

MEMO# 31678

March 26, 2019

SEC Adopts FAST Act-Related Disclosure Amendments for Funds and Advisers

[31678]

March 26, 2019 TO: ICI Members SUBJECTS: Closed-End Funds

Compliance

Disclosure

Fund Accounting & Financial Reporting

Investment Advisers

Operations

Unit Investment Trusts (UITs)

Variable Insurance Products RE: SEC Adopts FAST Act-Related Disclosure Amendments for Funds and Advisers

Last week, the SEC adopted amendments to modernize and simplify certain disclosure requirements in Regulation S-K and related rules and forms, pursuant to the Fixing America's Surface Transportation Act (FAST Act).[\[1\]](#) The amendments are also intended to improve the readability and navigability of disclosure documents and discourage repetition and disclosure of immaterial information.

ICI generally supported the proposal as it related to investment companies and investment advisers as registrants,[\[2\]](#) and the SEC has adopted the amendments largely as proposed. Many of the amendments apply only to operating companies. For consistency, the SEC has adopted parallel amendments to several rules and forms applicable to investment companies and investment advisers.

Below we summarize those amendments directly affecting investment companies and investment advisers, which relate to filing exhibits, incorporating information by reference, hyperlinking, and using HTML format for filings.

Background

Section 72003 of the FAST Act required the SEC to study and produce a report on Regulation S-K's requirements, with the report including recommendations on (i) modernizing and simplifying Regulation S-K's reporting requirements in a manner that reduces the costs and burdens on issuers while still providing all material information, and (ii) improving the readability and navigability of disclosure documents and discouraging repetition and the disclosure of immaterial information. It also required the SEC to "issue a proposed rule to implement the recommendations of the report...." The SEC issued its

proposal in October 2017.

Amendments to Exhibit Requirements

The SEC has amended the following relevant provisions of Regulation S-K:

- Item 601(a)(5), which will permit registrants to omit entire schedules and similar attachments to exhibits, provided they do not contain material information and that information is not otherwise disclosed in the exhibit or the disclosure document.
- Item 601(a)(6), which will permit registrants to redact personally identifiable information (e.g., bank account numbers, social security numbers, home addresses, etc.) from exhibits without submitting a confidential treatment request.
- Item 601(b)(10), which will permit registrants to redact confidential information in material contracts without submitting a confidential treatment request to the SEC, provided that such information is both not material, and likely to cause competitive harm to the registrant if publicly disclosed.

The proposal would have altered these exhibit requirements for operating companies only. ICI's comment letter recommended that the SEC extend similar relief to investment companies. In response, the SEC has amended several investment company forms to provide consistent treatment.[\[3\]](#)

Incorporation by Reference Amendments

To reduce duplicative disclosure, the SEC permits registrants to incorporate by reference previously filed information into their filings, subject to several conditions. The SEC has amended Item 10(d) of Regulation S-K, Rule 411 under the Securities Act, Rule 12b-23 under the Exchange Act, and several forms to simplify and modernize these rules while still providing all material information to investors. To provide for consistency, the SEC has adopted parallel amendments to Rule 0-4 under the Investment Company Act[\[4\]](#) and several Investment Company Act forms; has adopted parallel amendments to Rule 0-6 under the Investment Advisers Act;[\[5\]](#) and has rescinded Investment Company Act Rules 8b-23, 8b-24, and 8b-32 (consolidating certain of their provisions into amended Rule 0-4). In addition to reducing duplication, the amendments are intended to streamline the incorporation by reference requirements and facilitate investor access to incorporated documents through the use of hyperlinks.

More specifically, the amendments:

- Eliminate Item 10(d)'s prohibition on incorporating documents by reference if they have been on file with the SEC for more than five years.
- Eliminate Rule 8b-23's requirement that investment company registrants file with a registration statement or report a copy of any registration statement, report, or prospectus from which information is incorporated by reference, except in cases where the registration statement, report, or prospectus was filed electronically.
- Amend Rule 411, Rule 12b-23, and Rule 0-4 to require hyperlinks to information that is incorporated by reference if that information is available on EDGAR, to facilitate greater investor access to disclosure.[\[6\]](#)
- Amend Rule 0-4 to restrict the incorporation of financial information required to be given in comparative form for two or more fiscal years or periods, unless the information incorporated by reference includes the entire period for which the

comparative data is given (providing consistency with similar restrictions under Rule 411 and Rule 12b-23).[7]

The SEC has adopted as proposed other amendments to Rule 411, Rule 12b-23, Rule 0-4, and Rule 0-6 to streamline, clarify, and conform these rules, which it characterizes as “non-substantive.” Finally, the SEC has made corresponding changes to the incorporation by reference instructions to several investment company forms (e.g., Form N-1A).

