Company's current certificate of incorporation or other instrument of organization and by-laws and any related amendment.

(g) *Reinsurance Contracts*. Any contract of reinsurance related to a Contract.

(h) *Participation Agreements*. Any participation agreement or other contract relating to the investment by the Registered Separate Account in a Portfolio Company.

(i) *Administrative Contracts*. Any contract relating to the performance of administrative services in connection with administering a Contract.

(j) *Other Material Contracts*. Other material contracts not made in the ordinary course of business to be performed in whole or in part on or after the filing date of the registration statement.

(k) *Legal Opinion*. An opinion and consent of counsel regarding the legality of the securities being registered, stating whether the securities will, when sold, be legally issued and represent binding obligations of the Insurance Company.

(l) *Other Opinions*. Copies of any other opinions, appraisals, or rulings, and consents of their use relied on in preparing this registration statement and required by section 7 of the Securities Act [15 U.S.C. 77g].

(m) *Omitted Financial Statements*. Financial statements omitted from Item 26.

(n) *Initial Capital Agreements*. Any agreements or understandings made in consideration for providing the initial capital between or among the Registered Separate Account, Insurance Company, underwriter, or initial investors and written assurances from the Insurance Company or initial investors that purchases were made for investment purposes and not with the intention of redeeming or reselling.

(o) *Form of Initial Summary Prospectuses*. The form of any Initial Summary Prospectus that the Registrant

intends to use on or after the effective date of the registration statement, pursuant to rule 498A under the Securities Act [17 CFR 230.498A].

(p) *Power of Attorney.* Any power of attorney included pursuant to rule 483(b) under the Securities Act [17 CFR 230.483(b)].

(q) *Letter Regarding Change in Certifying Accountant.* For Contracts with Index-Linked Options and/or Fixed Options subject to a Contract Adjustment, a letter from the Insurance Company's former independent accountant regarding its concurrence or disagreement with the statements made by the Insurance Company in the registration statement concerning the resignation or dismissal as the Insurance Company's principal accountant.

(r) *Historical Current Limits on Index Gains.* Any exhibit that contains the information called for in Item 31A(b).

Instructions.

1. Schedules (or similar attachments) to the exhibits required by this Item are not required to be filed provided that they do not contain information material to an investment or voting decision and that information is not otherwise disclosed in the exhibit or the disclosure document. Each exhibit filed must contain a list briefly identifying the contents of all omitted schedules. Registrants need not prepare a separate list of omitted information if such information is already included within the exhibit in a manner that conveys the subject matter of the omitted schedules and attachments. In addition, the Registrant must provide a copy of any omitted schedule to the Commission or its staff upon request.

2. The Registrant may redact information from exhibits required to be filed by this Item if disclosure of such information would constitute a clearly unwarranted invasion of personal privacy (*e.g.*, disclosure of bank account numbers, social security numbers, home addresses and similar information).

3. The Registrant may redact specific provisions or terms of exhibits required to be filed by paragraphs (g) and (j) 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 or exhibits 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 3 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].

4. 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.

5. Registrants are required to provide the Initial Summary Prospectus exhibits, as required by paragraph (o) of this Item, only in connection with the filing of an initial registration statement, or in connection with a pre-effective amendment or a post-effective amendment filed in accordance with paragraph (a) of rule 485 under the Securities Act [17 CFR 230.485(a)]. Registrants should add a legend clearly identifying the document as a form of Initial Summary Prospectus the Registrant intends to use on or after the effective date of the registration statement.

Item 28. Directors and Officers of the Insurance Company

Provide the following information about each director or officer of the Insurance Company:

(1)	(2)
Name and Principal Business Address	Positions and Offices with Insurance Company

Instruction. Registrants are required to provide the above information only for officers or directors who are engaged directly or indirectly in activities relating to the Registered Separate Account or the Contracts, and for executive officers including the Insurance Company's president, secretary, treasurer, and vice presidents who have authority to act as president in the president's absence.

