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JULY 19, 2024

RILA MODERNIZATION

On July 1, 2024, the Securities and Exchange Commission ("SEC") adopted rule and form amendments that require issuers of registered index-linked annuities ("RILAs") to exclusively register their offerings on Form N-4.[1] The final amendments ("RILA Amendments") are focused on increasing and simplifying disclosure to RILA investors. Under the RILA Amendments, Forms S-1 and S-3 under the Securities Act of 1933 ("Securities Act") and Rule 424 under the Securities Act are no longer available for RILA offerings.

The RILA Amendments mostly adopt, unchanged, the modifications discussed in the original proposal (the "RILA Proposal").[2] The RILA Amendments will become effective 60 days after date of their publication in the Federal Register.

The RILA Amendments were adopted in response to Division AA, Title 1 of the Consolidated Appropriations Act ("RILA Act"). The RILA Act requires the SEC to adopt a new registration form for RILAs, which must be designed "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."[3] The RILA Act also directed the SEC to engage in investor testing in order to inform the design of the new form.[4]

This article summarizes key parts of the RILA Amendments.

The RILA Amendments make the following changes to RILA offerings, among others:

- RILA issuers will be required to use Form N-4 (the form historically used to register variable annuity products);
    - The Form N-4 Key Information Table is amended to highlight particular features of RILAs and to allow the use of financial statements presented in accordance with statutory accounting principles ("SAP");
- Form N-4 is amended for issuers of variable annuities to switch the order of the Key Information Table and the Overview of the Contract items so that investors are introduced earlier to the meaning of terms that the SEC has found to be confusing to investors;
- RILA issuers are permitted to use a summary prospectus;

- RILA issuers will pay registration fees in arrears, using Form 24F-2 (as opposed to paying in advance, as with Form S-1 or S-3);[5] and
- RILA issuers' sales literature will be required to comply with Rule 156 under the Securities Act.[6]

CHARACTERISTICS OF RILAs

RILAs are annuity contracts, the payout of which is linked to the performance of an underlier, such as an equity index. An annuity contract ("annuity" or "contract") is a type of insurance product in which an investor makes a lump-sum payment or series of payments in return for future payments from the issuing insurance company. Investors purchase annuities in order to meet retirement and other long-term financial objectives. 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"). In some cases, insurance companies offer RILAs with various index-linked investment options ("index-linked options") for investors to choose from.[7]

The Final Release summarizes certain features of RILAs, which, together, may be confusing to investors and should be considered by financial professionals when recommending RILAs to investors:

- "Bounded Return" structure – much like structured notes, RILAs have features that cause them not to have a 1:1 relationship with the performance of the underlying index, such as buffers, caps, and upside participation rates that are generally less than 1:1;
- "Fees and Expenses" – while a RILA investor pays no direct or explicit ongoing fees and expenses under a RILA, the SEC views limitations on the upside performance (leverage ratios of less than 1:1 and caps) as the equivalent of fees and expenses (a viewpoint not expressed by the SEC in the context of structured notes); and
- Early withdrawal penalties, changes by the insurer to the features of the RILA during the life of the RILA and taxes.[8]

HOW RILAS ARE CURRENTLY REGISTERED

RILAs are securities for purposes of the Securities Act. Offerings of RILAs are currently registered with the SEC on Form S-1 or S-3. Because U.S. insurance companies are required for state insurance regulatory purposes to prepare their financial statements in accordance with SAP, the usual approach for S-1 RILA issuers has been to obtain a no-action letter from the SEC staff, under which the issuer's financial statements are presented in SAP, rather than US GAAP (as required by Form S-1).

Under Section 15(d) of the Securities Exchange Act of 1934 ("Exchange Act"), any issuer that has had a registration statement declared effective under the Securities Act must file reports under the Exchange

Act. Under the Securities Act and the Exchange Act, the financial statements of domestic issuers in these reports must be prepared in accordance with US GAAP. Exchange Act periodic reports also require that the issuer's chief executive officer and chief financial officer complete and file Sarbanes-Oxley certifications.

To avoid overburdening an insurance company issuer that is already required under state insurance regulations to report its financial condition under SAP, Rule 12h-7 under the Exchange Act exempts insurance company issuers from the Section 15(d) reporting requirement. Rule 12h-7, in brief, exempts an insurance company that is state-regulated and also files an annual statement of its financial condition with, and is supervised and its financial condition is examined periodically by, the state insurance commissioner or equivalent official, among other requirements.

