

## SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33-9284, 34-65960, 39-2482, IA-3336, IC-29886; File No. S7-43-11]

### 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 today publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on them.

**DATES:** Comments should be submitted by [insert date 30 days after publication in the Federal Register].

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

*Electronic comments:*

- Use the Commission's Internet comment form(<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-43-11 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

*Paper comments:*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File No. S7-43-11. This file number should be included on the subject line

if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/other.shtml>). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Anne Sullivan, Office of the General Counsel, 202-551-5019.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act ("RFA"), codified at 5 U.S.C. 600-611, requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is "to determine whether such rules should be continued without change, or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities." 5 U.S.C. 610(a). The RFA sets forth specific considerations that must be addressed in the review of each rule:

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

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

The Securities and Exchange Commission, as a matter of policy, reviews all final rules that it published for notice and comment and, therefore, the list below is broader than that required by the RFA, and may include rules that do not have a significant economic impact on a substantial number of small entities. Where the Commission has previously made a determination of a rule's impact on small businesses, the determination is noted on the list. The Commission particularly solicits public comment on whether the rules listed below affect small businesses in new or different ways than when they were first adopted.

The rules and forms listed below are scheduled for review by staff of the Commission during the next twelve months. The list includes rules from 2000. When the Commission implemented the Act in 1980, it stated that it “intend[ed] to conduct a broader review [than that required by the RFA], with a view to identifying those rules in need of modification or even rescission.” Securities Act Release No. 6302 (Mar. 20, 1981), 46 FR 19251 (Mar. 30, 1981).

**List of Rules to be Reviewed**

<u>Title:</u>	Rule 17f-7
<u>Citation:</u>	17 CFR 270.17f-7
<u>Authority:</u>	15 U.S.C. 80a-6(c), 80a-7(d), 80a-17(f), 80a-37(a)
<u>Description:</u>	Rule 17f-7 under the Investment Company Act of 1940 sets certain requirements for maintaining the assets of a registered management investment company with a foreign securities depository, including the requirement that the fund's contract with its global custodian must obligate the custodian to analyze and monitor the custody risks of using the depository and provide information about the risks to the fund or its adviser. If a custody arrangement with a securities depository no longer

meets the requirements of the rule, the assets must be withdrawn from the depository as soon as reasonably practicable.

Prior Commission  
Determination Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC- 24424, which the Commission issued on April 27, 2000. Comments to the proposing release and any comments to the Initial Regulatory Flexibility Analysis were considered at that time.

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Title: Revised Transfer Agent Form and Related Rule.

Citation: 17 CFR 240.17Ac2-2, 17 CFR 249b.102, 17 CFR 240.17a-24.

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

Description: These rules amended Rule 17Ac2-2 and Form TA-2 under the Securities Exchange Act of 1934 (“Exchange Act”) and rescinded Rule 17a-24 under the Exchange Act to obtain more comprehensive information from transfer agents about their activities while making Form TA-2 clearer and easier for transfer agents to complete.

Prior Commission  
Determination Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-42892, which was approved by the Commission on June 2, 2000. No comment in response to the initial regulatory flexibility analysis was received, and no comment specifically addressed that analysis. One commenter, however, indicated that the proposed amendments would not require significant modifications to existing procedures or systems. The Commission stated that the rule amendments, as adopted, would not have an additional significant economic impact on a substantial number of small entities.

\* \* \* \* \*

Title: Rule 237

Citation: 17 CFR 230.237

Authority: 15 U.S.C. 77s(a), 77z-3

Description: Rule 237 under the Securities Act of 1933 (“Act”) exempts from registration under the Act certain securities offered to individuals who

reside in or are present in the United States, and who contribute to or receive the income and assets from a Canadian retirement account or sold to such accounts. Among other conditions, rule 237 requires written offering materials for these securities to disclose that the securities are not registered with the Commission and that the securities may not be offered or sold in the United States unless registered or exempt from registration.

