

MEMO# 35598

January 26, 2024

SEC Staff Issues FAQs on Tailored Shareholder Reports

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TO: ICI Members

Disclosure Working Group SUBJECTS: Compliance

Disclosure RE: SEC Staff Issues FAQs on Tailored Shareholder Reports

The staff of the Securities and Exchange Commission's Division of Investment Management recently issued a set of frequently asked questions^[1] on the Commission's final tailored shareholder reports rulemaking.^[2] The FAQs address twelve questions, including several that ICI and its members submitted in 2023. They are organized in five categories: Appropriate Broad-Based Securities Market Index; Form N-CSR and Website Availability Requirements; Binding Individual Shareholder Reports of Multiple Funds; Electronically Provided Shareholder Reports; and Compliance Date and Inline XBRL Issues. We highlight key takeaways in each of the categories, below.

Appropriate Broad-Based Securities Market Index

The SEC staff addressed two questions regarding the tailored shareholder reports requirement that a fund compares its performance against an "appropriate broad-based securities market index."^[3] First, the staff confirmed that an index that pertains to various countries or regions could qualify as such an index.^[4] In particular, it confirmed that an appropriate broad-based securities market index could include an index that reflects a group of countries (such as Europe or Asia), a group of countries excluding a country (such as Asia excluding Japan), or a group of countries with shared characteristics (such as emerging or developed markets).

Second, the staff clarified that a fund investing primarily in tax-exempt municipal securities may use an index that reflects the national municipal securities market as its appropriate broad-based securities market index.^[5] The staff noted that it views the national municipal securities market as a standalone overall market, rather than a subset of the fixed-income market generally, because of the unique nature of tax-exempt municipal bonds.^[6]

Form N-CSR and Website Availability Requirements

The SEC staff addressed three FAQs in the category of Form N-CSR and website availability requirements. In one FAQ, the staff confirmed that a fund may combine responses to multiple items of the Form N-CSR to assist a fund that chooses to post its entire form filing on a specified website in response to an item.[\[7\]](#) In such cases, the Form N-CSR may include information related to multiple items of the form and/or about other series. The staff explained that, in these situations, the information must meet certain presentation requirements, including that the grouped information (1) communicates the necessary information effectively, (2) clearly distinguishes the different types of materials or each series, and (3) makes it easy to locate the necessary information (e.g., using a table of contents with hyperlinks).

The staff also considered scenarios involving issuers of variable contracts (e.g., variable annuities or life insurance contracts) and whether the required Form N-CSR information for the underlying funds should appear on the variable contract issuer's website or the fund's website.[\[8\]](#) The staff explained that either option can be appropriate, as neither the relevant rule nor the form setting forth the requirement specifies the entity that must host the required fund materials,[\[9\]](#) and that funds may choose whichever approach they find most efficient.

The third question in this category concerned funds that are registered under the Investment Company Act, but that do not offer and sell their securities publicly.[\[10\]](#) The staff noted that if such a fund posted the required Form N-CSR information to its website, it would not violate prohibitions on general solicitation and advertising, provided that the fund posts only the information that the rule requires and does not at the same time use its website to offer or sell securities in a manner deemed to be a general solicitation or advertising.[\[11\]](#)

Binding Individual Shareholder Reports of Multiple Funds

The SEC staff addressed one question relating to the possibility of binding individual shareholder reports of multiple funds transmitted to a single investor. In responding to this question, the staff stated that, in situations where an investor has invested in multiple funds and/or in multiple share classes of a fund, the individual shareholder reports of each of those funds and/or share classes may be bound, stapled, or stitched together when transmitted to the investor.[\[12\]](#) The staff added that an issuer also may transmit shareholder reports that are bound, stapled, or stitched together to a variable contract investor who has allocated contract value to multiple underlying funds.[\[13\]](#)

Electronically Provided Shareholder Reports

The SEC staff also considered three FAQs related to electronically delivered shareholder reports. In one FAQ, the staff considered whether the obligations of a variable contract issuer to transmit tailored shareholder reports have been met if a hyperlink or website address to an underlying fund's shareholder report becomes stale.[\[14\]](#) The staff explained that such an instance would not violate the transmission requirements, provided the hyperlink or website address was stale for only a temporary period of time and that the issuer had reasonable procedures in place regarding the detection and resolution of such

instances.^[15]

