

COMMENT LETTER

December 16, 2020

ICI Letter to Treasury and IRS regarding Web Reporting of Distribution Information (pdf)

By Electronic Delivery December 16, 2020 Krishna Vallabhaneni Michael Desmond Tax Legislative Counsel Chief Counsel U.S. Department of the Treasury Internal Revenue Service 1500 Pennsylvania Avenue, NW 1111 Constitution Avenue, NW Washington, DC 20220 Washington, DC 20224 RE: Distribution Reporting on Public Websites Dear Mr. Vallabhaneni and Mr. Desmond: The Investment Company Institute¹ reiterates our request that the Treasury Department and the Internal Revenue Service (IRS) clarify that regulated investment companies (RICs) may satisfy the reporting requirements regarding the character of certain dividends by posting the information on their public websites.² Our request will become even more important if the Securities and Exchange Commission (SEC) finalizes its proposal to reduce substantially the amount of information that can be included in shareholder reports, where many RICs today provide this dividend information.³ If the proposal is adopted, and absent clarification from the Treasury Department and the IRS that RICs can report certain dividends on their public websites, funds may need to mail separate statements to shareholders solely for tax purposes. At the very least, we ask the government to confirm that RICs that include the distribution information in their financial statements and comply with the SEC's Rule 30e-3, which becomes effective on January 1, 2021, have satisfied these reporting requirements for tax purposes. 1 The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US\$26.1 trillion in the United States, serving more than 100 million US shareholders, and US\$7.7 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC. 2 See Institute letter to Emily McMahon and William Wilkins, dated June 30, 2011 (requesting guidance under the RIC Modernization Act of 2010); see also Institute Letter to David Kautter and Michael Desmond, dated July 21, 2020 (recommending issues for the 2020-2021 IRS Guidance Priority List). 3 The SEC disclosure modernization proposal can be found at: <https://www.sec.gov/rules/proposed/2020/33-10814.pdf> Background Reporting of RIC Distributions The RIC Modernization Act of 2010 (the "Act") revised the rules permitting RICs to pay capital gain dividends and other types of distributions. Under prior law, in order for a dividend paid by a RIC to be treated as a capital gain dividend, the RIC was required to

designate the dividend as a capital gain dividend in a written notice mailed to its shareholders within 60 days after the close of the RIC's taxable year. A similar requirement applied with respect to other types of dividends, such as exempt-interest dividends, and with respect to certain credits that RICs are allowed to pass through to shareholders (such as foreign tax credits). RICs typically made the required designations in their annual reports, which are mailed to shareholders within the requisite 60-day period. Section 852(b)(3), as amended by the Act, now provides that a capital gain dividend is "any dividend, or part thereof, which is reported by the company as a capital gain dividend in written statements furnished to its shareholders" (emphasis added). Similar rules apply to the other types of distributions to which the former designation requirement applied. Notably, the new rules do not require the information to be "mailed" to shareholders and do not include any requirement as to the time by which the information must be provided. This relaxation of the requirements of prior law was possible because relevant tax information about a RIC's distributions separately is required to be provided to the vast majority of RIC taxable shareholders through the Form 1099 reporting process. Because not all shareholders receive Forms 1099, however, RICs must use some other means for reporting distributions to those shareholders, such as corporations, retirement plans, and tax-exempt entities. Given the lack of clarity on what constitutes a "written statement furnished to [their] shareholders," most RICs have continued to provide this information in their annual reports.⁴ SEC Rule 30e-3 SEC Rule 30e-3 changes the default delivery for shareholder reports. Under this new rule, funds still must file the full shareholder report with the SEC. A fund, however, now may mail postcards to all shareholders notifying them that a new shareholder report is available and directing them to the fund's website to access the report. A shareholder still can request a paper copy and can place a standing instruction with the fund that he or she would like to continue to receive a paper copy of the shareholder report through the mail. RICs can begin to deliver the postcard to shareholders in lieu of mailing the full shareholder report (provided the fund meets certain requirements) on January 1, 2021. We 4 Generally Accepted Accounting Principles (GAAP) requires disclosure in the notes to the financial statements regarding distributions paid during the fiscal year for ordinary income, long-term capital gain, and returns of capital. Funds often will include separate disclosure in the shareholder report outside the financial statements specifying qualified dividend income (QDI), income qualifying for the dividends received deduction, and similar items. understand that our members are interpreting this effective date to mean that the first period-ends eligible to rely on the postcard are the periods ending October 31, 2020, as these shareholder reports normally would be mailed around January 1. SEC Disclosure Proposal The SEC recently released a proposal intended to tailor and modernize shareholder reports for open-end funds, including exchange-traded funds (ETFs). The concise and easily comprehensible annual and semi-annual reports highlighting information that the SEC believes is important for retail shareholders to assess and monitor their fund investments on an ongoing basis. Shareholders still would receive a traditional prospectus upon their initial investment. The proposed streamlined shareholder report, unlike the traditional shareholder report, could contain only a limited number of specified items. The SEC believes this would substantially reduce the length of required shareholder reports to 2-3 pages (rather than 30-60 pages). Information currently required to be included in the traditional shareholder report still would be filed with the SEC on Form N-CSR, posted to the fund's website, and made available to shareholders in hard copy upon request. If the proposed rule is adopted, it would rescind SEC Rule 30e-3. Funds thus would be required to mail the streamlined shareholder report to all shareholders. Under the proposed rule, the streamlined shareholder report would include only the following information: • Identifying information including the fund's name, share classes, fiscal period, and ticker symbols; • Expense example; • Management's Discussion of Fund