Exhibit Hyperlinking and HTML Format Amendments for Investment Companies

Going forward, investment companies generally must include a hyperlink to each exhibit identified in a filing’s exhibit index, whether the exhibit is included in the filing or incorporated by reference. This requirement will apply to registration statements on Form S-6, Form N-1A, Form N-2, Form N-3, Form N-4, Form N-5, Form N-6, Form N-8B-2, and Form N-14, and to reports on Form N-CSR. Registrants need not refile electronically any exhibits previously filed in paper. An electronic filer also must correct an inaccurate or nonfunctioning link or hyperlink to an exhibit, although the timing requirement differs by filing type.[8]

Amended Rule 105 of Regulation S-T requires investment company registrants to file registration statements and reports in HTML format, to facilitate the new hyperlinking requirements.

Compliance Dates

All investment company registration statement and Form N-CSR filings made on or after April 1, 2020 must be made in HTML format and comply with the new hyperlinking requirements. The amendments permitting redaction of confidential information in certain exhibits[9] are effective upon publication in the Federal Register. Otherwise, registrants must comply with all other amendments beginning 30 days after they are published in the Federal Register.

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endnotes

[1] *FAST Act Modernization and Simplification of Regulation S-K*, SEC Release No. 33-10618 (Mar. 20, 2019), available at www.sec.gov/rules/final/2019/33-10618.pdf.

[2] ICI’s comment letter is available at www.sec.gov/comments/s7-08-17/s70817-2866852-161735.pdf.

[3] See amendments to Form N-1A (new Instructions 2 through 4 to Item 28); Form N-2 (new Instructions 4 through 6 to Item 25.2); Form N-3 (new Instructions 3 through 5 to Item 29(b)); Form N-4 (new Instructions 3 through 5 to Item 24(b)); Form N-5 (new Instructions 1 through 3 of Instructions as to Exhibits); Form N-6 (new Instructions 1 through 3 to Item 26); Form N-14 (new Instructions 1 through 3 to Item 16); Form S-6 (new Additional Instructions 1 through 3 to the Instructions as to Exhibits); Form N-8B-2 (new Instructions 1 through 3 to IX. Exhibits); and Form N-CSR (new Instructions 2 and 3 to Item 13).

[4] Rule 0-4 provides general incorporation by reference rules for investment company registration statements, applications, and reports filed with the SEC.

[5] Rule 0-6 governs incorporation by reference for investment adviser applications for SEC orders under the Investment Advisers Act other than applications for registration as an investment adviser.

[6] Registrants are not required to file an amendment to a document solely to correct an inaccurate hyperlink, unless that hyperlink was included in a pre-effective registration statement.

[7] In the financial statements, incorporating by reference, or cross-referencing to, information outside of the financial statements is not permitted, unless otherwise specifically permitted or required by the SEC's rules or by U.S. Generally Accepted Accounting Principles or International Financial Reporting Standards as issued by the International Accounting Standards Board, whichever is applicable.

[8] In the case of a registration statement that is not yet effective, the filer must file an amendment to the registration statement containing the inaccurate or nonfunctioning link or hyperlink. In the case of an effective registration statement, the filer must make the correction in the next post-effective amendment, if any, to the registration statement. In the case of a report on Form N-CSR, the filer must make the correction in its next report on Form N-CSR.

[9] These include new Instruction 4 to Item 28 of Form N-1A; new Instruction 6 to Item 25.2 of Form N-2; new Instruction 5 to Item 29(b) of Form N-3; new Instruction 5 to Item 24(b) of N-4; new Instruction 3 of Instructions as to Exhibits of Form N-5; new Instruction 3 to Item 26 of Form N-6; new Instruction 3 to Item 16 of Form N-14; new Additional Instruction 3 to the Instructions as to Exhibits of Form S-6; and new Instruction 3 to IX. Exhibits of Form N-8B-2.