

- g. Revising the reference “(e)(3) of § 230.482” in paragraph (b)(1)(iii)(A) to read “(d)(3) of § 230.482”;
- h. Revising the reference “(e)(4) of § 230.482” in paragraph (b)(1)(iii)(B) to read “(d)(4) of § 230.482”;
- i. Revising the reference “(e)(4) of § 230.482” in paragraph (b)(1)(iii)(C) to read “(d)(4) of § 230.482”;
- j. Revising the reference “(e)(1) of § 230.482” in paragraph (b)(1)(iii)(D) to read “(d)(1) of § 230.482”;
- k. Revising the references “(e)(2)” and “(e)(1) of § 230.482” in paragraph (b)(1)(iii)(E) to read “(d)(2)” and “(d)(1) of § 230.482”, respectively;
- l. Revising the reference “paragraph (f) of § 230.482” in paragraph (b)(2) to read “paragraph (g) of § 230.482”; and
- m. Revising the reference “(e)(3)(ii), (e)(4)(ii)” in paragraph (b)(3) to read “(d)(3)(ii), (d)(4)(ii)”.

The addition and revisions read as follows:

§ 270.34b-1 Sales literature deemed to be misleading.

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Note to introductory text of § 270.34b-1: The fact that the sales literature includes the information specified in paragraphs (a) and (b) of this section does not relieve the investment company, underwriter, or dealer of any obligations with respect to the sales literature under the antifraud provisions of the federal securities laws. For guidance about factors to be weighed in determining whether statements, representations, illustrations, and descriptions contained in investment company sales literature are misleading, see § 230.156 of this chapter.

(a) Sales literature for a money market fund shall contain the information required by paragraph (b)(4) of § 230.482 of this chapter, presented in the manner required by paragraph (b)(5) of § 230.482 of this chapter.

(b)(1) * * *

(i) In any sales literature that contains performance data for an investment company, include the disclosure required by paragraph (b)(3) of § 230.482 of this chapter, presented in the manner required by paragraph (b)(5) of § 230.482 of this chapter.

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PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

- 8. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

Note: The text of Forms N-1A, N-3, N-4, and N-6 does not, and these amendments will not, appear in the *Code of Federal Regulations*.

9. Item 21 of Form N-1A (referenced in §§ 239.15A and 274.11A) is amended by:

- a. Revising the introductory text of paragraphs (a) and (b); and
- b. Removing paragraphs (a)(5) and (b)(7), to read as follows:

Form N-1A

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Item 21. Calculation of Performance Data

(a) *Money Market Funds.* Yield quotation(s) for a Money Market Fund included in the prospectus should be calculated according to paragraphs (a)(1)–(4).

* * * * *

(b) *Other Funds.* Performance information included in the prospectus should be calculated according to paragraphs (b)(1)–(6).

* * * * *

10. General Instruction F of Form N-3 (referenced in §§ 239.17a and 274.11b) is amended by:

- a. Removing General Instruction F.2; and
- b. Redesignating General Instruction F.1 as General Instruction F.

11. Item 4 of Form N-3 (referenced in §§ 239.17a and 274.11b) is amended by:

- a. Removing Item 4(c); and
- b. Redesignating Item 4(d) as Item 4(c).

12. Item 25 of Form N-3 (referenced in §§ 239.17a and 274.11b) is amended by:

- a. Removing Instruction 5 to paragraph (a); and
- b. Revising paragraphs (a) and (b), and Instruction 6 to paragraph (b)(i), to read as follows:

Form N-3

* * * * *

Item 25. Calculation of Performance Data

(a) *Money Market Accounts.* Yield quotation(s) included in the prospectus for an account or sub-account that holds itself out as a “money market” account or sub-account should be calculated according to paragraphs (a)(i)–(ii).

(i) *Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate the yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of

one accumulation unit of the account or sub-account at the beginning of the period, subtracting a hypothetical charge reflecting deductions from contractowner accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent.

(ii) *Effective Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate the effective yield, carried to at least the nearest hundredth of one percent, by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the account or sub-account at the beginning of the period, subtracting a hypothetical charge reflecting deductions from contractowner accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then compounding the base period return by adding 1, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula:

$$\text{EFFECTIVE YIELD} = [(\text{BASE PERIOD RETURN} + 1)^{365/7}] - 1.$$

Instructions:

* * * * *

(b) *Other Accounts.* Performance information included in the prospectus should be calculated according to paragraphs (b)(i)–(iii).

(i) *Average Annual Total Return Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate the average annual total return by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods that would equate the initial amount invested to the ending redeemable value, according to the following formula:

$$P(1+T)^n = \text{ERV}$$

Where:

P = a hypothetical initial payment of \$1,000

T = average annual total return

n = number of years

ERV = ending redeemable value of a hypothetical \$1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion).