

COMMENT LETTER

January 2, 2018

ICI Submits Comment Letter on SEC's Proposed Disclosure and Reporting Changes (Related to Incorporation by Reference, Hyperlinking, and HTML Format) (pdf)

January 2, 2018 Mr. Brent J. Fields Secretary Securities and Exchange Commission 100 F Street, NE Washington, D.C. 20549 Re: File Number S7-08-17 Dear Mr. Fields: The Investment Company Institute¹ supports the Securities and Exchange Commission (SEC) taking steps to modernize and simplify certain disclosure requirements in Regulation S-K and related rules and forms.² We provide below our views on the proposed changes that would affect registered investment companies (“funds”) and registered investment advisers (“advisers”) as registrants. Section 72003 of the FAST Act requires the SEC to study, and produce a report on, Regulation S-K’s requirements. The FAST Act requires the report to include 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 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\$21.5 trillion in the United States, serving more than 100 million US shareholders, and US\$7.1 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 The SEC is doing so as required by Section 72003 of the Fixing America’s Surface Transportation Act (FAST Act). FAST Act Modernization and Simplification of Regulation S-K, SEC Release No. IC-32858, 82 Fed. Reg. 50988 (Nov. 2, 2017) (“Proposal”), available at www.gpo.gov/fdsys/pkg/FR-2017-11-02/pdf/2017-22374.pdf. Brent J. Fields January 2, 2018 Page 2 immaterial information. These reflect sound policy objectives that ICI supports, as they are of great importance to funds and advisers. In our comments below, we: □ Request that the SEC provide equivalent relief to funds and advisers where it proposes relief for operating companies, as appropriate; □ Support the proposed incorporation by reference amendments that relate to funds and advisers; and □ Support the proposed changes

related to hyperlinking and the HTML filing format that relate to funds. I. The SEC Should Provide Equivalent Relief to Funds and Advisers as Appropriate Many of the proposed amendments apply only to operating companies (some clearly would not apply to funds and advisers). Throughout the Proposal, the SEC generally demonstrates sensitivity to maintaining equivalent treatment (where appropriate) of funds and advisers. However, the Proposal contains the following proposed amendments for which the SEC has not provided analogous relief to funds:

- Proposed Item 601(a)(5) of Regulation S-K, which would permit registrants to omit entire schedules and similar attachments to exhibits unless they contain material information and that information is not otherwise disclosed in the exhibit or the disclosure document.
- Proposed Item 601(a)(6), which would permit registrants to redact personally identifiable information (“PII”) from exhibits without submitting a confidential treatment request.
- Proposed revisions to Item 601(b)(10), which would permit registrants to redact confidential information from material contracts filed pursuant to that item where such information is both (i) not material and (ii) competitively harmful if publicly disclosed, even where the registrant has not submitted a confidential treatment request to the SEC.

Brent J. Fields January 2, 2018 Page 3 For each, the Proposal asks whether the SEC should amend investment company rules or forms to provide similar relief.³ For the reasons provided below, in each case, we recommend that the SEC do so. In support of proposed Item 601(a)(5) of Regulation S-K, the SEC states that commenters (on a 2016 SEC concept release on Regulation S-K disclosure requirements) noted that filing complete exhibits is unnecessarily cumbersome and expensive where the schedules do not contain material information, and that schedules frequently contain confidential information. The same holds true for certain exhibits that funds file. For instance, a fund may file as an exhibit to its registration statement contracts with service providers. Those contracts may be quite lengthy, include schedules containing no material information, and include confidential information about one or both parties. In support of proposed Item 601(a)(6), the Proposal notes that exhibits filed pursuant to Item 601 may include PII such as bank account numbers, social security numbers, home addresses and similar information. Fund exhibits also may contain this information (particularly account numbers). And funds encounter situations in which their material contracts contain information that is both not material and competitively harmful if disclosed, and are therefore deserving of similar treatment. Accordingly, it would be appropriate for the SEC to make corresponding amendments to all applicable investment company rules or forms, so that funds also benefit from the SEC’s work in this area.⁴

II. ICI Supports the Proposed Incorporation by Reference Amendments The SEC’s proposed amendments would revise Item 10(d) of Regulation S-K, Rule 411 under the Securities Act of 1933, Rule 12b-23 under the Exchange Act of 1933, and several forms to simplify and modernize these rules while still providing all material information. To provide for consistency, the SEC has proposed parallel amendments to Rule 0-4 under the Investment Company Act of 1940 (“Investment Company Act”)⁵ and several Investment Company Act forms; parallel amendments to Rule 0-6 under the Investment Advisers Act of 1940 (“Investment Advisers Act”);⁶ and rescission of 3 Proposal at 51003 and 51004. ⁴ Given that the Proposal raises the possibility of making similar amendments to investment company rules or forms, the SEC could forgo the step of proposing these amendments and simply amend these investment company rules or forms when it adopts other amendments in connection with this Proposal, provided that the final investment company rule or form amendments are substantially similar to proposed Item 601(a)(5) and (6), and the proposed amendments to Item 601(b)(10), of Regulation S-K. ⁵ Rule 0-4 provides general incorporation by reference rules for investment company registration statements, applications, and reports filed with the SEC. ⁶ 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. Brent J. Fields January 2, 2018

Page 4 Investment Company Act Rules 8b-23, 8b-24, and 8b-32 (certain provisions of which would be consolidated into proposed new Rule 0-4).⁷ ICI supports those proposed incorporation by reference amendments relating to funds and advisers. Incorporation by reference is an efficient disclosure tool, which allows funds and advisers to avoid repetition and address fully rule and form requirements in a streamlined and layered way, while still directing the SEC and investors to potentially useful information. We believe the proposed amendments would be easier to interpret and apply (e.g., by consolidating provisions applicable to funds in revised Rule 0-4, and eliminating those provisions that serve no practical purpose), and would facilitate increased use of incorporation by reference, all without sacrificing investor protection. Indeed, the proposed hyperlinking requirements would further investor protection, by assisting investors that wish to more easily access any additional information incorporated by reference. Thus, we regard the proposed amendments as a step in the right direction, and we hope the Commission continues to explore this and other disclosure tools and approaches to enhance fund disclosure.

III. ICI Supports the Proposed Hyperlinking and HTML Requirements Under the proposed amendments, affected registrants generally would be required to include a hyperlink to each exhibit identified in a filing's exhibit index. This requirement would 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, and Form N-14 and to reports on Form N-CSR. Registrants would not be required to refile electronically any exhibits filed only in paper. Proposed amendments to Rule 105 of Regulation S-T would require investment company registrants to file registration statements and reports that include exhibits in HTML format, to make the proposed hyperlinking requirements feasible. We support these proposed amendments. While the insertion of hyperlinks may create modest up-front work for registrants when these amendments take effect, the presence of hyperlinks will improve investors' ability to navigate between EDGAR filings, and thus advance investor protection. As with incorporation by reference, hyperlinking is a clean and efficient way to direct investors to other information, and we believe the SEC should explore greater permissive use of hyperlinking in other contexts in the future. ■ ■ ■ ■ ■

⁷ Rule 8b-23 provides additional incorporation by reference rules for registration statements and reports. Rule 8b-24 sets forth rules regarding summaries or outlines of documents. Rule 8b-32 applies to incorporating exhibits by reference.

Brent J. Fields January 2, 2018 Page 5 If you have any questions, please contact me at (202) 218-3563 or Matthew Thornton at (202) 371-5406.

Sincerely, /s/ Dorothy Donohue Deputy General Counsel