

June 26, 2018

## SEC Adopts Rule Permitting Notice-and-Access “Delivery” of Shareholder Reports

In a [June 5, 2018 Release](#) (the “Release”), the SEC adopted new Rule 30e-3 under the 1940 Act (the “Rule”). Subject to conditions, the Rule will permit registered funds to satisfy their obligations to transmit annual and semi-annual reports to shareholders (each a “Periodic Report”) by making them accessible at a website address specified in a written notice mailed to shareholders (a “Notice”).<sup>1</sup> Funds are already permitted to rely on similar “notice-and-access” rules to furnish proxy statements to shareholders and statutory prospectuses to holders of summary prospectuses.<sup>2</sup>

The Rule is intended to modernize methods by which funds may deliver Periodic Reports to shareholders. The SEC believes that the Rule will improve shareholders’ ability to access and use this information, and will reduce fund expenses, ultimately borne by shareholders, of printing and mailing Periodic Reports.<sup>3</sup>

The Rule’s effective date is January 1, 2019. However, the Rule specifies a minimum two-year transition period. This means that the earliest that a fund may rely on the Rule and mail Notices to shareholders instead of paper Periodic Reports is January 1, 2021, subject to the requirement that, in 2019 and 2020, a fund provided a statement (each such statement, a “Required Statement”) in each prospectus and Periodic Report sent to shareholders of its intent to rely on the Rule. Beginning January 1, 2022, funds may rely on the Rule without providing Required Statements.

The Rule does *not* affect the SEC’s guidance on electronic delivery. Funds and intermediaries may continue to rely on that guidance to electronically transmit reports to investors who have already consented (*i.e.*, “opted in”) to receive Periodic Reports electronically.

The Rule’s general conditions are described below in section A, and additional Rule conditions that apply only during the extended transition period are described in section B.

### A. The Rule’s General Conditions

A fund relying on the Rule to satisfy its obligations to transmit Periodic Reports must fulfill the conditions described below. The conditions fall into three categories: (i) *availability* of the Periodic Report and other materials at a website address, (ii) delivery of *paper notice to shareholders* regarding the availability of each new Periodic Report and (iii) *delivery of paper copies* of Periodic Reports to shareholders who request.

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<sup>1</sup> The Rule may be relied upon by (i) open-end and closed-end funds to satisfy their obligations under Rule 30e-1 to transmit Periodic Reports and (ii) unit investment trusts (each a “UIT”) to satisfy their obligations under Rule 30e-2 to transmit Periodic Reports.

<sup>2</sup> See Securities Act Rule 498 and Exchange Act Rule 14a-6.

<sup>3</sup> On the same day the SEC issued the Release, the SEC issued a [request for comment](#) regarding the framework under which financial intermediaries may charge fees for distributing certain non-proxy disclosure materials to fund investors, such as Periodic Reports and prospectuses. These fees are intended to reimburse a financial intermediary for expenses incurred and are generally paid by funds. Separately, on the same day, the SEC issued another [request for comment](#) from individual investors and other interested parties regarding how the SEC could improve the delivery, design and content of disclosures by mutual funds, ETFs and other types of investment funds to help investors make better informed investment decisions. Both of the requests for comment will be described in a future Ropes & Gray Investment Management Update.

## 1. *Availability of Periodic Reports and Other Materials*

The following materials must be publicly available without charge at the website address specified in the Notice from the date a fund transmits a new Periodic Report until the fund transmits its next Periodic Report: (i) the new Periodic Report, (ii) the Periodic Report for the prior reporting period, (iii) if the Periodic Report specified in (i) and (ii) includes a summary schedule of investments (instead of a complete schedule of investments in unaffiliated issuers), the fund's complete portfolio holdings, as of the close of the period covered by the Periodic Report and (iv) for any fund other than a money market fund, the fund's complete portfolio holdings, as of the end of the fund's most recent first and third fiscal quarters.

## 2. *Notice Requirements*

Each Notice must satisfy the following conditions and must be sent to shareholders within 70 days after the close of the period for which the Periodic Report is made.

- The Notice must contain a prominent legend in bold-face type stating: “[An] **Important Report[s] to [Shareholders] of [Fund] [is/are] Now Available Online and In Print by Request.**”
- The Notice must (i) state that the Periodic Report contains important information about the fund, including its portfolio holdings and financial statements, (ii) state that the Periodic Report is available at the website address specified in the Notice or, upon request, by mail, and encourage the shareholder to review the Periodic Report and (iii) include a website address where the Periodic Report and other materials described in paragraph 1, above (the “Other Materials”) are available.
- The Notice must (i) provide a telephone number to contact the fund (or the shareholder's financial intermediary)<sup>4</sup> without charge, (ii) include instructions describing how a shareholder may request a paper copy of the Periodic Report and the Other Materials without charge (and indicate that the shareholder will not otherwise receive a paper copy), (iii) explain that the shareholder can elect to receive paper Periodic Reports prospectively and provide instructions describing how a shareholder can make that election (*e.g.*, contacting the fund or the shareholder's financial intermediary) and (iv) provide instructions describing how a shareholder can elect to receive Periodic Reports and other documents and communications by electronic delivery.
- A Notice must be sent unaccompanied by any other documents or materials, except for (i) one or more additional Notices, (ii) a current summary prospectus, statutory prospectus or statement of additional information, (iii) a “Notice of Internet Availability of Proxy Materials” pursuant to Exchange Act Rule 14a-16, (iv) with respect to a fund held in a separate account that funds a variable annuity or variable life contract, the contract or the statutory prospectus and statement of additional information of the contract and (v) a shareholder account statement.
- A single Notice may be sent to multiple shareholders who share an address, subject to existing householding requirements.

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<sup>4</sup> The Release notes that broker-dealers may prepare Notices, in which case, a Notice could contain the toll-free telephone number of the broker-dealer. Alternatively, if a broker-dealer is delivering Notices prepared by a fund, the firm could include with the Notice information containing the toll-free telephone number. The Release notes that, in the case of broker-dealers, distribution of Periodic Reports to shareholders is generally required by SRO rules, provided the issuer (fund) reimburses broker-dealers for their incurred expenses. More broadly, the SEC expects that a variety of existing infrastructure arrangements for hosting reports and other materials – including those arrangements maintained by financial intermediaries – will be used to provide website availability of Periodic Reports.

### 3. *Delivery of Paper Copies*

The Rule requires that a fund must transmit a paper copy of a Periodic Report and the Other Materials to any person requesting such a copy, without charge and by U.S. first-class mail or other “reasonably prompt means,” within three business days after the request is received.

### 4. *Shareholders Electing Paper Format*

In addition to *ad hoc* requests for paper copies of Periodic Reports (described in paragraph 3, above), the Rule permits shareholders to make a permanent request for paper copies. Importantly, a shareholder who notifies a fund or her financial intermediary (including a separate account sponsor) that she has elected to receive paper copies of a fund’s Periodic Reports prospectively will be deemed to have elected to receive paper copies of Periodic Reports with respect to ***all current and future funds*** held through an account or accounts with (i) the fund’s transfer agent or principal underwriter for the same “group of related investment companies”<sup>5</sup> or (ii) the notified financial intermediary. The shareholder’s notice to a fund or her financial intermediary electing to receive paper copies of Periodic Reports with respect to a fund also will be deemed to apply to the Periodic Reports of all funds, held currently and in the future, in a separate account funding a variable annuity or variable life insurance contract.

## B. Transition Period’s Additional Conditions

Any fund that seeks to rely on the Rule prior to January 1, 2022 (*i.e.*, the end of the extended transition period) must satisfy additional conditions.