Item 29. Persons Controlled by or Under Common Control with the Insurance Company or the Registered Separate Account

Provide a list or diagram of all persons directly or indirectly controlled by or under common control with the Insurance Company or the Registered Separate Account. For any person controlled by another person, disclose the percentage of voting securities owned by the immediately controlling person or other basis of that person's control. For each company, also provide the state or other sovereign power under the laws of which the company is organized.

Instructions:

1. Include the Registered Separate Account and the Insurance Company in the list or diagram and show the relationship of each company to the Registered Separate Account and Insurance Company and to the other companies named, using cross-references if a company is controlled through direct ownership of its securities by two or more persons.

2. Indicate with appropriate symbols subsidiaries that file separate financial statements, subsidiaries included in consolidated financial statements, or unconsolidated subsidiaries included in group financial statements. Indicate for other subsidiaries why financial statements are not filed.

Item 30. Indemnification

State the general effect of any contract, arrangements, or statute under which any underwriter or affiliated person of the Registrant is insured or indemnified against any liability incurred in his or her official capacity, other than insurance provided by any underwriter or affiliated person for his or her own protection.

Item 31. Principal Underwriters

(a) *Other Activity*. State the name of each investment company (other than the Registered Separate Account) for which each principal underwriter currently distributing the Registrant's securities also acts as a principal underwriter, Insurance Company, sponsor, or investment adviser.

(b) *Management*. Provide the information required by the following table for each director, officer, or partner of each principal underwriter named in the response to Item 23:

(1) Name and Principal Business Address	(2) Positions and Offices with Underwriter

Instruction. If a principal underwriter is the Insurance Company or an affiliate of the Insurance Company, and is also an insurance company, the above information for officers or directors need only be provided for officers or directors who are engaged directly or indirectly in activities relating to the Registered Separate Account or the Contracts, and for executive officers including the Insurance Company's or its affiliate's president, secretary, treasurer, and vice presidents who have authority to act as president in the president's absence.

(c) *Compensation From the Registrant*. Provide the information required by the following table for all commissions and other compensation received, directly or indirectly, from the Registrant during the Registrant's last fiscal year by each principal underwriter:

(1) Name of Principal Underwriter	(2) Net Underwriting Discounts	(3) Compensation on Redemption	(4) Brokerage Commission	(5) Other Compensation

Instructions:

1. Disclose the type of services rendered in consideration for the compensation listed under column (5).
2. Information need not be given about the service of mailing proxies or periodic reports of the Registered Separate Account.
3. Exclude information about bona fide contracts with the Registered Separate Account or the Insurance Company for outside legal or auditing services, or bona fide contracts for personal employment entered into with the Registered Separate Account or the Insurance Company in the ordinary course of business.
4. Exclude information about any service for which total payments of less than $15,000 were made during each of the Registrant's last three fiscal years.
5. Exclude information about payments made under any agreement whereby another person contracts with the Registered Separate Account or the Insurance Company to perform as custodian or administrative or servicing agent.

Item 31A. Information about Contracts with Index-Linked Options and Fixed Options Subject to a Contract Adjustment

(a) For any Contract with Index-Linked Options and/or Fixed Options subject to a Contract Adjustment offered through this registration statement, provide the information required by the following table as of December 31 of the prior calendar year:

Name of the Contract	Number of Contracts outstanding	Total value attributable to the Index-Linked Option and/or Fixed Option subject to a Contract Adjustment	Number of Contracts sold during the prior calendar year	Gross premiums received during the prior calendar year	Amount of Contract value redeemed during the prior calendar year	Combination Contract (Yes/No)

Instructions:

1. In the case of group Contracts, each participant certificate should be counted as an individual Contract.

2. "Total value attributable to the Index-Linked Option and/or Fixed Option subject to a Contract Adjustment" means the sum of the Contract value in the Index-Linked Options and/or Fixed Options subject to a Contract Adjustment of each individual Contract. For "Combination Contracts," which for purposes of this Item are Contracts that offer Variable Options in addition to Index-Linked Options and/or Fixed Options subject to a Contract Adjustment, exclude amounts allocated to the Registered Separate Account.

(b) For any Contract with Index-Linked Options offered through this registration statement that posts current limits on Index gains on a website in accordance with Instruction 1 to Item 6(d)(2)(ii)(B), provide the current limits on Index gains in effect for each Index-Linked Option during the twelve months ending on December 31 of the prior year.

Instruction. The information called for in this paragraph may be provided in an exhibit to the registration statement.

Item 32. Location of Accounts and Records

State the name and address of each person maintaining physical possession of each account, book, or other document, required to be maintained by the Registered Separate Account pursuant to section 31(a) of the Investment Company Act [15 U.S.C. 80a-30(a)] and the rules under that section.

Instruction. The Registered Separate Account may omit this information to the extent it is provided in its most recent report on Form N-CEN [17 CFR 274.101].

Item 33. Management Services

Provide a summary of the substantive provisions of any management-related service contract not discussed in Part A or Part B, disclosing the parties to the contract and the total amount paid and by whom for the Registrant's last three fiscal years.

Instructions:

1. The instructions to Item 21(b) shall also apply to this Item.

2. Exclude information about any service provided for payments totaling less than $15,000 during each of the Registrant's last three fiscal years.

Item 34. Fee Representation and Undertakings

(a) With regard to Variable Options, provide a representation of the Insurance Company that the fees and charges deducted under the Contracts, in the aggregate, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the Insurance Company.

(b) With regard to Index-Linked Options and/or Fixed Options subject to a Contract Adjustment, furnish the following undertakings in substantially the following form:

1. To file, during any period in which offers or sales are being made, a post-effective amendment to the registration statement to include any prospectus required by section 10(a)(3) of the Securities Act; and

2. That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933 and the Investment Company Act of 1940, the Registrant (certifies that it meets all of the requirements for effectiveness of this registration statement under rule 485(b) under the Securities Act and) has duly caused this registration statement to be signed on its behalf by the undersigned, duly authorized, in the City of_____, and State of _____, on this_____day of_____,_____.

_____
(Registered Separate Account)

By _____
(Signature)

_____
(Title)

_____
(Insurance Company)

By _____
(Name of Officer of Insurance Company)

_____
(Title)

Instruction:

If the registration statement is being filed only under the Securities Act or under both the Securities Act and the Investment Company Act, it should be signed by both the Registered Separate Account and the Insurance Company, if applicable. If the registration statement is being filed only under the Investment Company Act, it should be signed only by the Registered Separate Account.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date

BILLING CODE: 8011–01–C

Appendix B—Form N–3

Form N–3

* * * * *

GENERAL INSTRUCTIONS

A. Definitions

* * * * *

''Summary Prospectus'' has the meaning provided by paragraph (a) of rule 498A under the Securities Act [17 CFR 230.498A(a)].

Appendix C—Form N–6

Form N–6

* * * * *

GENERAL INSTRUCTIONS

A. Definitions

* * * * *

''Summary Prospectus'' has the meaning provided by paragraph (a) of rule 498A under the Securities Act [17 CFR 230.498A(a)].

* * * * *

Item 30. Exhibits

* * * * *

Instructions.

* * * * *

3. The Registrant may redact specific provisions or terms of exhibits required to be filed by paragraphs (g) and (j) of this Item if the Registrant customarily and actually treats that information as private. 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 3 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].

* * * * *

Appendix D—Form 24F–2

BILLING CODE: 8011–01–P

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 24F-2

Annual Notice of
Securities Sold Pursuant to
Rule 24f-2 under the
Investment Company Act
of 1940 or Rule 456(e)
under the Securities Act of
1933

Read Instructions at end of this Form before preparing.

1. Name and address of issuer:

2. The name and EDGAR identifier of each series or class of securities for which this Form is filed.
   If the Form is being filed for all series and classes of securities of the issuer, check the box but do not list series or classes: ☐

3. Investment Company Act File

   Number: Securities Act File

   Number:

4(a). Last day of fiscal year for which this Form is filed:

4(b). ☐ Check box if this Form is being filed late (*i.e.*, more than 90 calendar days after the end of the issuer's fiscal year). (See Instruction A.2)

Note: If the Form is being filed late, interest must be paid on the registration fee due.

