

MEMO# 31243

June 8, 2018

Summary of SEC Final Rule 30e-3 and Requests for Comment on Processing Fees and Enhancing Disclosure

[31243]

June 8, 2018 TO: ICI Members
Investment Company Directors
SEC Rules Committee
Small Funds Committee
Transfer Agent Advisory Committee
Variable Insurance Products Advisory Committee SUBJECTS: Compliance
Disclosure
Operations
Transfer Agency RE: Summary of SEC Final Rule 30e-3 and Requests for Comment on Processing Fees and Enhancing Disclosure

The Commission voted on June 4 to issue three releases related to improving fund disclosure.[\[1\]](#) First, the Commission voted to adopt Rule 30e-3, which provides a new, optional “notice and access” method for delivering fund shareholder reports.[\[2\]](#) We were pleased that the final rule reflects many of the modifications we recommended to increase potential cost savings for fund shareholders.[\[3\]](#)

In addition, the Commission requested comment on improving fund disclosure.[\[4\]](#) The SEC describes this request for comment as the first major step in a long-term initiative to improve the investor experience by updating the design, delivery, and content of fund disclosure for the benefit of individual investors.

Finally, the Commission requested comment on the fees that intermediaries charge for delivering fund reports.[\[5\]](#) This request for comment includes questions that highlight many concerns that ICI has raised repeatedly.[\[6\]](#)

This memo provides a detailed summary of the releases. Comment is due to the Commission on the requests for comment by October 31, 2018. We will be scheduling member calls soon.

I. Final Rule 30e-3

Rule 30e-3 creates an optional “notice and access” method for delivering shareholder reports. Under the rule, a fund may deliver its shareholder reports by making them publicly

accessible on a website, free of charge, and sending investors a paper notice of each report's availability by mail. Investors who prefer to receive the full reports in paper may—at any time—choose that option free of charge. The rule is effective January 1, 2019, and funds may rely on the rule beginning no earlier than January 1, 2021.

A. Transition Period in lieu of Proposed Initial Statement[\[7\]](#)

The final rule eliminates the proposed Initial Statement requirement in favor of a three-year transition period between January 1, 2019 and December 31, 2021. During the transition period, a fund that wishes to begin relying on the rule before January 1, 2022 would include prominent disclosures on the cover page or at the beginning of the summary and statutory prospectuses, as well as the semi-annual and annual report to shareholders.[\[8\]](#) Generally, funds may not rely on the rule until they have completed a full two-year notice period or until January 1, 2022, whichever comes first. The earliest that Notices may be transmitted to investors in lieu of paper reports is January 1, 2021.

Funds that newly offer their shares to the public during the period of January 1, 2019 through December 31, 2020 may rely on the rule starting January 1, 2021, if they provide notice to shareholders starting with their first public offering. Funds that are newly offered on or after January 1, 2021 could rely on rule 30e-3 immediately without providing any advance notice.

B. Content of Notice[\[9\]](#)

Rule 30e-3 requires a fund relying on the rule to send a paper Notice notifying each investor that his or her shareholder report is available.

1. Required Information

Each Notice must include the following information.

Prominent legend in bold-face type. The Notice must state that an important report to shareholders is available online and in paper by request. It 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.

Other statements. The Notice must state that the report contains important information about the fund, including its portfolio holdings and financial statements. It also must state that the report is available on the internet or, upon request, by mail.

Website address of shareholder report. The Notice must include the website address[\[10\]](#) where the shareholder report and other required portfolio information is posted, but the rule does not require the Notice to include the website address for individual reports. The website address could be a central site with prominent links to each document (*i.e.*, the “landing page” to those materials), but could not be a home page or section of the website other than where the documents are posted. An investor must be able to navigate from the landing page to each of the required documents with a single click or tap.