Prior Commission  
Determination Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC-24491, which was issued by the Commission on June 7, 2000. Comments to the proposing release and any comments to the Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title: Rule 7d-2

Citation: 17 CFR 270.7d-2

Authority: 15 U.S.C. 80a-37(a)

Description: Rule 7d-2 under the Investment Company Act of 1940 excludes from the definition of “public offering” under the Act offerings of certain securities to natural persons who reside in or are present in the United States, and who contribute to or receive the income and assets from a Canadian retirement account or sales of certain securities to such accounts. Among other conditions, rule 7d-2 requires written offering materials for these securities to disclose that (i) the securities are not registered with the Commission and that the securities may not be offered or sold in the United States unless registered or exempt from registration and (ii) the investment company that issued the securities is not registered with the Commission.

Prior Commission  
Determination Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC-24491, which was issued by the Commission on June 7, 2000. Comments to the proposing release and any comments to the Initial Regulatory Flexibility Analysis were considered at that time.

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Title: Privacy of Consumer Financial Information (Regulation S-P).

Citation: 17 CFR Part 248.

Authority: 15 U.S.C. 6801 *et seq.*, 15 U.S.C. 78a *et seq.*, 15 U.S.C. 80a-1 *et seq.*, 15 U.S.C. 80b-1 *et seq.*

Description: Regulation S-P consists of rules that implemented, with respect to investment advisers registered with the Commission, brokers, dealers, and investment companies, provisions in Title V of the Gramm-Leach-Bliley Act requiring the provision of consumer financial privacy notices, restricting disclosures of nonpublic personal information, and mandating that the Commission establish standards to protect customer information.

Prior Commission  
Determination Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 as summarized in Release No. 34-42974, which was approved by the Commission on June 22, 2000. No comment in response to the initial regulatory flexibility analysis was received, although commenters who addressed the proposed rules suggested that the Commission reduce compliance burdens by, among other things, providing model forms, providing additional examples, adding additional flexibility for providing initial privacy notices, and extending the rules' effective date. In response, the Commission provided an Appendix with sample clauses that could be used in privacy notices under appropriate circumstances, an extended compliance date to allow more time to comply and more opportunity to include initial notices with other mailings, an additional example permitting the householding of annual privacy notices with prospectuses or investor reports delivered under the Commission's householding rules, and revisions permitting the delivery of an initial notice within a reasonable time after establishing a customer relationship in two additional circumstances.

\* \* \* \* \*

Title: Selective Disclosure and Insider Trading.

Citation: 17 CFR 243.100 – 103, 17 CFR 240.10b5-1 and 10b5-2.

Authority: 15 U.S.C. 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a-29, unless otherwise noted.

Description: These rules address the selective disclosure by issuers of material nonpublic information; when insider trading liability arises in connection with a trader's "use" or "knowing possession" of material nonpublic information; and when the breach of a family or other non-business relationship may give rise to liability under the misappropriation theory of insider trading. The rules are designed to promote the full and fair

disclosure of information by issuers, and to clarify and enhance existing prohibitions against insider trading.

Prior Commission  
Determination Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-7881, approved by the Commission on August 15, 2000, which adopted Regulation FD and the related rules and revisions. Comments to the proposing release were considered at that time.

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Title: Financial Statements and Periodic Reports for Related Issuers and Guarantors.

Citation: 17 CFR 210.3-10, 17 CFR 210.3-16, 17 CFR 240.12h-5, 17 CFR 249.220f.

Authority: 15 U.S.C. 77a *et seq.*, 15 U.S.C. 78a *et seq.*, 15 U.S.C. 80a-1 *et seq.*

Description: These rules provide financial reporting rules for related issuers and guarantors of guaranteed securities and provide an exemption from Exchange Act periodic reporting for subsidiary issuers and subsidiary guarantors of these securities.

Prior Commission  
Determination Under  
5 U.S.C. 601:

Pursuant to the Regulatory Flexibility Act (15 U.S.C. § 605(b)), the Chairman of the Commission certified at the proposal stage on February 26, 1999 in Release No. 33-7649 that the revisions to rules and forms would not have a significant economic impact on a substantial number of small entities. The Commission received no comments specifically addressing the certification.

\* \* \* \* \*

Title: Unlisted Trading Privileges.

Citation: 17 CFR 240.12f-2(a).

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

Description: This rule amended Rule 12f-2(a) under the Exchange Act to provide that a national securities exchange extending unlisted trading privileges to an initial public offering security listed on another exchange would no longer be required to wait until the day after trading had commenced on the

listing exchange to allow trading in that security, but instead would be permitted to begin trading an initial public offering issue immediately after the listing exchange's reporting of the first trade in the security to the Consolidated Tape.

