

CLICK-HERE FOR YOUR FUND REPORT: SEC ENDORSES WEB-DELIVERY AND ASKS FOR COMMENTS

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U.S. Investment Management Alert

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A. KEY TAKEAWAYS

On June 4, 2018, the Securities and Exchange Commission ("SEC") adopted Rule 30e-3 (the "Rule") to provide mutual funds, exchange-traded funds, closed-end funds and certain registered unit investment trusts covered by the rule ("Funds") with a new option of internet-based "notice and access" delivery of annual and semi-annual shareholder reports, conditioned on delivery to investors of a separate paper notice for each shareholder report to explain how the report can be obtained from a website or in paper form. The following is a high level summary of the Rule and its conditions, including certain differences between the final Rule and the 2015 rule proposal. The first date on which any Fund may rely on the Rule to send paper notices in lieu of shareholder reports is January 1, 2021.

In related releases, two SEC requests for public comment were announced. First, the SEC seeks public comment on additional ways to modernize fund information. Investors, academics, literacy and design experts, market observers, fund advisers, and boards of directors are invited to provide feedback on how to improve the experience of fund investors. Second, the SEC seeks comment on the framework for certain processing fees that broker-dealers and other intermediaries charge funds for delivering fund shareholder reports and other materials to investors.

These requests for comments present an excellent opportunity for Fund sponsors and others to comment on specific areas relating to the investor experience, including, but not limited to: (1) the length and content of statutory and summary prospectuses, (2) the use of even more abbreviated disclosure documentation such as utilized by Canadian and European funds, (3) uniform standards for the presentation of Fund strategies and risk information, (4) the disclosure requirements of other types of funds (closed end funds, business development companies, unit investment trusts and variable insurance products), and (5) which self regulatory organization is best positioned to set and regulate fees for the mutual fund industry. Comments are due by October 31, 2018.

B. RULE 30E-3 REGULATORY CONTEXT

The Rule was initially proposed in May, 2015 as part of a broader SEC rulemaking initiative focused on modernizing registered investment company reporting. In October 2016, after an extensive comment period, the SEC adopted rules related to some aspects of the modernization proposals (including new Form N-PORT, new Form N-CEN, amendments to Regulation S-X, and other form amendments relating to securities lending

activities). However, proposed Rule 30e-3 proved surprisingly controversial and was not adopted, despite support from the fund industry and the potential to reduce mailing and printing costs while streamlining shareholder access to information. [1] Since that time, the SEC has continued to study the rule proposal while considering how relevant concerns could be addressed. This process ultimately led to the approval of the Rule by a majority vote of the SEC's Commissioners on June 4, 2018, with the notable inclusion of a multi-year transition period and additional flexibility in the type of information that may be included in the paper notices to investors, as described in greater detail below. [2]

C. IMPACT OF FINAL RULE 30E-3

Once the Rule is fully implemented (in January 2022), Funds will be permitted to satisfy their delivery obligations for shareholder reports in multiple ways: (1) by mailing traditional reports on paper if preferred by the funds or requested by investors, (2) through electronic delivery only to those investors who have specifically chosen this method under the SEC's existing electronic delivery protocols, (3) by providing a short form paper notice paired with comprehensive website accessibility for each report covered by the Rule (the "notice and access" method), or (4) through a combination of the above.

D. CONDITIONS FOR RELIANCE ON RULE 30E-3

In order to avail itself of the optional "notice and access" method of delivery under the Rule, a Fund must comply with a series of key conditions. The conditions include:

- **Public Website Materials.** The Fund's most recent shareholder report and the Fund's immediately prior report must be publicly accessible, free of charge, at a website specified for the purpose. In addition, complete quarterly portfolio holdings for the last fiscal year (i.e., holdings included in the most recent annual and semi-annual shareholder reports, plus holdings from the fund's first and third fiscal quarters) must be publicly accessible at the same website. In adopting release relating to the Rule ("Adopting Release") the SEC noted favorably that some fund groups have established dedicated electronic delivery website pages with FAQs, contact information, and details about obtaining documentation on paper.
- **Paper Notice.** Investors must receive a short form paper notice of the availability of each shareholder report delivered pursuant to the Rule (each, a "Notice"). The Notice must: (1) include information sufficient to direct investors to the reports on the specified public website (including, for example, a prominent legend in bold-face type stating that an important report to investors is available online) and (2) provide clear instructions for obtaining a paper copy of any single report and for electing paper transmission for all future reports. In a change from the 2015 proposal, the Notice need not be accompanied by a reply card.
- **Investor Opt-Out.** At any time, an investor must be permitted to elect, at no cost: (1) a print-upon-request paper copy of any individual report mandated for inclusion on the website, and (2) paper copies of all future reports, in each case by calling a toll-free telephone number or otherwise notifying the Fund or the applicable intermediary. Notably, an investor's election to receive reports in paper format with respect to just one Fund will be deemed to apply broadly to all other Funds held in the same account. [3]