The release also notes that a fund, as the party ultimately responsible for the content and delivery of shareholder reports under Commission rules, may agree to the use of a broker-dealer or third-party website to provide electronic access to shareholder reports and other

materials if the reports and other materials are posted in a manner consistent with the requirements of rule 30e-3.

Toll-free telephone number. The Notice must include toll-free (or collect) telephone number to contact the fund or the shareholder's financial intermediary. As we recommended in our comments on the proposal, the final rule does not require the Notice to include a reply card.

Instructions for requesting a paper report. The Notice must provide instructions describing how a shareholder may request, at no charge, a paper or email copy of the shareholder report. The Notice also must explain that the shareholder can at any time in the future elect to receive paper reports, and it must provide instructions describing how a shareholder may make that election (e.g., by contacting the fund or the shareholder's financial intermediary).

Instructions for how to opt into e-delivery. If applicable, the Notice should include instructions describing how a shareholder can opt into receiving reports or other communications by electronic delivery (i.e., email).

2. Optional Additional Information from the Shareholder Report

In a change from the proposal, the final rule permits—but does not require—funds to include certain additional information from the full shareholder report that they may deem helpful when notifying investors of the availability of reports.[\[11\]](#)

The SEC provides the following examples of information that they would permit (but not require) in the Notice: one or more graphical representations of holdings; a list of the fund's top holdings (e.g., top five or ten holdings); performance information; the type of fund; a brief statement of the fund's investment objectives and strategies; the expense ratio or an expense example; and the name and title of the fund's portfolio manager(s).

Funds that decide to include additional information from the report in their Notices generally should consider the appropriateness of such information, the benefits to investors, and the cost impacts associated with adding information to the Notice. The release reminds funds of their obligations with respect to the antifraud provisions of the federal securities laws and mentions that including performance information may raise certain considerations. Any additional content must come after the required Notice content. The final rule does not prescribe a specific page limit but cautions funds generally to limit optional content to a relatively brief amount.

The SEC also requires funds to file as part of their reports on Form N-CSR any Notices that include additional information.

3. Other Optional Information

Rule 30e-3 also permits funds to include certain additional optional information in a Notice.

Brief listing of the types of information contained in the report. The Notice may include a brief listing of other types of information in the shareholder report, such as fund performance and portfolio manager insights.

Other means of contacting the fund or intermediary. The Notice may include other methods by which a shareholder can contact the fund or the shareholder's financial

intermediary (e.g., by email or through a website).

Control number or account number. The Notice may include any information needed to identify the shareholder so that shareholders may express their shareholder report transmission preference with ease, such as a control number or account number.[\[12\]](#)

Pictures, logos, or similar design elements. These design elements are permitted so long as the design is not misleading and the information is clear.

C. Consolidated Notices and Other Accompanying Materials[\[13\]](#)

Consolidated Notice permitted. The final rule permits the use of a consolidated Notice to alert a shareholder to the online availability of shareholder reports for multiple funds. A Notice could list one central website address, or it could list additional website addresses if the funds that the Notice covers are located on different websites.

Notice can accompany additional materials. As proposed, the final rule permits the Notice to accompany a current summary prospectus, statutory prospectus, statement of additional information, or proxy notice. In a change from the proposal, a Notice also may accompany one or more Notices for other funds, or the investor's account statement. In the case of a fund that is available as an investment option in a variable annuity or variable life insurance contract, the Notice may accompany the contract or the contract's statutory prospectus and statement of additional information.

D. Delivery Timeframe

Notice delivery.[\[14\]](#) In a change from the proposal, the final rule extends from 60 days to 70 days the period of time in which the Notice must be sent to investors after the close of the period covered by the related report. The SEC believes a 70-day period may increase the likelihood that a fund could include the Notice in an investor's account statement mailing.

Request for paper copies.[\[15\]](#) The fund or financial intermediary must mail a paper copy of the reports and portfolio holdings posted online within three business days after receiving a request for a paper copy.