Prior Commission  
Determination Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-43217, which was approved by the Commission on August 29, 2000. No comment in response to the initial regulatory flexibility analysis was received, and no comment specifically addressed that analysis. Commenters did, however, offer support for the proposal on the basis that a one-day trading delay imposed a burden on competition. Based in part on comments, the Commission decided to adopt the rule amendment as proposed.

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Title: Amendments to Rule 9b-1 Under the Securities Exchange Act of 1934 Relating to the Options Disclosure Document.

Citation: 17 CFR 240.9b-1.

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

Description: The Commission adopted minor or technical amendments to Rule 9b-1 under the Exchange Act to revise certain language in the rule to better reflect the disclosure requirements regarding standardized options.

Prior Commission  
Determination Under  
5 U.S.C. 601:

Pursuant to 15 U.S.C. 605(b), the Chairman of the Commission certified at the proposal stage, on June 25, 1998, that the proposed amendments to Rule 9b-1 under the Exchange Act would not have a significant economic impact on a substantial number of small entities. The Commission received no comment specifically addressing the certification, and the Commission adopted the rule amendments substantially as proposed on October 19, 2000.

\* \* \* \* \*

Title: Form ADV-NR

Citation: 17 CFR 279.4

Authority: 15 U.S.C. 77s(a), 15 U.S.C. 78w(a), 15 U.S.C. 77sss(a), 15 U.S.C. 78a-



37(a), and 15 U.S.C. 80b-3(c)(1), 80b-4, and 80b-11(a).

Description: Form ADV-NR is a form for the appointment of an agent for service of process by a non-resident general partner and non-resident managing agent of an investment adviser. Each non-resident general partner or managing agent of an investment adviser must file this form pursuant to rule 0-2 [17 CFR 275.0-2] under the Investment Advisers Act of 1940.

Prior Commission  
Determination Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IA-1897, which was approved by the Commission on September 12, 2000. Comments to the proposing release and any comments to the Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title: Form ADV-H

Citation: 17 CFR 279.3

Authority: 15 U.S.C. 80b-3(c)(1), 80b-4, and 80b-11(a)

Description: An investment adviser must file Form ADV-H pursuant to rule 203-3 [17 CFR 275.203-3] under the Investment Advisers Act of 1940 to request a temporary hardship exemption or apply for a continuing hardship exemption from the requirement to make Advisers Act filings electronically with the Investment Adviser Registration Depository (IARD).

Prior Commission  
Determination Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IA-1897, which was approved by the Commission on September 12, 2000. Comments to the proposing release and any comments to the Initial Regulatory Flexibility Analysis were considered at that time.

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Title: Delivery of Proxy Statements and Information Statements to Households.

Citation: 17 CFR 230.154, 17 CFR 240.14a-2 and 14a-3, 17 CFR 240.14a-7, 17 CFR 240.14a-101, 17 CFR 240.14b-1 and 14b-2, 17 CFR 240.14c-3, 17 CFR 240.14c-101.

Authority: 15 U.S.C. 77a *et seq.*, 15 U.S.C. 78a *et seq.*, 15 U.S.C. 80a-1 *et seq.*

Description: These amendments permit companies and intermediaries to satisfy the delivery requirements for proxy statements and information statements with respect to two or more security holders sharing the same address by delivering a single proxy statement or information statement to those security holders. These amendments also modify the rules for householding annual reports and permit householding of proxy statements combined with prospectuses.

Prior Commission  
Determination Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-7912, approved by the Commission on October 27, 2000, which adopted the amendments. Comments to the proposing release were considered at that time. The Commission received no comments on the Initial Regulatory Flexibility Analysis.

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Title: Rule 203-3

Citation: 17 CFR 275.203-3

Authority: 15 U.S.C. 80b-3(c)(1) and 80b-11(a)].

Description: Rule 203-3 under the Investment Advisers Act of 1940 Advisers Act provides a temporary hardship exemption and a “continuing hardship exemption” from the requirement to make Advisers Act filings electronically with the Investment Adviser Registration Depository (IARD).

Prior Commission  
Determination Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IA-1897, which was approved by the Commission on September 12, 2000. Comments to the proposing release and any comments to the Initial Regulatory Flexibility Analysis were considered at that time.