E. EXTENDED TRANSITION PERIOD

As originally proposed, Rule 30e-3 would have been effective immediately, permitting Funds to establish internet-based delivery by default so long as investors received a written notice (an 'Initial Statement') at least 60 days prior to the time the Fund planned to begin relying on the rule. In the final rule, the SEC abandoned the concept of the Initial Statement in favor of an extended transition period with staged effective dates over three years. The extended transition period means that January 1, 2021, is the earliest date that Notices may be mailed to investors in lieu of full paper reports. Below is a summary of the Rule's key compliance dates:

<p>January 1, 2019</p>	<p>Effective Date of the Rule.</p> <p>Investor Preference Tracking. Beginning January 1, 2019, Funds and intermediaries that intend to rely on the Rule on January 1, 2021, must track investor preferences to receive paper copies of reports from the first time they transmit or deliver a document that includes the required cover page disclosure to a shareholder.</p>
<p>January 1, 2019 through December 31, 2021 ("Compliance Period")</p>	<p>Cover Page Disclosures. <i>Existing funds</i> that intend to rely on the Rule on January 1, 2021, must provide prominent disclosures on the cover page or beginning of their summary prospectuses, cover pages of their statutory prospectuses, and front cover page or beginning of their annual and semi-annual reports, informing investors of the change in delivery format options. This disclosure must appear for two consecutive years during the three year Compliance Period. <i>New funds</i> that begin offering shares publicly during the period between January 1, 2019, and December 31, 2021, must include the required statements on each applicable document required to be delivered or transmitted to investors for the period beginning on the date the fund first publicly offers its shares and ending on December 31, 2021.</p>
<p>January 1, 2021</p>	<p>Notices. The earliest date that Notices may be transmitted to investors in lieu of paper reports, assuming disclosure requirements have been met.</p> <p>Form N-CSR. Effective date for amended instructions to Form N-CSR. Funds that choose to transmit an Initial Statement containing information from a shareholder report must file the Initial Statement as part of their reports on Form N-CSR.</p>
<p>January 1, 2022</p>	<p>Temporary Disclosure Conditions Expire. Cover page and related disclosures no longer required. Funds that did not provide the required disclosure during the Compliance Period may begin relying on the Rule to provide Notices in lieu of paper reports to investors.</p>

F. ADDED FLEXIBILITY FOR NOTICES

In response to comments on the 2015 rule proposal, the SEC provided in the final Rule that the Notice may, in addition to the mandatory items, include a limited amount of additional information drawn from content within the relevant shareholder report (but generally not from other filings). To aid the SEC's compliance monitoring and

information gathering efforts, as part of the Rule initiative, the SEC also adopted amendments to Form N-CSR that require Funds to make filings with the SEC of Notices that incorporate disclosures from shareholder reports.

The Adopting Release also provides flexibility as to Fund shares acquired through a variety of distribution channels, including insurance products. For example, for a Fund that is available as an investment option in a variable annuity or variable life insurance contract, the SEC has specifically permitted the Notice to accompany the contract or the contract's statutory prospectus and statement of additional information. Similarly, the Notice is permitted to accompany an investor's account statement delivered by a broker-dealer or another type of intermediary. Moreover, the Notice may include information identifying the Fund, its sponsor (including any investment adviser or sub-adviser to the Fund), a variable annuity or variable life insurance contract or insurance company issuer thereof, or a financial intermediary through which shares of the Fund are held.

G. LIMITATIONS ON PROCESSING FEES

Simultaneous with the adoption of the Rule, the SEC approved amendments to rules of the New York Stock Exchange ("NYSE") regarding processing fees paid to financial intermediaries for the delivery of shareholder reports and notices to beneficial owners of Fund shares under "notice and access" rules such as the Rule. The rule amendments were approved based on proposals submitted by the NYSE in 2016 and are intended to clarify and limit certain circumstances in which "notice and access" processing fees may be charged. In addition, as noted below, the SEC has requested comment more generally on the processing fees charged for forwarding materials on behalf of Funds.

H. ADDITIONAL REQUESTS FOR PUBLIC COMMENT

Alongside the adoption of the Rule, the SEC also published two releases that seek public comment prior to a deadline of October 31, 2018.