4(c). ☐ Check box if this is the last time the issuer will be filing this Form.

5. Calculation of registration fee (if calculating on a class-by-class or series-by-series basis, provide the EDGAR identifier for each such class or series):

(i) Aggregate sale price of securities sold during the fiscal year pursuant to section 24(f) or rule 456(e): $_____

(ii) Aggregate price of securities redeemed or repurchased during the fiscal year: $_____

(iii) Aggregate price of securities redeemed or repurchased during any *prior* fiscal year ending no earlier than the date the issuer became eligible to use this form that were not previously used to reduce registration fees payable to the Commission: $_____

(iv) Total available redemption credits [add Items 5(ii) and 5(iii)]: -$_____

(v) Net sales -- if Item 5(i) is greater than Item 5(iv) [subtract Item 5(iv) from Item 5(i)]: $_____

(vi) Redemption credits available for use in future years — if Item 5(i) is less than Item 5(iv) [subtract Item 5(iv) from Item 5(i)]: $(_____)

(vii) Multiplier for determining registration fee (See Instruction C.9): x_____

(viii) Registration fee due [multiply Item 5(v) by Item 5(vii)] (enter "0" if no fee is due): =$_____

6. Interest due -- if this Form is being filed more than 90 days after the end of the issuer's fiscal year (see Instruction D): +$_____

7. Total of the amount of the registration fee due plus any interest due [line 5(viii) plus line 6]: =$

8. Explanatory Notes (if any): The issuer may provide any information it believes would be helpful in understanding the information reported in response to any item of this Form. To the extent responses relate to a particular item, provide the item number(s), as applicable.

SIGNATURES

This report has been signed below by the following persons on behalf of the issuer and in the capacities and on the dates indicated.

By (Signature and Title)*_____

_____

Date _____

*Please print the name and title of the signing officer below the signature.

UNITED STATES
SECURITIES AND EXCHANGE
COMMISSION
Washington, D.C. 20549

FORM 24F-2
Annual Notice of Securities Sold Pursuant to Rule 24f-2 under the Investment Company Act of 1940 or Rule 456(e) under the Securities Act of 1933

INSTRUCTIONS

A. General

1. This Form should be used by an open-end management investment company, closed-end management company that makes periodic repurchase offers pursuant to § 270.23c-3(b) of this chapter (an "interval fund"), face amount certificate company, or unit investment trust for annual filings required by rule 24f-2 under the Investment Company Act of 1940 [15 U.S.C. 80a] ("Investment Company Act") or an issuer that offers registered non-variable annuity securities for annual filings required by rule 456 under the Securities Act of 1933 [15 U.S.C. 77a-aa] ("Securities Act") (each an "issuer"). If the issuer has registered more than one class or series of securities that are required to be reported on this form on the same registration statement under the Securities Act, the issuer may file a single Form 24F-2 for those classes or series that have the same fiscal year end. Such an issuer may calculate its fees based on aggregate net sales of the series having the same fiscal year end. An issuer choosing to calculate registration fees on a class-by-class or series-by-series basis should make a single filing consisting of a separate Form 24F-2 for each class or series in a single EDGAR document.

2. This Form must be filed within 90 calendar days after the end of the issuer's fiscal year or, if the last day of the 90 day period falls on Saturday, Sunday or a Federal holiday, the first business day thereafter. For example, a Form 24F-2 for a fiscal year ending on June 30 must be filed no later than September 28. If September 28 falls on a Saturday or Sunday, the Form must be filed on the following Monday. In these instructions, we refer to this as the "Due Date."

3. Pursuant to rule 101(a)(1)(iv) of Regulation S-T [17 CFR 232.101(a)(1)(iv)] this Form must be submitted in electronic format using the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.

4. This Form must be accompanied by the appropriate registration fee. If the Form is being filed late, interest must be paid. See Instruction D.