In responding to a question regarding scenarios in which an underlying fund uses online tools in an electronically provided shareholder report, the staff confirmed that a variable contract issuer does not need to also include such optional content in its version of the shareholder report.^[16]

The staff also confirmed, in a separate question, that funds are permitted to: (1) deliver emails including direct links to the shareholder report(s) of the fund(s) and share class(es) that an investor owns; or (2) specify the fund(s) and class(es) that an investor owns and provide a link to a landing page that includes links to the shareholder report(s) of those fund(s) and class(es).^[17] Such approaches, rather than simply including in the body of the email the full tailored shareholder report, would be consistent with the requirements for a fund to deliver directly to an investor its fund and share-class specific shareholder reports.^[18]

Compliance Date and Inline XBRL Issues

The staff addressed three FAQs on compliance dates and Inline XBRL requirements. First, the Staff confirmed that, if a fund's shareholder report is transmitted to shareholders prior to the rulemaking's compliance date (July 24, 2024), but the fund's Form N-CSR is filed with the SEC after the compliance date, the shareholder report included with the Form N-CSR need not comply with the new requirements.^[19]

Second, the staff clarified that shareholder reports transmitted to shareholders on or after the compliance date and included in Form N-CSR must be tagged using Inline XBRL.^[20] Third, in response to another FAQ related to Inline XBRL, the staff confirmed its view that, when a Form N-CSR filing includes multiple tailored shareholder reports and the issuer later files an amended Form N-CSR amending only one tailored shareholder report, it would be reasonable for the issuer to re-file and re-tag only the one amended shareholder report.^[21] In so doing, the staff noted that all elements of the amended shareholder report should be tagged in Inline XBRL (not just the amended elements).

Kenneth Fang
Associate General Counsel

Jason Nagler
Senior Director, Fund Accounting & Compliance

Notes

^[1] See Tailored Shareholder Reports Frequently Asked Questions (modified Jan. 19, 2024), available at <https://www.sec.gov/investment/tailored-shareholder-reports-faqs>.

^[2] See Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Inv. Co. Act Rel. No. 34731 (Oct. 26, 2022), available at <https://www.sec.gov/files/rules/final/2022/33-11125.pdf>. For a summary of the final rules, please see ICI Memorandum No. 34329, available at

www.ici.org/memo34329.

[3] See, e.g., Amended Item 27A(d)(2) of Form N-1A (requiring an open-end fund to compare the fund's account values to a similar investment in an appropriate broad-based securities market index and to compare the fund's returns to the average annual returns of an appropriate broad-based securities market index). Amended Instruction 6 to Item 27A(d)(2) of Form N-1A defines a "broad-based index" as an index that represents the overall applicable domestic or international equity or debt markets, as appropriate.

[4] See FAQs, Question 1.

[5] See FAQs, Question 2.

[6] The staff stated that municipal bonds are unique because they generally are free from federal and, in some cases, state and local income taxes.

[7] See FAQs, Question 3.

[8] See FAQs, Question 4.

[9] See Amended Rule 30e-1 under the Investment Company Act of 1940; Amended Form N-1A.

[10] See FAQs, Question 5. The question specifically covers funds that rely on the exemptions in Rule 506 of Regulation D under the Securities Act of 1933 and/or under Section 4(a)(2) of the Securities Act to privately offer securities.

[11] Specifically, the SEC staff would not view compliance with the requirement to post Form N-CSR information online as a violation of Rule 502(c) of Regulation D under the Securities Act.

[12] See FAQs, Question 6.

[13] The staff noted that funds should consider including a table of contents to any bound, stapled, or stitched shareholder reports transmitted to shareholders.

[14] See FAQs, Question 7.

[15] The question also confirmed that variable contract issuers must comply with the hyperlinking requirements for any electronically delivered annual or semi-annual shareholder report for their underlying funds. See Instruction 9 to Item 27A(a) of Amended Form N-1A.

[16] See FAQs, Question 8. See also Instruction 8 to Item 27A(a) of Amended Form N-1A.

[17] See FAQs, Question 9.

[18] See Instruction 4 to Item 27A(a) of Amended Form N-1A.

[19] See FAQs, Question 10. The staff explained that Item 1 of Form N-CSR requires that funds include a copy of the report actually transmitted to shareholders.

[20] See FAQs, Question 11.

[\[21\]](#) See FAQs, Question 12.

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