### 1. *Post-Effective Date Conditions*

The Rule’s effective date is January 1, 2019, and the earliest that a Notice can be sent to shareholders instead of a paper Periodic Report is January 1, 2021. Funds are required to provide, for two years during the three-year period between January 1, 2019 and December 31, 2021, a Required Statement in their summary prospectuses, statutory prospectuses and Periodic Reports before relying on the Rule. Thus, if a fund has included a Required Statement in each of these documents required to be delivered or transmitted in 2019 and 2020, beginning on January 1, 2021, it may rely on the Rule with respect to the transmission of its first Periodic Report occurring in 2021.<sup>6</sup>

- A fund that is first offered publicly on a date between January 1, 2019 and December 31, 2020 may rely on the Rule beginning January 1, 2021, provided the fund begins providing a Required Statement with its first public offering.
- A fund that is first offered publicly on January 1, 2021 or later may begin to rely on the Rule immediately, without providing a Required Statement to its shareholders.
- Any other fund is barred from relying on the Rule until either (i) it has completed two full years of providing Required Statements or (ii) January 1, 2022, whichever comes first.

### 2. *Location and Content of Required Statements*

The Release amends Rule 498 and Forms N-1A, N-2, N-3, N-4, and N-6 to require funds to provide a Required Statement (i) on the cover page or beginning of their summary prospectuses, (ii) on the cover page

<sup>5</sup> The Rule incorporates the definition of “group of related investment companies” in Rule 0-10 under the 1940 Act.

<sup>6</sup> For example, an open-end fund would be required to provide the Required Statement on at least six documents sent to shareholders during the two-year period beginning January 1, 2019 and ending December 31, 2020: once each year on the fund’s summary prospectus or statutory prospectus, once each year on the fund’s annual report and once each year on the fund’s semi-annual report.

of their statutory prospectuses and (iii) on the cover page or beginning of their Periodic Reports.<sup>7</sup> The text of the Required Statement is set forth in each of the amended Forms (above) and, in summary, states:

- Beginning on a specified date, paper copies of Periodic Reports will no longer be sent by mail, unless the shareholder requests paper copies.
- Periodic Reports will instead be available on a website, and the shareholder will be notified by mail when a Periodic Report is posted and provided with the website address to access the Periodic Report.
- A shareholder who has already elected to receive Periodic Reports electronically will not be affected by these changes (along with instructions regarding how a shareholder may elect to receive Periodic Reports and other communications electronically).
- A shareholder may elect to receive all future Periodic Reports in paper by notifying the fund or the shareholder's financial intermediary.

### C. Observations

The SEC estimates that the aggregate cost savings, net of compliance costs, after the first year of funds' reliance on the Rule will be approximately \$140 million per year in aggregate for all registered open-end and closed-end funds and UITs, most of which will be passed on to investors. This is good news for investors and funds.

At present, funds are not required to send first- and third-quarter portfolio holdings information to shareholders or to make that information available on their websites. Therefore, the Rule will result in shareholders having easier access to at least a full year of complete portfolio holdings information in one location instead of requiring an investor to access fund reports on Forms N-Q and Forms N-PORT.

While the Rule has an extended transition period, fund complexes that desire to rely on the Rule at the earliest possible date (January 1, 2021) may want to consider having written policies and procedures in place by January 1, 2019 to assure that (i) the Required Statement appears, as required, on the cover page or beginning of summary prospectuses and on the cover pages of statutory prospectuses and Periodic Reports beginning in 2019 and (ii) the identity of shareholders opting to continue to receive paper Periodic Reports are recorded. Thereafter, new procedures (or amendments to existing procedures) are recommended to assure compliance with the Rule's "General Conditions" described above, including procedures for oversight of financial intermediaries preparing Notices and hosting Periodic Reports and Other Materials on their websites.

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For further information about how the issues described in this Alert may impact your interests, please contact your regular Ropes & Gray contact.

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<sup>7</sup> These amendments to Rule 498 and Forms N-1A, N-2, N-3, N-4, and N-6 are effective January 1, 2019 and remain in effect for a period of three years. Separately, effective January 1, 2019, the Release amends Rule 498 to permit a summary prospectus to include instructions regarding how a shareholder can elect to receive prospectuses or other documents and communications by electronic delivery. This amendment remains effective indefinitely.