5. This Form will be deemed filed with the Commission on the date on which it is received and accepted by the Commission. The Commission will not accept for filing any Form accompanied by insufficient payment of the registration fee. A Form accompanied by insufficient payment of the registration fee will not be deemed accepted and filed until receipt by the Commission of proper payment of the registration fee. No part of the registration fee is refundable. Issuers should refer to rule 111 of the Securities Act [17 CFR 230.111], rule 0-8 under the Investment Company Act [17 CFR 270.0-8], rule 3a of the Commission's Rules of Informal and Other

Procedures [17 CFR 202.3a], and rule 13(c) under Regulation S-T [17 CFR 232.13(c)] for instructions on payment of fees to the Commission.

6. This Form may be used to pay registration fees for multiple offerings with different Securities Act numbers, provided that those Securities Act numbers are under the same Central Index Key ("CIK") number.

B. Identifying Information

1. **Item 1** - Provide the name of the issuer as it appears on the cover of the issuer's most recent Securities Act registration statement or post-effective amendment.

2. **Item 2** - If the Form is being filed for all classes and series of securities of the issuer, the issuer should check the box and not list the names of the classes and series. Issuers of registered non-variable annuities should check this box if the Form is being filed for all of the issuer's registered non-variable annuities and classes.

3. **Item 3** - If applicable, the Investment Company Act file number should be the number assigned to the issuer's registration statement filed under the Investment Company Act (beginning with "811-"). The Securities Act file number is the number of the issuer's most recent Securities Act registration statement (beginning with "2-", "33-" or "333-") relating to the securities being reported (e.g., issuers of registered non-variable annuities should use the most recent registered non-variable annuity Securities Act registration statement being reported, but not any other intervening Securities Act registration statements relating to securities not being reported).

4. **Item 4(a)** - In the case of an issuer that ceases operations, the date it ceases operations is deemed the last day of its fiscal year for purposes of section 24(f) of the Investment Company Act or rule 456(e) of the Securities Act.

5. **Item 4(b)** - Check the box if the Form is filed late. If the issuer files the Form late, the issuer is required under section 24(f) or rule 456(e) to pay interest on unpaid amounts at the rate applicable to Treasury and tax loan accounts. See Instruction D.

6. **Item 4(c)** - Check the box if this is the last time the issuer will be filing Form 24F-2 (*i.e.*, if the issuer has ceased operations).

C. Computation of Registration Fee

1. **Item 5** is a work sheet for calculating the registration fee due. An issuer must aggregate prices for all classes or series for which the Form is being filed. If the issuer charges a front-end sales load on its securities, the aggregate sale price must include the sales load.

2. Mergers -

(a) In the case of a liquidation, merger, or sale of all or substantially all of the assets of an issuer ("merger"), the securities of the entity ceasing operation (the "Predecessor") that are exchanged for or converted into the other issuer (the "Successor") should be treated as redemptions on the Predecessor's final Form 24F-2 (not the Successor's).

(b) In the case of a merger in which the Predecessor is *not* deemed to cease operations (*e.g.*, a reorganization), the Successor inherits the sales and redemption credits of the Predecessor, and the Successor must report them as sales and redemptions on its next Form 24F-2 filing. The Predecessor in this type of merger need not file a final Form 24F-2. *See* Rule 24f-2(b)(1) and (2) [17 CFR 270.24f-2(b)(1) and (2)] and rule 456(e)(4) [17 CFR 230.456(e)(4)].

3. Special Rule for Unit Investment Trusts - The aggregate sale price of securities sold to a unit investment trust ("UIT") that offers interests that are registered under the Securities Act and on which a registration fee has been or will be paid to the Commission, may be excluded from the aggregate sale price of securities reported in Item 5(i). If the issuer chooses to exclude the aggregate sale price of these securities from Item 5(i), the issuer may not use securities redeemed or repurchased from those UITs for purposes of determining the redemption or repurchase price of securities in Items 5(ii) and 5(iii).

4. Special Rule for Registered Non-Variable Annuities - The aggregate sale price of securities sold during the fiscal year in reliance upon registration under rule 456(e) shall include the value of any expiring annuity contract or investment option that is rolled over into a new crediting period. The value of such contracts or options should therefore be reported in Item 5(i). In addition, the value of such expiring annuity contract or options should also be reported in Item 5(ii) as a redemption. Where the contract value of the new and expiring annuity contract is the same, the reported amounts attributable to such contracts in Items 5(i) and 5(ii) would result in a net-zero calculation.