The SEC states in the RILA Proposal that, because Forms S-1 and S-3 are designed to accommodate a wide range of equity and debt securities, these forms "do not include specific line-item requirements addressing disclosures about RILAs and their complex features."[9] The SEC also noted that these forms 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 features of the RILA.[10]

INVESTOR CONFUSION ABOUT RILAS

The SEC's Office of the Investor Advocate ("OIA") conducted investor testing to determine the level of investor understanding about RILAs. Through interviews, the SEC sought to identify specific items that could appear in the Key Information Table in RILA registration statements, and to determine whether those line items could confuse investors. The results of the research showed that investors had significant confusion about the structure and timing of RILAs.[11] After a second round of interviews, in which investors were shown tables and graphics explaining RILA payoffs, participants "demonstrated modestly improved comprehension in certain limited areas."[12]

Testing "reviewed overall comprehension of participants as well as whether participants were able to assess four sub-scores: (1) appropriateness of RILAs for investors based on their characteristics, (2) how a RILA works, (3) how the charges and penalties associated with RILAs affect liquidity, and (4) the insurance protections offered by RILAs. Across all participants, the average percentage of questions scored correct was 58%, which, while higher than the expected score for people randomly guessing (50%), was lower relative to what might be considered a well-informed purchaser of a RILA product."[13] Although the SEC did not conclude that the OIA's testing was largely successful in identifying areas of investor confusion, the testing did not point to specific disclosures that would mitigate confusion. The SEC incorporated the OIA's testing results into its amendments to Form N-4, with the aim of reducing areas of confusion exposed by the OIA's testing while working off of existing disclosure requirements.[14]

FORM N-4 AMENDMENTS

Form N-4 is used by most variable annuity issuers and requires certain specific insurance product disclosures. The SEC is concerned that Forms S-1 and S-3 do not prescribe line item disclosure requirements specifically suited to RILAs.

In the RILA Proposal, the SEC noted a fundamental difference in form-specific disclosure requirements:

Form N-4 does not include many of the disclosures relating to the mechanics of the offering (e.g., use of proceeds, dilution, etc.); offering participants other than the issuer, such as selling securities holders; and certain details of the issuer (e.g., descriptions of property, executive compensation, etc.). These disclosures may be more useful to an investor considering an investment in the capital stock or debt securities of the insurance company rather than an investment in a RILA issued by the insurance company. Unlike an investor in the insurance company itself, a RILA investor's direct investment exposure to the insurance company is limited to the insurance company's claims-paying ability, which also is supported by State insurance regulations and supervision designed to ensure that insurance companies are able to satisfy their obligations under their insurance contracts. Requiring insurance companies to register RILA offerings on Form N-4 would leverage that form's annuity-focused requirements to ensure that investors receive those disclosures that would be the most important in the RILA context.[15]

The RILA Amendments require RILA issuers to use Form N-4, as amended. By requiring RILA issuers to use revised Form N-4, investors will benefit from the tailored disclosures relevant to RILA investors and also have the ability to compare similar products.[16]

FORM N-4 CONTENT CHANGES

CHANGES TO THE FRONT AND BACK COVER PAGES

RILA issuers will be required to identify on the cover page the types of investment options offered under the RILA and cross-reference to the prospectus appendix with additional information.[17] There are also new required legends for the cover page, including:

- A statement that the contract is a complex investment and involves risks, including the potential loss of principal;
- For contracts that include index-linked options:
    - 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 a prominent statement that the insurance company limits the amount the investor can earn, the potential for investment loss could

be significantly greater than the potential for investment gain, an investor could lose a significant amount of money if the index declines in value, and a prominent statement disclosing 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;

- 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; and
- 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.[18]

- A statement that the contract is not a short-term investment and is not appropriate for an investor who needs ready access to cash, 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;[19]
- A statement that the insurance company's obligations under the contract are subject to its financial strength and claims paying ability;[20] and
- 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.[21]

Issuers of structured notes with a similar structure using Form S-3 would disclose the above factors absent a line item requirement.