Performance; • Fund Statistics; • Graphical Representation of Fund Holdings; • Material Changes to the Fund since Previous Annual Report; • Changes in and Disagreements with Accountants (if any); • Statement Regarding Liquidity Risk Management Program; • Statement Regarding How to Obtain Additional Information; and • Statement Regarding Shareholder's Ability to Revoke Consent to Householding. The SEC is aware that RICs include tax disclosures about dividend distributions in annual shareholder reports and specifically asks whether funds should be permitted to continue doing so.⁵ ICI generally supports the SEC proposed rule, though we oppose rescinding Rule 30e-3. ICI plans to submit comments to the SEC on the proposed rule.

Website Reporting of Distributions As mentioned above, RICs historically satisfied the dividend designation requirements under the Internal Revenue Code by including such information in their annual reports. After the Act eliminated the old designation requirements, many RICs began posting distribution information online but continued to include the information in their annual reports as well because it was not clear whether web posting alone satisfied the distribution reporting requirements. ICI long has advocated, however, for the ability to post such information solely on funds' public websites. This is due in part to the overwhelming amount of information already included in the annual reports. Also, an increasing majority of fund shareholders rely upon and prefer electronic delivery for fund documents, including tax forms. The SEC has recognized this changing dynamic with the implementation of Rule 30e-3. The SEC also has proposed to streamline shareholder reporting because it believes that much of the information included in the traditional annual reports are not useful to most retail shareholders. Indeed, it has never been clear that the annual reports are the best place for providing such tax information to shareholders. The changes made by the Act allowed RICs to report distributions to retail shareholders on IRS forms, which is a more useful and efficient means of providing such information. As discussed above, however, some RIC shareholders are exempt from information reporting. To address these shareholders, ICI's members would prefer to move reporting of the character of distributions out of the financial statements. A fund's public website is an integral component of its contact with its shareholders. Website reporting would provide easy and equal access to all shareholders who need information regarding a fund's distributions. It thus is a logical means for communicating information about a RIC's distributions, particularly for those shareholders who do not receive Form 1099s. The Institute thus asks the IRS and Treasury Department to clarify that RICs can satisfy the distribution reporting requirements by posting capital gains and other dividends on the tax information pages of their public websites. This guidance will be particularly necessary if the SEC adopts the proposed rule regarding streamlined shareholder reports. The current proposal would permit only certain specified information to be included in the streamlined report; information about distributions is not one of those categories. Further, it is unclear whether unaudited tax information can be reported on Form N-CSR. Thus, if the rule is finalized as proposed, and absent clarification that RICs can satisfy the distribution reporting requirements by utilizing public websites, funds might

⁵ See question 12, pg. 66 of the SEC proposed rule. need to send separate statements to shareholders solely to satisfy these tax requirements. Doing so would be costly and unnecessary. In fact, many funds already post this information to their public websites, in addition to placing it in the annual reports, because it is easier for shareholders to locate and use. Further, providing a separate tax statement to all shareholders would be confusing to those shareholders who receive Forms 1099. We understand it would not be feasible to provide the separate statement only to shareholders who are exempt from information reporting. The SEC has asked whether tax distribution information should be included in the streamlined shareholder report. The ICI and its members would prefer not to do so. Including distribution information that is necessary solely for tax purposes would not advance the purpose of the SEC proposal,

which is to provide concise information to retail shareholders that is helpful in understanding their investments. Retail shareholders will receive tax information on the fund's distributions in the tax forms and statements provided by the fund; including it in the streamlined shareholder report is unnecessary and would achieve no purpose other than satisfying the reporting requirement for shareholders exempt from information reporting, who likely would not use the streamlined shareholder report anyway. Indeed, it likely would create additional confusion for retail shareholders. In addition, we understand that the industry largely plans to adopt Rule 30e-3, with implementation beginning in January 2021. Thus, the annual reports that RICs traditionally have used to satisfy the reporting requirements for distributions will be online and generally will not be mailed to shareholders unless specifically requested. Shareholders will receive, however, postcards indicating that the annual reports are available online. ICI believes distribution information included in these annual reports still should be deemed to have satisfied the distribution reporting requirements, regardless of whether they are physically mailed to shareholders. At the very least, we ask the IRS and Treasury Department to confirm this understanding. *

* * We appreciate your renewed attention to this issue. Please do not hesitate to contact me (202-371-5432 or kgibian@ici.org) if you have any questions or would like to discuss it further. Sincerely, /s/ Karen L. Gibian Karen Lau Gibian Associate General Counsel, Tax Law
cc: Michael Novey Helen Hubbard Steven Harrison

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