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SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33-11136; 34-96386; IC-34765; File No. S7-27-22]

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

AGENCY: Securities and Exchange Commission.

ACTION: Publication of list of rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on whether the rules should be continued without change, or should be amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of small entities.

DATES: Comments should be submitted by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

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

Electronic comments:

- Use the Commission's internet comment form (<http://www.sec.gov/rules/submitcomments.html>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-27-22 on the subject line.

Paper comments:

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-27-22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (<http://www.sec.gov/rules/other.shtml>). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Sandra Sojka, General Attorney, Office of the General Counsel, 202-551-4928.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act ("RFA"), codified at 5 U.S.C. 601-612, requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is "to determine whether such rules should be continued without change, or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities." 5 U.S.C. 610(a). The RFA sets forth specific considerations that must be addressed in the review of each rule:

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

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

The list below includes rules adopted in 2013 that may have a significant economic impact on a substantial number of small entities (but excludes rules that have been substantially changed since adoption, rules that are minor amendments to previously adopted rules, and rules that are ministerial, procedural, or technical in nature). Where the Commission has previously made a determination of a rule's impact on small businesses, the determination is noted on the list.

The Commission particularly solicits public comment on whether the rules listed below affect small businesses in new or different ways than when they were first adopted. The rules and forms listed below are scheduled for review by staff of the Commission.

<u>Title:</u>	Removal of Certain References to Credit Ratings Under the Investment Company Act
<u>Citation:</u>	17 CFR 239, 17 CFR 270.5b-3, and 17 CFR 274
<u>Authority:</u>	15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78c(b), 78l, 78m, 78n, 78o(d), 78o-7, 78o-7 note, 78u-5, 78w(a), 78ll, 78mm, 80a-1 <i>et seq.</i> , 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, 80a-34(d), 80a-37, 80a-39; and Pub. L. 111-203, sec. 939A, 124 Stat. 1376 (2010).
<u>Description:</u>	The Commission adopted amendments to a rule and three forms under the Investment Company Act of 1940 ("Investment Company Act") and the Securities Act of 1933 ("Securities Act") in order to implement a provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Specifically, rule 5b-3 under the Investment Company Act contained a reference to credit ratings in determining when an investment company ("fund") may treat a repurchase agreement as an acquisition of securities collateralizing the repurchase agreement for certain purposes under the Investment Company Act. The amendments replaced this reference to credit ratings with an alternative standard designed to retain a similar degree of credit quality to that in prior rule 5b-3. The Commission also adopted amendments to Forms N-1A, N-2, and N-3 under the Investment Company Act and the Securities Act to eliminate the required use of NRSRO credit ratings when a fund chooses to depict its portfolio holdings by credit quality.

Prior RFA Analysis: When the Commission adopted the amendments on December 27, 2013, it published a Final Regulatory Flexibility Analysis in the adopting release, Release No. 33-9506, available at: <https://www.federalregister.gov/documents/2014/01/08/2013-31425/removal-of-certain-references-to-credit-ratings-under-the-investment-company-act>. The Commission received no comments on its Initial Regulatory Flexibility Analysis published in the proposing release, Release No. 33-9193 (March 3, 2011), available at: <https://www.federalregister.gov/documents/2011/03/09/2011-5184/references-to-credit-ratings-in-certain-investment-company-act-rules-and-forms>.

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Title: **Registration of Municipal Advisors**

Citation: 17 CFR 200.19c, 17 CFR 200.19d, 17 CFR 200.30-3a, 17 CFR 200.30-18; 17 CFR 240.15Ba1-1, 17 CFR 240.15Ba1-2, 17 CFR 240.15Ba1-3, 17 CFR 240.15Ba1-4, 17 CFR 40.15Ba1-5, 17 CFR 240.15Ba1-6, 17 CFR 240.15Ba1-7, 17 CFR 240.15Ba1-8, 17 CFR 240.15Bc4-1; 17 CFR 249.1300, 17 CFR 249.1300T, 17 CFR 249.1310, 17 CFR 249.1320, 17 CFR 249.1330, and 17 CFR 249.1300T

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77o, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78a *et seq.*, 78c, 78d, 78d-1, 78d-2, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78ll(d), 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.*, 7202, 7211 *et seq.*, 12 U.S.C. 5221(e)(3), 12 U.S.C. 5461 *et seq.*, and 18 U.S.C. 1350, unless as otherwise noted.