CHANGES TO THE KEY INFORMATION TABLE

The Key Information Table, or KIT, currently in Form N-4, is being revised for RILA-specific disclosures. The KIT provides summary prospectus disclosure in a specific sequence and in a standardized presentation. Changes to the KIT were informed by OIA investor testing results.[22] The changes to the KIT include:

- Formatting changes to enhance readability;
- Requiring the KIT information to be presented in a question and answer format, with responses beginning with a bold "Yes" or "No";
- Moving the KIT to after the "Overview of the Contract" section, which provides general information about the RILA and important context about the information summarized in the KIT; and
- Deleting a general instruction that allowed information appearing in the Overview of the Contract or the KIT to be omitted from the disclosures in other parts of the prospectus. Again, in response to OIA testing, the SEC believes that a degree of repetition is helpful for investor understanding.[23]

Other items required to be disclosed in the KIT include:

- Early withdrawal charges;
- If the RILA has contract adjustments, any negative effects, including specific numerical examples, and a brief narrative illustration of any transactions subject to an adjustment;[24]
- Other transaction charges;
- Tables showing minimum and maximum annual fees table and the lowest and highest annual costs;
- 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; this means that the investor's returns may be lower than the index's returns; in return for accepting this limit on index gains, an investor will receive some protection from index losses; and this implicit ongoing fee is not reflected in the applicable minimum and maximum fee tables;[25]
- Specific risk factors, including:
    - the percentage maximum amount of loss (which may be expressed as a range) an investor could experience from negative index performance after taking into account the current limits on index loss;
    - the effect of any limits on positive returns (such as caps and participation rates);
    - numerical examples of each type of limit;
    - a prominent statement that such limits may result in the investor earning less than the index's return;
    - any limits on losses (with numerical examples);

    - disclosing, if applicable, that an index is a price return and not a total return index, and therefore does not reflect dividends paid on the index constituents, or that the index deducts fees and costs when calculating the index level, either of which will reduce the index return and cause the index to underperform a direct investment in the index constituents; and
    - insurance company risks (such as the 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);[26]
- Specific restrictions that may limit investment options and any restrictions imposed by the RILA; and
- The effect of taxes and conflicts of interest relating to fees paid to investment professionals and costs of exchanging the RILA for another.[27]

SUMMARY OF INCREASED DISCLOSURE ABOUT RILAS AND INDEX-LINKED OPTIONS

Amendments to particular items in Form N-4 will increase principal disclosures about RILAs. The following statements will be required with respect to descriptions of index-linked options offered under the RILA:

- 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 that an investment in an index-linked option is not an investment in the index or in any index fund;
- That an investor could lose a significant amount of money if the index declines in value;
- 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 this crediting period;
- That 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); and
- Information regarding the features of each index-linked option, and that such information is available in an appendix to the prospectus.[28]

In addition to explanations of how payoffs work, with hypothetical illustrations, a bar chart illustrating the annual total return of each index along with examples of each return, after applying standardized limitations on index gains and losses will be required. A legend stating that the examples assume hypothetical index returns, gains and losses, and that no withdrawals occurred is a further requirement.

For each index available under currently offered options, a bar chart is required showing the index's annual return for the last 10 years (or the life of the index, if less than 10 years), and a hypothetical example next to each index return showing the effect of an illustrative 5% cap and a -10% buffer (or any comparable measure used to limit index gains or losses). If applicable, the prospectus will include a statement that the index return does not reflect dividends paid on the index constituents, and that the index provider deducts fees and costs when calculating the index return. Also, if applicable, footnote disclosure will be required if the index is a price return, not a total return, index, and therefore does not reflect the dividends paid on the index constituents, which will reduce the index return and cause the index to underperform a direct investment in the index constituents.[29]

A description of each index must be included, including total and price return versions, if applicable, and where investors could find more information about the index.[30]

An appendix to the prospectus will be required to disclose, in summary:

- A table titled "Index-Linked Options," which would summarize disclosures included elsewhere in the prospectus;
- A legend stating that current index-linked options are available under the RILA, and that the features of such options may be changed (including the index and current limits on index gains or losses), new index-linked options may be offered, existing index-linked options may be terminated, written notice will be provided to investors prior to any such changes and that information about current limits on gains are available at a website address; and
- Following the legend, a table that highlights key elements of each available index-linked option, specifically (i) each index by name, (ii) type of index, (iii) crediting period in years, (iv) index crediting methodology, (v) limits on loss if held to the end of the crediting period and (vi) guaranteed maximum limit on index gain.[31]