E. Filing Requirements[\[16\]](#)

The rule does not require funds to file with the Commission Notices that do not contain content from the shareholder report because the staff does not expect those Notices to change significantly from period to period. On the other hand, the rule would require funds to file Notices that contain additional content from the shareholder report, as part of the fund's report on Form N-CSR.

F. Information Required to Be Posted on Website[\[17\]](#)

Materials posted. Funds must post the most recent two shareholder reports as well as complete portfolio holdings for the most recent four fiscal quarters at the website location referenced on the Notice.

Safe harbor provision. The rule includes a safe harbor provision that would allow a fund to continue relying on the rule even if it did not satisfy the posting condition of the rule for a temporary period of time.

G. Other Information

Applying election for paper at investor account level.[\[18\]](#) The rule permits funds and intermediaries to apply the investor's election for paper reports at the investor account level, rather than the fund position level.

Continued review of rule implementation.[\[19\]](#) The staff will review, and report to the Commission on, the implementation of rule 30e-3 to evaluate whether funds are implementing processes that effectively facilitate investors making elections consistent with investors' preferences and whether any further action should be taken to facilitate investor election of delivery preferences.

H. Application to Intermediaries[\[20\]](#)

The SEC believes that the rule 30e-3 framework is analogous to delivery of fund documents other than proxy materials (e.g., prospectuses, summary prospectuses, shareholder reports, ad hoc requests for paper documents, etc.). It therefore expects intermediaries will leverage existing processes and infrastructure in delivering shareholder reports using the rule 30e-3 mechanism.

In the case of fund-generated Notices that do not have a telephone number or other contact information for the broker-dealer, the release notes that a broker-dealer could include a cover page or other similar communication that provides the beneficial owner with contact and other information for the broker-dealer. The beneficial owner could use this contact information if it elected to receive all future reports in paper or elect electronic delivery.

II. Commission Approval of NYSE Rule Amendments for Processing Fees that Apply to Rule 30e-3

The Commission also approved amendments to the NYSE fee schedule that sets the maximum fees that broker-dealers and other intermediaries may charge funds for delivering shareholder reports to investors.[\[21\]](#) The Division of Trading and Markets originally approved these NYSE rule amendments on November 8, 2016.[\[22\]](#)

The amendments set forth how the fee schedule would apply specifically to delivery of Notices under rule 30e-3 and incorporate the following provisions:

1. The current Notice and Access tiered fee (originally put in place for delivery of proxy materials under the SEC's "notice and access" model) would apply to accounts receiving Notices under rule 30e-3;
2. The Notice and Access fee would not apply to any account for which a fund already pays a Preference Management fee (*i.e.*, no layering of fees); and
3. The Notice and Access fee breakpoints would apply at the fund level, not at the share class level.

As discussed below, the SEC also is requesting comment on the processing fees that intermediaries charge funds for distributing shareholder reports and other materials to investors.

III. Request for Comment on Fund Retail Investor Experience and Disclosure

The Commission also published a release that seeks public comment on additional ways to

modernize fund information.[\[23\]](#) According to the Release, this input will help inform the Commission on how to modernize the design, delivery, and content of fund information, including shareholder reports, prospectuses, and advertisements. It also requests comment on manner of delivery and how to make disclosure more interactive and personalized.[\[24\]](#)

The Release asks a voluminous number of wide-ranging questions. We highlight below those that we believe are of most interest. They are in the order in which the Release presents them and reference the numbering in the Release.

Question 16. Should the SEC consider requiring a “point of sale” requirement similar to that required by securities regulators in other jurisdictions (delivery of a summary document describing the key features of the fund at or before the purchase of fund shares)?

Question 24. Should the SEC permit funds to email prospectuses or summary prospectuses and not send paper copies without having to ask an investor for permission first, if the fund has an email address on file for the investor?