1. *Retail Investor Experience* [4] The first request for comment is directed at investors and other interested parties, seeking comments as to ways in which fund disclosure, including shareholder reports, may be improved. This input is intended to assist the SEC as it modernizes the design, delivery and content of Fund information, including shareholder reports, prospectuses, and advertisements. The SEC has also requested comments on the manner of delivery and how to make disclosure more interactive and personalized. Fund sponsors and others will want to consider submitting comments in the following specific areas:
 - Of particular interest are questions related to the statutory and summary prospectus, including whether the summary prospectus should be limited in length similar to the Canadian Facts Document or European Key Investor Information Document, whether it would be beneficial to have a one-page sheet at the beginning of each statutory prospectus (or summary prospectus) with key information such as historical performance, fees, portfolio managers, date of inception and whether the fund employs leverage to a significant extent, or whether it should include additional data points (such as measures of leverage, or derivative exposure).
 - Other questions focus on the utility of the content of prospectuses or reports such as strategies, risks, fees and expenses, performance, management discussion of fund performance, and structured disclosures such as XBRL .

- In particular, with respect to performance, the SEC questions whether it should address the length and complexity of principal strategies disclosure or establish specific thresholds to determine which strategies are considered "principal" (such as a stated percentage of the fund's assets devoted to a strategy).
- With respect to risk, among other questions, the SEC asks whether Funds should list their principal risks in a way that reflects the relative importance of each risk to a Fund or simply in alphabetical order. Further, the SEC asks whether a Fund should rank its risk level akin to that required by Canadian and European regulators.
- The SEC also asks for comments regarding mutual-fund advertising and how to appropriately tailor disclosure requirements to other types of funds including: closed-end funds, business development companies, unit investment trusts, and variable insurance products.

The SEC release also includes a short 14 question "Feedback Flier" designed specifically for retail investors to enable them to provide input in a streamlined manner.

2. *Intermediary Processing Fees* [5] As noted above, with the adoption of the Rule, the SEC approved amendments to the NYSE Rules regarding processing fees paid to financial intermediaries for the delivery of shareholder reports and notices to beneficial owners of Fund shares under "notice and access" rules such as the Rule intended to clarify and limit certain circumstances in which "notice and access" processing fees may be charged. However, the SEC believes that it is appropriate to consider more broadly the overall framework and influences on the level of processing fees charged by broker-dealers and other intermediaries for forwarding shareholder reports and other non-proxy materials to Fund investors to investors that are beneficial owners of shares held in "street name" through the intermediary. The request for comment focuses on the appropriateness and treatment of these various fees (i.e., "interim report fees," "preference management fees," and "notice and access fees") and other reimbursements of expenses as well as the role and compensation of fulfillment service providers.

The request also questions whether the NYSE or the Financial Industry Regulatory Association ("FINRA") is best positioned to take on a regulatory role for setting fees in for the mutual fund industry given the NYSE's limited involvement with mutual funds and the fact that FINRA has adopted rules that generally mirror the NYSE rules in this regard. [6] Further, FINRA has adopted rules governing broker-dealers' sales practices and other conduct with respect to funds. [7]

As noted, the SEC seeks public comment prior to a deadline of October 31, 2018.

[1] The final rule was approved by four of the SEC's five Commissioners (Clayton, Stein, Piwowar, and Peirce). Commissioner Jackson did not approve. Commissioner Stein expressed reservations, but ultimately approved the final rule. Each Commissioner subsequently released a public statement outlining his or her own considerations in voting, available at <https://www.sec.gov/news/statements>.

[2] In this respect, the final rule provides that if an investor has notified a fund complex, or the investor's financial intermediary, that the investor wishes to receive paper copies of shareholder reports, the investor will be deemed to have requested paper copies with respect to (i) all current and future Funds held through an account or accounts with (A) the transfer agent or principal underwriter or agent thereof for the same fund group or (B) the

financial intermediary; and (ii) any and all Funds held in a separate account funding a variable annuity or variable life insurance contract.

[3] Request for Comments on Fund Retail Investor Experience and Disclosure, <https://www.sec.gov/rules/other/2018/33-10503.pdf>.

[4] <https://www.sec.gov/rules/proposed/2018/34-83063.html>.

[5] Request for Comments on the Processing Fees Charged by Intermediaries For Distributing Materials Other Than Proxy Materials to Fund Investors, <https://www.sec.gov/rules/other/2018/33-10505.pdf>.

[6] Compare FINRA Rule 2251 with NYSE rule 451.

[7] See FINRA Rules 2341 and 2210.

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