INCREASED RISK FACTOR DISCLOSURE FOR RILA ISSUERS

The current risk factor instructions for Form N-4 have been expanded to include new sub-items calling for disclosure specific to index-linked options. In summary, the new sub-items require disclosure for the following:

- The principal risks of investing in an investment option, including the risk of negative investment performance;
- The maximum potential loss from negative index performance over the crediting period, as a percentage;

- Early withdrawal risks, including surrender charges, negative contract adjustments and loss of interest, with statements of the maximum potential loss resulting from a negative contract adjustment as a percentage;
- Specific index-linked option risks, including (i) a statement that an investor in index-linked options now has ownership rights in the index constituents; (ii) limits on positive index returns; (iii) the possibility of losses despite limits on negative index returns; (iv) interest crediting methodologies; (v) the effect of contract fees on the amount of interest credited; and (vi) the reallocation of contract value at the end of an index-linked option's crediting period; and
- Specific risks relating to the index itself, including (i) the type of index, (ii) price return indexes and (iii) market volatility.[32]

AMENDMENTS TO SECURITIES ACT RULES

Currently, Rules 480, 481, 483 and 484 under the Securities Act apply only to registration statements prepared on a form available solely to registered investment companies or business development companies. Rule 480 requires information to be disclosed wherever the title of the securities is given; Rule 481 prescribes information to be included in prospectuses; Rule 483 requires certain exhibits to be included in the registration statement, including powers of attorney and consents; and Rule 484 requires the registrant to include undertakings relating to any indemnification provisions.

These rules, absent an amendment, would not apply to a RILA offering registered on Form N-4. Rule 405 will be amended to add a new term, "form available solely to investment companies registered under the Investment Company Act," which would include the form used to register RILA offerings for purposes of the Securities Act.[33] This would cause Form N-4 to be subject to Rules 480, 481, 483 and 484 under the Securities Act.

Rule 405 will also be amended to add the term "registered index-linked annuity," defined 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 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.[34]

Rule 498A (Summary Prospectuses for separate accounts offering variable annuity and variable life insurance contracts) will be broadened to include RILAs. RILA issuers will now have the option to use a summary prospectus to satisfy the prospectus delivery obligations under Section 10(a) of the Securities

Act. Amended Rule 498A covers a standard presentation for RILA issuers using initial and updating summary prospectuses.[35]

Rule 485 (Effective date of post-effective amendments filed by certain registered investment companies) will be amended to require RILA issuers to use that rule when amending RILA registration statements on Form N-4. Rule 485(a) allows post-effective amendments to become automatically effective in a certain period after filing, while Rule 485(b) allows for immediate effectiveness upon filing, depending on the purpose of the post-effective amendment. RILA issuers using Form S-1 are required to update the registration statement annually by means of a post-effective amendment, which is subject to SEC review and comment. RILA issuers eligible to use Form S-3 update their registration statement by incorporation by reference of Exchange Act reports.[36]

Rule 497(e) will be amended by requiring RILA issuers to use Rule 497 to file every prospectus that varies in form from a previously filed prospectus before it is first used. Rule 415(b) will be amended so that the continuous offering provisions of that rule would not apply to RILA issuers.[37]

RILA issuers, to the extent that they do so, will no longer be able to rely on prospectus delivery requirements being satisfied under Rule 172. Rule 172 allows the prospectus delivery requirement of Securities Act Section 5(b) to be satisfied by filing of a definitive prospectus on the SEC's EDGAR system. The rule will be amended to exclude RILA issuers, just as the rule currently excludes registered investment companies.[38]

Rule 156 would be broadened to include RILA sales literature.