Description: The Commission adopted new Rules 15Ba1-1 through 15Ba1-8, new Rule 15Bc4-1, and new Forms MA, MA-I, MA-W, and MA-NR under the Securities Exchange Act of 1934 (“Exchange Act”) to implement provisions of Title IX of the Dodd-Frank Act that required the Commission to establish a registration regime for municipal advisors and impose certain record-keeping requirements on such advisors. The rules and forms are designed to give effect to provisions of Title IX of the Dodd-Frank Act that, among other things, required the Commission to establish a registration regime for municipal advisors and impose certain record-keeping requirements on such advisors.

Prior RFA Analysis: When the Commission adopted the rules and forms on September 20, 2013, it published a Final Regulatory Flexibility Analysis in the adopting release, Release No. 34-70462, available at: <https://www.federalregister.gov/documents/2013/11/12/2013-23524/registration-of-municipal-advisors>. The Commission solicited comment on the Initial Regulatory Flexibility Analysis published in the proposing release, Release No. 34-63576 (Dec. 20, 2010), available at: <https://www.federalregister.gov/documents/2011/01/06/2010->

32445/registration-of-municipal-advisors, and considered comments received at that time.

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Title: **Broker Dealer Reports**

Citation: 17 CFR 240.17a-5, 17 CFR 240.17a-11, and 17 CFR 249.639

Authority: 15 U.S.C. 78a *et seq.*, 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78a *et seq.*, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.*, 8302, 7 U.S.C. 2(c)(2)(E), 12 U.S.C. 5221(e)(3), 12 U.S.C. 5461 *et seq.*, 18 U.S.C. 1350; and Pub. L. 111-203, 939A, 124 Stat. 1376, (2010).

Description: The Commission amended certain broker-dealer annual reporting, audit, and notification requirements under the Exchange Act. The amendments included a requirement that broker-dealer audits be conducted in accordance with standards of the Public Company Accounting Oversight Board (“PCAOB”) in light of explicit oversight authority provided to the PCAOB by the Dodd-Frank Act to oversee these audits. The amendments further required a broker-dealer that clears transactions or carries customer accounts to agree to allow representatives of the Commission or the broker-dealer’s designated examining authority (“DEA”) to review the documentation associated with certain reports of the broker-dealer’s independent public accountant and to allow the accountant to discuss the findings relating to the reports of the accountant with those representatives when requested in connection with a regulatory examination of the broker-dealer. Finally, the amendments required a broker-dealer to file a new form with its DEA that elicits information about the broker-dealer’s practices with respect to the custody of securities and funds of customers and non-customers.

Prior RFA Analysis: When the Commission adopted the amendments and new form on July 30, 2013, it published a Final Regulatory Flexibility Analysis in the adopting release, Release No. 34-70073, available at: <https://www.federalregister.gov/documents/2013/08/21/2013-18738/broker-dealer-reports>. The Commission received no comments on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34-64676 (June 15, 2011), available at: <https://www.federalregister.gov/documents/2011/06/27/2011-15341/broker-dealer-reports>.

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Title: **Financial Responsibility Rules for Broker-Dealers**

Citation: 17 CFR 240.15c3-1, 17 CFR 240.15c3-1a, 17 CFR 240.15c3-2, 17 CFR 240.15c3-3, 17 CFR 240.15c3-3a, 17 CFR 240.17a-3, 17 CFR 240.17a-4, and 17 CFR 240.17a-11

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et. seq.*, 8302, 7 U.S.C. 2(c)(2)(E), 12 U.S.C. 5221(e)(3), 18 U.S.C. 1350; and Pub. L. 111-203, 939A, 124 Stat. 1376, (2010).

Description: The Commission adopted amendments to the net capital (Rule 15c3-1), customer protection (Rule 15c3-3), books and records (Rules 17a-3 and 17a-4), and notification rules for broker-dealers (Rule 17a-11) promulgated under the Exchange Act. The amendments were designed to address several areas of concern regarding the financial responsibility requirements for broker-dealers. The amendments also updated certain financial responsibility requirements and made certain technical amendments.

Prior RFA Analysis: When the Commission adopted the amendments on July 30, 2013, it published a Final Regulatory Flexibility Analysis in the adopting release, Release No. 34-70072, available at: <https://www.federalregister.gov/documents/2013/08/21/2013-18734/financial-responsibility-rules-for-broker-dealers>. The Commission solicited comment on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34-66910 (May 3, 2012), available at: <https://www.federalregister.gov/documents/2012/05/09/2012-11133/amendments-to-financial-responsibility-rules-for-broker-dealers>, and considered comments received at that time.

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Title: **Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings**

Citation: 17 CFR 230.144A, 17 CFR 230.500(c), 17 CFR 230.501, 17 CFR 230.502, 17 CFR 230.506, 17 CFR 239.500, 17 CFR 242.101, 17 CFR 242.102, and 17 CFR 242.104

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77j, 77r, 77s, 77q(a), 77s(a), 77z-2, 77z-3, 77sss, 78b, 78c, 78d, 78g(c)(2), 78i(a), 78j, 78k-1(c), 78l, 78m, 78n, 78o, 78o-7 note, 78o(b), 78o(c), 78o(d), 78o(g), 78q(a), 78q(b), 78q(h), 78t, 78u-5, 78w, 78w(a), 78dd-1, 78ll, 78ll(d), 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-23, 80a-24, 80a-26, 80a-28, 80a-29, 80-30, 80a-37; and Pub. L. 112-106, sec. 201(a), 126 Stat. 313 (2012).

Description: The Commission adopted amendments to Rule 506 of Regulation D and Rule 144A under the Securities Act to implement Section 201(a) of the

Jumpstart Our Business Startups Act. The amendment to Rule 506 permitted an issuer to engage in general solicitation or general advertising in offering and selling securities pursuant to Rule 506, provided that all purchasers of the securities are accredited investors and the issuer takes reasonable steps to verify that such purchasers are accredited investors. The amendment to Rule 506 also included a non-exclusive list of methods that issuers may use to satisfy the verification requirement for purchasers who are natural persons. The amendment to Rule 144A provided that securities may be offered pursuant to Rule 144A to persons other than qualified institutional buyers, provided that the securities are sold only to persons that the seller and any person acting on behalf of the seller reasonably believe are qualified institutional buyers. The Commission also revised Form D to require issuers to indicate whether they are relying on the provision that permits general solicitation or general advertising in a Rule 506 offering.

Prior RFA Analysis: When the Commission adopted the amendments on July 10, 2013, it published a Final Regulatory Flexibility Analysis in the adopting release, Release No. 33-9415, available at: <https://www.federalregister.gov/documents/2013/07/24/2013-16883/eliminating-the-prohibition-against-general-solicitation-and-general-advertising-in-rule-506-and>. The Commission solicited comment on its Initial Regulatory Flexibility Analysis published in the proposing release, Release No. 33-9354 (August 29, 2012), available at: <https://www.federalregister.gov/documents/2012/09/05/2012-21681/eliminating-the-prohibition-against-general-solicitation-and-general-advertising-in-rule-506-and>, and considered comments received at that time.

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Title: **Disqualification of Felons and Other “Bad Actors” from Rule 506 Offerings**

Citation: 17 CFR 200.30-1, 17 CFR 230.145, 17 CFR. 147, 17 CFR 152, 17 CFR 155, 17 CFR 230.501, 17 CFR 230.506, and 17 CFR 239.500

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77j, 77o, 77r, 77s, 77z-2, 77z-3, 77sss, 78c, 78d, 78d-1, 78d-2, 78j, 78l, 78m, 78n, 78o, 78o(d), 78o-7 note, 78t, 78u-5, 78w, 78w(a), 78ll, 78ll(d), 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-28, 80a-29, 80a-30, 80a-37, 80b-11, 7202; and Pub. L. No. 112-106, § 201(a), 126 Stat. 313 (2012).

Description: The Commission adopted amendments to Rules 501 and 506 of Regulation D and to Form D to implement Section 926 of the Dodd-Frank Act. Section 926 required the Commission to adopt rules that disqualify securities offerings involving certain “felons and other ‘bad actors’” from reliance on Rule 506 of Regulation D. The rules are “substantially similar” to Rule 262 under the Securities Act, which contains the disqualification provisions of Regulation A under the Securities Act, and also cover

matters enumerated in Section 926 of the Dodd-Frank Act (including certain state regulatory orders and bars).

Prior RFA Analysis: When the Commission adopted the amendments on July 10, 2013, it published a Final Regulatory Flexibility Analysis in the adopting release, Release No. 33-9414, available at: <https://www.federalregister.gov/documents/2013/07/24/2013-16983/disqualification-of-felons-and-other-bad-actors-from-rule-506-offerings>. The Commission received no comments on its Initial Regulatory Flexibility Analysis published in the proposing release, Release No. 33-9211 (May 25, 2011), available at: <https://www.federalregister.gov/documents/2011/06/01/2011-13370/disqualification-of-felons-and-other-bad-actors-from-rule-506-offerings>.