5. Item 5(i) - Report the aggregate sale price of securities sold during the fiscal year in reliance upon registration under section 24(f) or rule 456(e). Include securities issued pursuant to dividend reinvestment plans ("DRIP shares") whether or not they are required to be registered under the Securities Act. *Do not* include the sale price of securities, if any, that were registered under the Securities Act *other than* pursuant to section 24(f) or rule 456(e), as applicable. [**Example:** An interval fund issuer sold 1,000,000 shares, 250,000 of which were registered prior to August 1, 2021. Item 5(i) should show the aggregate sale price of 750,000 shares.]

6. Item 5(ii) - Report the aggregate redemption or repurchase price of securities redeemed or repurchased during the fiscal year in reliance upon registration under section 24(f) or rule 456(e). *Do not* include securities that have been redeemed or repurchased, if any, other than pursuant to section 24(f) or rule 456(e), as applicable.

7. Item 5(iii) - Report the aggregate redemption or repurchase price of securities redeemed or repurchased during any prior fiscal year ending no earlier than the date the issuer became eligible to use this Form (e.g., August 1, 2021 for interval funds, September 23, 2024 for issuers of registered non-variable annuity securities, and October 11, 1995 for all other filers on this Form) that were *not* used previously to reduce registration fees payable to the Commission.

8. Items 5(iv) through 5(vi) - Report the sum of Items 5(ii) and 5(iii) in Item 5(iv). Subtract Item 5(iv) from Item 5(i). If Item 5(iv) is less than Item 5(i), report the result in Item 5(v) (net sales). If Item 5(iv) is greater than Item 5(i), report the resulting negative number in parentheses in Item 5(vi) (net redemptions or repurchases). The amount of redemptions or repurchases reported in Item 5(vi) may be used by the issuer in future years to offset sales (by including it in response to Item 5(iii) of Form 24F-2 filed for the next fiscal year).

9. Item 5(vii) - The registration fee is calculated by multiplying the net sales amount (Item 5(v)) by the fee rate. For the current fee rate, see https://www.sec.gov/ofm/Article/feeamt.html The fee rate in effect at the time of filing applies to all securities sold during the fiscal year, regardless of whether the fee rate changes during the year.

10. Item 5(viii) - If the issuer reports net redemptions or repurchases in Item 5(vi), report "0" in Item 5(viii).

D. Computation of Interest Due if Form is Filed Late

1. **Item 6** – Section 24(f) and rule 456(e) require any issuer that pays its registration fee after the Due Date (see Instruction A.2) to pay interest to the Commission on fees that are not paid on time. The payment of interest does not preclude the Commission from bringing an action to enforce the requirements of section 24(f) or rule 456(e), as applicable. Under section 11 of the Debt Collection Act [31 U.S.C. 3717(a)], the interest rate is published by the Secretary of the Treasury. The rate is computed annually and is effective on January 1 each year. In some circumstances the rate may be changed on a quarterly basis. Filers owing interest should verify the current interest rate. Filers can find the rate by looking for the "current value of funds rate" on the Treasury Department's internet site at https://fiscal.treasury.gov/reports-statements/cvfr/rates.html.

2. The interest is assessed only on the amount of the registration fee due, and begins to accrue on the day after the Due Date. The amount of interest due should be calculated based on the interest rate in effect at the time the interest payment is made using the following formula:

$$I = (X)\ (Y)\ (Z/365)$$

where:

I = Amount of interest due
X = Amount of registration fee due
Y = Applicable interest rate, expressed as a fraction
Z = Number of days by which the registration fee payment is late

E. Signature

The Form must be signed on behalf of the issuer by an authorized officer of the issuer. See rule 302 of Regulation S-T [17 CFR 232.302] regarding signatures on forms filed electronically.

F. SEC's Collection of Information

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Filing of this Form is mandatory. The principal purpose of this collection of information is to enable issuers to calculate the registration fee payable to the Commission. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate of this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. 3507. The responses to the collection of information will not be kept confidential.

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