Question 25. The SEC asks investors if they would prefer to receive a brief notice (such as a postcard or an email linking to the document) informing them that a new or amended fund disclosure is available rather than receiving a prospectus or summary prospectus directly.

Question 28. The SEC asks if it should accommodate changes in the way investors review electronic documents, such as the increasing use of mobile devices? If so, how.

Question 34. The SEC asks if it should replace technical terms, such as “front-end load” or “12b-1 fees.” The SEC also asks if it should require certain fund disclosure documents to have specific readability scores.

Question 46. The SEC asks if it should require summary versions of other required fund disclosures, such as shareholder reports.

Question 47. The SEC asks investors if requiring other information in summary prospectuses, such as measures of leverage or derivatives exposure would help them make informed investment decisions. The SEC also asks whether there are disclosure items currently required in the summary prospectus that should be eliminated.

Question 49. The SEC asks if it should limit the length of summary prospectuses or continue to provide funds with flexibility.

Question 50. The SEC asks if it should encourage technology that can aggregate fund information from multiple funds so an investor can see a summary of his or her entire portfolio.

Question 51. The SEC asks whether a one-page sheet at the beginning of each prospectus or summary prospectus with certain key information would be helpful to investors. If so, should the one-page sheet be standardized?

Question 55. The SEC asks whether it should limit prospectuses, SAls, and shareholder reports to one fund per document.

Questions 56-61. The SEC asks a series of questions about how to use structured disclosure format.

Question 64. The SEC asks whether it should address the length and complexity of principal strategies disclosure, and if so, how.

Question 71. The SEC asks whether it should establish additional guidelines, such as specific thresholds to determine which risks are principal, page limits, or limits on number of principal risks a fund may disclose.

Questions 72-74. The SEC asks a series of questions about requiring funds to rank risks or provide quantitative measures of risk.

Question 75. The SEC asks investors if it would be helpful if the actual fees and expenses associated with their investment in the fund were included in other fund documents, such as their account statements.

Question 80. The SEC asks what disclosure, if any, should funds provide about soft dollars.

Question 81. The SEC asks if investors are able to determine their costs of investing in the fund based on the fee table's expense example or if they would prefer to receive a customized calculation of their specific expenses from the fund.

Question 82. The SEC asks if investors would find it useful to see the total amount they pay annually for investing in a fund, including external costs charged by financial intermediaries.

Question 87. The SEC asks if funds should be required to compare their performance to a peer group of funds.

Question 90. The SEC asks whether it should take steps to encourage or require funds to include interactive performance presentations on their websites.

Question 91. The SEC asks whether the current information about fund portfolio managers is sufficient.

Questions 92-96. The SEC asks a series of questions regarding the shareholder report's Management's Discussion of Fund Performance ("MDFP") including if investors would find it useful for the MDFP to be included in semi-annual shareholder reports and whether there should be special requirements for different types of funds.

Questions 97-103. The SEC asks a series of questions about fund advertisements including whether there should be special requirements, such as embedded links in web-based advertisements to the fund prospectus.

Questions 104-108. The SEC asks a series of questions about funds other than mutual funds, including whether closed-end funds should be: permitted to use a summary prospectus; required to include a MDFP in shareholder reports; and required to present performance information in the same format as mutual funds and ETFs.

IV. Request for Comment on Processing Fees Intermediaries Charge for Forwarding Fund Materials

The Commission also is seeking 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.[\[25\]](#) The release explains that, with the adoption of rule 30e-3, the SEC believes it is appropriate to consider more broadly the overall

framework for the fees that broker-dealers and other intermediaries charge funds as reimbursement for distributing shareholder reports and other fund materials to investors that are beneficial owners of shares held in street name through the intermediary.

Among other things, the SEC requests comment on the following:

- Current processing fee structure, including the application of various processing fees and rates under the NYSE rules;
- Transparency of these fees;
- Practices related to the payment of these fees and remittances that financial intermediaries receive for delivery of fund documents (including shareholder reports); and
- The appropriateness of these fees in cases where intermediaries are separately paid shareholder servicing fees from fund assets.