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Title: Disclosure of Order Routing Practices.

Citation: 17 CFR 240.11Ac1-5 and 240.11Ac1-6, *renumbered* 17 CFR 242.605 and 242.606.

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

Description: The Commission adopted Rule 11Ac1-5 under the Exchange Act to require market centers that trade national market system securities to make available to the public monthly electronic reports that include uniform statistical measures of execution quality. It adopted Rule 11Ac1-6 under the Exchange Act to require broker-dealers that route customer orders in equity and option securities to make publicly available quarterly reports that, among other things, identify the venues to which customer orders are routed for execution, and, in addition, to disclose to customers, on request, the venues to which their individual orders were routed.

Prior Commission  
Determination Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-43590, which was approved by the Commission on November 17, 2000. No comment in response to the initial regulatory flexibility analysis was received, and no comment specifically addressed that analysis. Some commenters stated, however, that they believed compliance with the proposed rules, particularly Rule 11Ac1-5, could be significantly more burdensome for smaller firms than for large ones. The Commission did not agree that compliance with the rules would be unduly burdensome for firms considered small entities for purposes of the Regulatory Flexibility Act, particularly after the omission from the final rules of a proposed requirement of a narrative discussion and analysis of order routing objectives and results.

\* \* \* \* \*

Title: Firm Quote and Trade-Through Disclosure Rules for Options.

Citation: 17 CFR 240.11Ac1-1, *renumbered* 17 CFR 242.602, and 11Ac1-7, *11Ac1-7 repealed December 27, 2002.*

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

Description: The Commission amended Rule 11Ac1-1 under the Exchange Act to require options exchanges and options market makers to publish firm quotes and adopted Rule 11Ac1-7 under the Exchange Act to require a broker-dealer to disclose to its customer when its customer's order for listed options is executed at a price inferior to a better published quote and what that better quote was, unless the transaction was effected on a market that is a participant in an intermarket options linkage plan approved by the Commission.

Prior Commission  
Determination Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-43591, which was approved by the Commission on November 17, 2000. No comment in response to the initial regulatory flexibility analysis was received, and no comment specifically addressed that analysis.

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Title: Revision of the Commission's Auditor Independence Requirements.

Citation: 17 CFR 210.2-01, 17 CFR 240.14a-101.

Authority: 15 U.S.C. 77c *et seq.*, 15 U.S.C. 78c *et seq.*, 15 U.S.C. 79e *et seq.*, 15 U.S.C. 80a *et seq.*

Description: The Commission amended Rule 2-01 in Regulation S-X and Item 9 in Schedule 14A under the Securities Exchange Act to modernize its guidance for determining whether an auditor is independent in light of investments by auditors (or the auditor's family members) in audit clients, employment relationships between auditors (or the auditor's family members) and audit clients, and the scope of services provided by audit firms to their audit clients.

Prior Commission  
Determination Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-7919, which was approved by the Commission on November 21, 2000. In response to multiple public comments, the Commission made modifications to reduce the impact of the new rules on small entities. In light of those modifications, the Commission concluded that the rules as adopted would not have a significant impact on a substantial number of small entities.

\* \* \* \* \*

Title: Options Price Reporting Authority.

Citation: 17 CFR 240.11Aa3-2, *renumbered* 17 CFR 242.608.

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

Description: The Commission adopted amendments to the Options Price Reporting Authority ("OPRA") Plan, a national market system plan approved by the

Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3-2 thereunder, to allocate, among the options exchanges, OPRA's peak period message handling capacity.

Prior Commission  
Determination Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-43621, which was approved by the Commission on November 27, 2000. The Commission received one comment directly relating to the initial regulatory flexibility analysis. The comment, from an OPRA participant exchange, stated that all its members would be affected if quotation capabilities were reduced and, as a result, small businesses would be impacted by the proposed OPRA Plan amendments because many of this commenter's members were small entities. Although the Commission included certain recommendations from commenters in the final OPRA Plan amendments, it did not believe that entities other than the OPRA participant exchanges, none of which was a small entity for purposes of the Regulatory Flexibility Act, would be directly affected by the amendments, or that the OPRA Plan amendments, as adopted, established any new reporting, recordkeeping, or compliance requirements for small entities.

By the Commission

Elizabeth M. Murphy  
Secretary

Dated: December 15, 2011