

SEC Changes Coming to Registered Annuities?

On September 29, 2023, the SEC issued a 420-page [proposal](#) that would update registration, disclosure, and advertising requirements for registered index-linked annuities (RILAs). New details to be included on an updated Form N-4 would include RILA risks and features. If approved, RILA offerings would be handled more like variable annuity (VA) offerings. Other changes to Form N-4 would be applicable to all insurers that file that form. If approved, mandatory compliance with Form N-4 updates would start one year after a final rule is published in the Federal Register, although the new form could be used as soon as a final rule is adopted.

Background

An annuity 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 insurer. A RILA investor’s gains or losses are based on whether a selected benchmark, typically an index, goes up or down over a set period. These annuities also have a “bounded return structure,” which limits an investor’s losses when the index goes down but limits that investor’s gains when the index goes up. RILAs can be offered as a standalone product or in combination with other investment options such as mutual funds. For example, a combination contract may have the ability to allocate payments to index-linked options and/or fixed account options for which the insurer promises to pay a fixed and stated minimum rate of interest. Roughly 44% of RILAs are offered as a combination product. RILAs are predominantly sold by broker-dealers and well as being offered directly by an insurance company. The RILA market has more than tripled since 2017, and as of 2022, the market size is estimated at \$41 billion.

A RILA is a security under the *Securities Act of 1933* and new offerings are currently registered on Forms S-1 or S-3, which are used for a wide range of traditional debt and equity securities offerings and not specifically tailored for RILA’s unique features. The *Consolidated Appropriations Act, 2023* required the SEC to develop new registration procedures. Rather than create a new registration form, the SEC decided to leverage Form N-4, which is used for VAs and is well understood by investors and issuers.

Form N-4 Changes

The following table highlights form changes for both RILAs and VAs.

Item	Description	Change
Prospectus (Part A)		
1	Front & back cover	New legends and other standardized disclosures applicable to all issuers
2	Contract overview	New RILA-specific disclosures
3	Key information	New RILA-specific disclosures; Q&A format ; and change discussion of restrictions on optional benefits to cover all benefits

Item	Description	Change
Prospectus (Part A)		
4	Fee table	New contracts adjustments disclosure
5	Principal risks	More detailed disclosures applicable to all issuers
6	Description of insurance company, registered separate accounts, and investment options	New RILA-specific disclosures and one new item on variable options
7	Charges	New disclosures on contract adjustments
17	Contract's investment options	New RILA-specific disclosures
Statement of Additional Information (Part B)		
22	Purchase of securities being offered	New disclosure of specific contract adjustment information
24	Calculation of performance data	Will continue to only apply to variable contracts and not RILAs
26	Financial statements*	Changes in accountants and disagreement with auditors for RILAs; SAP financial statement use extended to RILAs
Other Information (Part C)		
27	Exhibits	Power of attorney for all issuers and accountant letters for RILA issuers as exhibits
31A	Details on index-linked contract options	New disclosure of RILA-specific information
34	Fee representation and undertakings	Adding new RILA undertakings

* Form N-4 provides a limited exception for insurers to file financial statements prepared using statutory accounting principles (SAPs) rather than GAAP. Insurance companies, which act as the depositors of VA 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 SEC filings or the parent's registration statements. SEC interpretations do not require the use of GAAP when:

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- GAAP financial statements are not prepared for either the depositor or its parent, or
- 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.

Sales & Advertising

Rule 156 would be updated to apply to RILA sales literature, prohibiting the use of materially misleading communications in the sale or offering of any security.

Insurance companies typically marketed RILAs as growth products based primarily on the linkage to an underlying index. Under Rule 156, a statement could be misleading because it lacks explanations, qualifications, limitations, or other statements necessary to make a statement not misleading. If Rule 156 were applied to RILAs as proposed, insurers would need to consider if RILA representations as a growth product would require qualification in light of particular RILA features, such as the existence and extent of any limitations on upside index performance. Representations that highlight downside protections of a RILA could similarly be misleading without the context of the cost or limitation of those protections, *e.g.*, upside limitations.

In addition to Rule 156, advertisements and sales literature for existing N-4 issuers are subject to Rule 482, which requires—among other things—enhanced disclosures in investment company and business development company (BDC) advertisements designed to convey balanced information to prospective investors by standardizing representations of a fund's past performance. Rule 482 also permits registered investment companies and BDCs to provide advertisements and sales literature to investors without an accompanying statutory prospectus.

Expansion of Rule 482 to RILAs was not included in this proposal but may be considered in future rule setting.

Other Updates

- Rule 415. The proposal would eliminate the need for RILA issuers to file a new initial registration statement at least once every three years to ensure continuous offering.
- Rule 485. The changes would allow RILA issuers to file routine annual updates—and to make immaterial changes—to their RILA registration statements with post-effective amendments that are eligible for immediate and automatic effectiveness.
- Rule 497. The proposed amendments to Rule 497 will simplify the SEC's regulatory framework by allowing issuers with both RILAs and VAs to conform their material and supplemental filings.

Comment Letter Feedback

The comment letter period closed on November 28, 2023, and the SEC received 14 responses. Insurers and industry trade groups overwhelmingly supported providing investors with information needed to make knowledgeable decisions, leveraging the existing requirements of Form N-4, and welcomed the use of SAP financial statements for RILAs. Most supported the expansion of Rule 482 to RILAs. Respondents offered additional language and formatting suggestions to fine tune the requirements to better balance the cost and related benefits of the proposed changes.

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Conclusion

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