General framework. The release requests comments on several matters related to the general framework for processing fees, including the following.

- Whether Exchange Act rules 14b-1 and 14b-2 are well-tailored for distribution of fund materials and whether other rules would be preferable?
- Is the current fee and remittance structure for the distribution of fund materials to investors reasonable? Should fees be presented differently to better explain how they are applied and allow funds to verify that they are correct?
- Do intermediaries and their agents provide sufficiently detailed and transparent invoices for the fund to be able to evaluate their accuracy?
- Does the current NYSE fee structure discourage funds from directly sending fund materials to non-objecting beneficial shareholders (“NOBOs”)?

Role of FINRA. The release also asks whether FINRA should be the self-regulatory organization for setting the structure and level of processing fees for funds.

Fulfillment service providers and “vendor remittances.” The release asks several questions regarding the role of fulfillment service providers and views on rebates and remittances, including the following.

- Should funds have more control over the selection of, services billed to, and payments made to fulfillment service providers?
- How do fees charged to funds on intermediary’s behalf for delivery of fund materials compare with fees negotiated for comparable services between funds and their service providers for distribution of similar materials to investors holding shares directly with funds?

Preference management fees. The release requests comment regarding preference management fees, including the following.

- Should the application of the preference management fee for fund materials be eliminated on an on-going basis once an investor elects electronic delivery? Should the fee be permitted to be assessed annually?
- Is it appropriate that aggregate processing fees are greater for fund materials that are suppressed than those delivered in paper?

Managed accounts. The release also requests comment regarding processing fees for managed accounts, including the following.

- Is the current application of processing fees for fund materials to managed accounts appropriate?
- Should such distributions to managed accounts be charged at a reduced rate as they are in the proxy distribution context? If so, at what rate?

Shareholder servicing arrangements. The release also requests comment on other arrangements between funds and intermediaries and how this relates to processing fees, including the following.

- How, if at all, is the framework of funds paying fees to intermediaries pursuant to 12b-1 plans, shareholder service agreements, or other similar arrangements relevant considerations in differentiating fund material distributions from distributions of operating company distributions?
- Does this framework result in duplicative payments from a fund to an intermediary for the same services?
- How does the presence of sub-transfer agent, sub-accounting, or selling arrangements affect the appropriateness of the payment of a preference management fee or notice and access fees? Are such payments duplicative?
- Are the costs of distributing shareholder reports and other materials to fund investors covered by administrative services, recordkeeping, or other similar contractual arrangements?

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endnotes

[1] The Commission voted 4-1 to adopt rule 30e-3, with Commissioner Jackson as the dissenting vote. See Statement by Commissioner Robert Jackson, Jr. on Investment Company Disclosure (June 5, 2018), *available at* <https://www.sec.gov/news/public-statement/statement-jackson-060618>; Statement by Chairman Jay Clayton on Investment Company Design, Delivery and Disclosures Rulemaking Package (June 5, 2018), *available at* <https://www.sec.gov/news/public-statement/statement-clayton-060518>; Statement by Commissioner Michael Piwowar on Investment Company Rule 30e-3, Enabling Optional Internet Availability of Shareholder Reports (June 5, 2018), *available at* <https://www.sec.gov/news/public-statement/statement-piwowar-060518>; Statement by Commissioner Kara Stein on Final Rule on the Optional Internet Availability of Investment Company Shareholder Reports, Request for Comment on the Investor Experience, and Request for Comment on Intermediary Fees (June 5, 2018), *available at* <https://www.sec.gov/news/public-statement/statement-stein-060518>; and Statement by Commissioner Hester Peirce on Optional Internet Availability of Investment Company Shareholder Reports (June 5, 2018), *available at* <https://www.sec.gov/news/public-statement/statement-peirce-060518>.