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Title: **Identity Theft Red Flags Rules**

Citation: 17 CFR 162.30, 17 CFR 162.31, 17 CFR 162.32, 17 CFR 248.201, and 17 CFR 248.202

Authority: Sec. 1088, Pub. L. 111–203, 124 Stat. 1376 (2010); 15 U.S.C. 78q, 78q–1, 78o–4, 78o–5, 78w, 78mm, 80a–30, 80a–37, 80b–4, 80b–11, 1681m(e), 1681s(b), 1681s–3 and note, 1681w(a)(1), 6801–6809, and 6825; and Pub. L. 111–203, secs. 1088(a)(8), (a)(10), and sec. 1088(b), 124 Stat. 1376 (2010).

Description: The Commission and the Commodity Futures Trading Commission (“CFTC”) (together, the “Commissions”) jointly adopted rules and guidelines to require certain regulated entities to establish programs to address risks of identity theft. These rules and guidelines implemented provisions of the Dodd-Frank Act, which amended the Fair Credit Reporting Act and directed the Commissions to adopt rules requiring entities that are subject to the Commissions’ respective enforcement authorities to address identity theft. First, the rules required financial institutions and creditors to develop and implement a written identity theft prevention program designed to detect, prevent, and mitigate identity theft in connection with certain existing accounts or the opening of new accounts. The rules included guidelines to assist entities in the formulation and maintenance of programs that would satisfy the requirements of the rules. Second, the rules established special requirements for any credit and debit card issuers that are subject to the Commissions’ respective enforcement authorities, to assess the validity of notifications of changes of address under certain circumstances.

Prior RFA Analysis: When the Commissions adopted the new rules on April 10, 2013, the Commission published a Final Regulatory Flexibility Analysis in the adopting release, Release No. 34-69359, available at: <https://www.federalregister.gov/documents/2013/04/19/2013-08830/identity-theft-red-flags-rules>. The Commission received no

comments on its Initial Regulatory Flexibility Analysis published in the proposing release, Release No. IC-29969 (Feb.27, 2012), available at: <https://www.federalregister.gov/documents/2012/03/06/2012-5157/identity-theft-red-flags-rules>.

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Title: **Lost Securityholders and Unresponsive Payees**

Citation: 17 CFR 240.15b1-6 and 17 CFR 240.17Ad-17

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78ll, 78m, 78mm, 78n, 78n-1, 78o, 78o-4, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*, 18 U.S.C. 1350, and 12 U.S.C. 5221(e)(3), unless otherwise noted.

Description: The Commission adopted amendments to Rule 17Ad-17 to implement the requirements of Section 929W of the Dodd-Frank Act. Section 929W added to Section 17A of the Exchange Act subsection (g), “Due Diligence for the Delivery of Dividends, Interest, and Other Valuable Property Rights,” which directs the Commission to revise Exchange Act Rule 17Ad-17, “Transfer Agents’ Obligation to Search for Lost Securityholders” to: extend the requirements of Rule 17Ad-17 to search for lost securityholders from only recordkeeping transfer agents to brokers and dealers as well; add a requirement that “paying agents” notify “unresponsive payees” that a paying agent has sent a securityholder a check that has not yet been negotiated; and add certain other provisions. The Commission also adopted conforming amendment to Rule 17Ad-7(i) and new Rule 15b1-6, a technical rule to help ensure that brokers and dealers have notice of their new obligations with respect to lost securityholders and unresponsive payees.

Prior RFA Analysis: When the Commission adopted the rule amendments on January 16, 2013, it published a Final Regulatory Flexibility Analysis in the adopting release, Release No. 34-68668, available at: <https://www.federalregister.gov/documents/2013/01/23/2013-01269/lost-securityholders-and-unresponsive-payees>. The Commission solicited comment on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34-64099 (March 18, 2011), available at: <https://www.federalregister.gov/documents/2011/03/25/2011-6940/rule-17ad-17-transfer-agents-brokers-and-dealers-obligation-to-search-for-lost-securityholders>, and considered comments received at that time.

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By the Commission.

Dated: November 28, 2022

Vanessa A. Countryman
Secretary

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