UNDERTAKINGS AND FINANCIAL STATEMENTS

The move from Form S-3 to N-4 will also remove RILA issuers' eligibility to conduct continuous offerings under Rule 415,[39] the Securities Act rule authorizing certain delayed or continuous offerings of securities long after the effective date of a registration statement. Instead, the SEC's proposal would allow RILA issuers to file post-effective amendments to a Form N-4 registration statement for the purpose of continuously offering RILAs for an indefinite amount of time. Consequently, RILA issuers will only be required to include two undertakings as part of the Form N-4, which are those currently required under Regulation S-K, Item 512(a)(1)(i) and (a)(2).[40]

Under final Form N-4, SAP financial statements will be acceptable instead of GAAP financials.[41] Currently, RILA issuers using Form S-1 generally obtain no-action relief from the SEC staff, allowing the use of SAP financials instead of GAAP financials.[42] RILA issuers using Form S-3 provide GAAP financials. The SEC stated, in the RILA Proposal, that "SAP financial statements, which focus on an issuer's ability to meet its obligations under insurance contracts, as regulated by state law, appear to provide sufficient material information for investors evaluating RILAs."[43]

A checkbox has been added to the facing sheet on Form N-4 for the issuer to indicate whether it is relying on an exemption from Exchange Act reporting requirements in reliance on Rule 12h-7.[44]

SUGGESTIONS OF THE OFFICE OF THE INVESTOR ADVOCATE

As discussed above, the SEC and its staff believe that there is a fair amount of investor confusion about RILAs. One idea floated by the OIA in its Fiscal Year 2023 Report on Activities was the use of a decision tree to help guide investors considering an investment in RILAs.[45] Working with an investment professional, a potential investor would consider the following:

- "Does this type of product match my financial goals?"
    - If not, consider other types of products.
- "Is this provider right for me?"
    - If not, consider other providers.
- "Of the investment options this provider offers, is this the right one for me?"
    - If not, consider different options or products the provider offers.
    - If yes, continue evaluating the investment product.[46]

This decision tree is very similar to, and may have been inspired by, the "care obligation" in Regulation Best Interest, an Exchange Act rule governing the conduct of broker-dealers and their associated persons recommending any securities transaction or investment strategy to retail investors.[47]

LESSONS FROM STRUCTURED NOTES PRACTICES

Many of the concerns raised by the SEC in the RILA Proposal and the Final Release are familiar to structured notes issuers, dealers and their counsel. It is a fundamental principle of federal securities regulation that any offering document for securities not contain any material misstatements of fact or omissions of material fact needed to make other statements made not misleading. Structured notes often have the features that raised concerns in the RILA Proposal – buffers, leverage, caps and fees. With that in mind, structured notes offering documents thoroughly disclose how these features work, along with robust risk factors.

Underlying reference assets for structured notes, such as indexes, ETFs or equity securities, are also fully disclosed, with any related risks also included in the offering document. Any historical presentation, including hypothetical backtested performance data, is accompanied by appropriate disclaimers, particularly about the risks of relying on hypothetical backtested data. The presentation of these disclaimers and related risk factors is standard across all structured products issuers' documentation.[48]

These disclosures could serve as models to include in prospectuses for RILAs with similar features.

CONCLUSION

RILA issuers will now move away from Forms S-1 and S-3 and onto Form N-4.

Current Form S-3 RILA issuers have the most flexibility with respect to continuous offerings of RILAs under Rule 415. They also have the ability under Rule 424 to file various prospectus supplements and pricing supplements for particular offerings. Updating the prospectus is done by incorporation by reference of the issuer's Exchange Act reports. In this way, RILA issuers have had the ability to conduct their offerings in a manner similar to offerings of structured notes.

Removing the flexibility offered by Form S-3 for a potentially active RILA issuer may be a disincentive to those issuers. Rule 497 would allow a RILA issuer to file the prospectuses and pricing supplements now filed under Rule 424. Updating financial statements would require a post-effective amendment to Form N-4, which would be immediately effective under Rule 485(b)(1)(i). However, the immediate effectiveness provisions in Rule 485(b) are somewhat limited if the amendment is not for the purpose of updating financial statements.

It is not clear from the Final Release whether the filing by a RILA issuer of a prospectus similar to a product supplement used by structured notes issuers would be within the ambit of Rule 497. If not, RILA issuers seeking to have a complete set of documents on file for maximum flexibility should consider including all such documents in their initial Form N-4 filing – something that RILA issuers using Form S-3 do not have to do, as they have the flexibility of Rule 424.

For up news and discussions relating to structured products, derivatives, and bank regulatory matters, join our REVERSEinquiries LinkedIn page.

