

## SEC Finalizes Changes for Certain Registered Annuities

On July 1, 2024, the SEC issued a [final rule](#) updating registration, disclosure, and advertising requirements for registered index-linked annuities (RILAs) and registered market value adjustment (MVA) annuities, which will now be handled more like variable annuity (VA) offerings. In certain cases, issuers of these products will now be able to file financial statements prepared under Statutory Accounting Principles (SAP) rather than GAAP.



## Background

### RILAs

According to the SEC final rule, 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 if 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. Roughly 44% of RILAs are offered as a combination product. RILAs are predominantly sold by broker-dealers and are offered directly by an insurance company. The RILA market has more than tripled since 2017, and in 2023, RILA sales were \$47.4 billion.

The SEC was concerned that RILAs’ complex features and risks may not be apparent or easily understood by prospective investors absent clear disclosure.

### MVAs

As [noted](#) in the **Federal Register**, 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(where the insurance company promises to pay a fixed and stated minimum rate of interest) and apply MVAs to amounts withdrawn before the end of the fixed option’s term. An MVA is most commonly applied 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.

RILAs and registered MVA annuities differ in how interest is calculated and credited. Interest in a RILA contract is calculated and credited at the end of the crediting period based in part on an index or benchmark performance, while interest in a registered MVA annuity is guaranteed and typically credited daily at a fixed rate. Both registered MVA annuities and 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.

## Current Registration Process

Both RILAs and registered MVA annuities are securities 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

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offerings and not specifically tailored for these products' unique features. Domestic registrants also must include financial statements prepared in accordance with U.S. GAAP.

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 already used for VAs and is well understood by investors and issuers.

### Form N-4 Changes

Both RILAs and registered MVA annuities must now use Form N-4, which has been updated as detailed in the below table. The required disclosures were scaled back from the proposal in response to comment letter feedback.

#### Form N-4 Changes for MVA Annuities

Item	Description	Change
<b>Prospectus (Part A)</b>		
6	Description of the Insurance Company, Registered Separate Account, & Investment Options	New contract adjustment disclosures for MVA fixed account options
7	Charges & Adjustments	New contract adjustment disclosures applicable to MVA fixed account options
17	Contract's investment Options	New contract adjustment disclosures applicable to MVA fixed account options
<b>Statement of Additional Information (Part B)</b>		
26	Financial Statements*	Providing that insurance companies can use the relevant instructions for offerings of registered MVA annuities and adding requirements for changes in accountants for registered MVA annuities
<b>Other Information (Part C)</b>		
31A	Details on Index-Linked Contract Options & Fixed Options Subject to a Contract Adjustment	New disclosure of registered MVA annuity-specific information

#### Substantive Changes for RILAs & MVA Annuities

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Item	Description	Change
<b>Prospectus (Part A)</b>		
1	Front & Back Cover	New legends and other standardized disclosures applicable to <b>all issuers</b>
2	Contract Overview	New non-variable annuity-specific disclosures
3	Key Information	New non-variable annuity-specific disclosures; <b>Q&amp;A format</b> ; and change discussion of restrictions on optional benefits to cover all benefits
4	Fee Table	New contract adjustment disclosure
5	Principal Risks	More detailed disclosures applicable to <b>all issuers</b>
6	Description of Insurance Company, Registered Separate Account, & Investment Options	New non-variable annuity-specific disclosures and one new item on variable options
7	Charges & Adjustments	New disclosures on contract adjustments
17	Contract's Investment Options	New non-variable annuity-specific disclosures
<b>Statement of Additional Information (Part B)</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
26	Financial Statements*	Changes in accountants and disagreement with auditors for non-variable annuities; SAP financial statement use extended to non-variable annuities
<b>Other Information (Part C)</b>		
27	Exhibits	Power of attorney for all issuers and accountant letters for non-variable annuity issuers as exhibits
31A	Details on Index-Linked Contract Options	New disclosure of non-variable annuity-specific information
34	Fee Representation & Undertakings	Adding new non-variable annuity undertakings

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\*Form N-4 provides a limited exception for insurers to file financial statements prepared using SAP 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:

- 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

Non-variable annuity issuers must now comply with Rule 156, which prohibits the use of materially misleading communications in the sale or offering of any security. 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.

In a change from the proposal, the final rule makes 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.

## Other Updates

- Rule 415. The amendments 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 will 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 updates will simplify the SEC's regulatory framework by allowing issuers with both RILAs and VAs to conform their material and supplemental filings.

## Conclusion

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