[2] *Final Rule: Optional Internet Availability of Investment Company Shareholder Reports*,

SEC Rel. Nos. 33-10506, 34-83380, IC-33115 (June 5, 2018), *available* at <https://www.sec.gov/rules/final/2018/33-10506.pdf>.

[3] See Letter from David W. Blass, General Counsel, Investment Company Institute, to Brent J. Fields, Secretary, SEC, dated Aug. 12, 2015, *available* at <https://www.sec.gov/comments/s7-08-15/s70815-315.pdf>, at p. 73-88.

[4] *Request for Comment on Fund Retail Investor Experience and Disclosure*, SEC Rel. Nos. 33-10503, 34-83376, IC-33113 (June 5, 2018), *available* at <https://www.sec.gov/rules/other/2018/33-10503.pdf>.

[5] *Request for Comments on the Processing Fees Charged by Intermediaries For Distributing Materials Other Than Proxy Materials to Fund Investors*, SEC Rel. Nos. 33-10505, 34-83379, IC-33114 (June 5, 2018), *available* at <https://www.sec.gov/rules/other/2018/33-10505.pdf>.

[6] See Letter from Paul Schott Stevens, President and CEO, Investment Company Institute, to Brent J. Fields, Secretary, SEC, dated Mar. 14, 2016, *available* at <https://www.sec.gov/comments/s7-08-15/s70815-581.pdf>; see also Letter from David W. Blass, General Counsel, Investment Company Institute, to Brent J. Fields, Secretary, SEC, dated Sept. 12, 2016, *available* at <https://www.sec.gov/comments/sr-nyse-2016-55/nyse201655-4.pdf>.

[7] See Rule 30e-3 Release, *supra* note 2, at Section II.B.2.f., at p. 76.

[8] Variable annuity and variable life insurance contracts would be required to provide the cover page disclosure on at least two contract prospectuses during this time.

[9] See Rule 30e-3 Release, *supra* note 2, at Section II.B.2.b.i., at p. 47.

[10] In addition to the website address, the Notice may contain any other equivalent method or means (e.g., a QR Code) to access the documents.

[11] See Rule 30e-3 Release, *supra* note 2, at Section II.B.2.b.ii, at p. 57. The release also notes that the email accompanying an e-delivered shareholder report similarly could include additional content from the related report under the Commission's electronic delivery guidance. See *id.*, at n. 187.

[12] The release notes that the fund should take appropriate measures to protect any sensitive information as they currently do for other mailings, like account statements.

[13] See Rule 30e-3 Release, *supra* note 2, at Section II.B.2.b.iii., at p. 61.

[14] See *id.*, at Section II.B.2.b, at p. 46.

[15] See *id.*, at Section II.B.2.c., at p. 66.

[16] See *id.*, at Section II.B.2.b.v., at p. 65.

[17] See *id.*, at Section II.B.2.a., at p. 36.

[18] See *id.*, at Section II.B.2.d., at p. 73.

[19] See *id.*, at Section II.B.2.a.ii., at p. 55.

[20] See *id.*, at Section II.C., at p. 82.

[21] *Order Affirming Action by Delegated Authority Approving SR-NYSE-2016-55 and Discontinuing Stay*, SEC Rel. No. 34-83378 (June 5, 2018), available at <https://www.sec.gov/rules/other/2018/34-83378.pdf>.

[22] For further background and a summary of ICI's comments on these amendments, see ICI Memorandum No. 30421, available at https://www.ici.org/my_ici/memorandum/memo30421.

[23] See Request for Comment on Fund Disclosure, *supra* note 3.

[24] See also Keynote Address: ICI Securities Law Developments Conference, Dalia Blass, Director, Division of Investment Management, available at <https://www.sec.gov/news/speech/blass-keynote-ici-securities-law-developments-conference-2017>.

[25] See Request for Comment on Processing Fees, *supra* note 4.