Visit: https://www.linkedin.com/groups/8342722/

CONTACTS

BRADLEY BERMAN
+1 212 506 2129
BBERMAN@MAYERBROWN.COM

MICHAEL HYATTE
+1 202 263 3103
MHYATTE@MAYERBROWN.COM

LAWRENCE HAMILTON
+1 312 701 7055
LHAMILTON@MAYERBROWN.COM

ANNA T. PINEDO
+1 212 506 2275
APINEDO@MAYERBROWN.COM

ENDNOTES

[1] 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 Securities Act Release No. 33-11294 (July 1, 2024), available at: https://www.sec.gov/files/rules/final/2024/33-11294.pdf (the "Final Release").
[2] Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities, Securities Act Release No. 11250 (Sept. 29. 2023), available at: https://www.sec.gov/files/rules/proposed/2023/33-11250.pdf.
[3] Final Release at p. 5.
[4] The investor testing was performed by the SEC's Office of the Investor Advocate ("OIA") and is available at: https://www.sec.gov/files/rila-report-092023.pdf.
[5] The SEC noted that it is not aware of any RILA issuers that are "well known seasoned issuers" eligible to use Form S-3ASR, the automatic shelf registration form, which also allows for "pay-as you-go" of registration fees. *See* the Final Release at II.F.1, n. 598 (citing also the RILA Proposal).
[6] Final Release at II.G.
[7] RILA Proposal at pp. 5-6; Final Release at pp. 8-9.
[8] Final Release at I.A.
[9] Final Release at p. 14. We note that, in the absence of these line item requirements, material disclosure about characteristics such as limits on gains are fully disclosed by S-3 issuers of structured notes.
[10] Final Release at pp. 14-15.
[11] *See generally* the Final Release at I.D. Although certain characteristics of RILA are familiar to investors in structured notes (buffers, leverage, caps), it is understandable that the additional complexities of RILAs– such as crediting periods, early withdrawal penalties, etc.– create opportunities for confusion.
[12] RILA Proposal at p. 22.
[13] *Id.* at pp. 24-25.
[14] Final Release at pp. 17-18.
[15] RILA Proposal at pp. 31-32.
[16] Final Release at p. 29.
[17] Item 1(a)(5) of final Form N-4.
[18] Item 1(a)(6) of final Form N-4.
[19] Item 1(a)(7) of final Form N-4.
[20] Item 1(a)(8) of final Form N-4.
[21] Item 1(a)(12) of final Form N-4.
[22] Final Release at p. 58.
[23] Final Release at II.C.3.a.
[24] Final Release at pp. 66-67.
[25] Final Release at p. 70.
[26] Final Release at II.C.3.c.
[27] Final Release at II.C.3.d. – f.
[28] Item 6(d)(1)(i) – (v) of final Form N-4.
[29] Item 6(d)(2)(iv) and instruction of final Form N-4.
[30] Item 6(d)(2)(v)(A) of final Form N-4.
[31] Item 17(b)(1) of final Form N-4.
[32] Item 5(a) – (c) of final Form N-4.
[33] Rule 405, as amended.
[34] Rule 405, as amended.
[35] Final Release at II.D.

[36] *Id.* at II.F.2.
[37] *Id*.
[38] Final Release at II.F.3.
[39] Rules 415(b) and (f) will be amended to carve out RILA issuers' registration statements and prospectuses.
[40] Final Release at II.C.8.d.
[41] Item 26(b), Instruction 1 of final Form N-4.
[42] Existing SEC letters exempting insurance companies from providing GAAP financial statements, granted under Rule 3-13 of Regulation S-X, would be rescinded. RILA Proposal at § II.G.
[43] RILA Proposal at pp. 180-182.
[44] *See also* Item 6(a) of final Form N-4.
[45] The 2023 Report on Activities is available at: https://www.sec.gov/files/2023-oiad-annual-report.pdf.
[46] *Id*. at p. 22.
[47] Exchange Act Rule 15l-1(a)(2)(ii).
[48] Structured products issuers' presentation of hypothetical backtested data generally follows the recommendations of the Financial Industry Regulatory Authority, Inc. in the Interpretive Letter to Bradley J. Swenson, ALPS Distributors, Inc. (Apr. 22, 2013) available at: https://www.finra.org/rules-guidance/guidance/interpretive-letters/bradley-j-swenson-alps-distributors-inc.