August 14, 2020

SEC Proposes Modernized Fund Reports and Disclosure Amendments

On August 5, 2020, the SEC unanimously proposed rule and form amendments intended to modernize the disclosure framework for mutual funds and ETFs (the "Proposals"). This Alert summarizes the key provisions of the Proposals.

Executive Summary

The Proposals, if adopted, would modify the disclosure framework for funds registered on Form N-1A (mutual funds and ETFs) to follow a "layered" approach to fund disclosure that highlights key information for retail investors.

- For existing shareholders, the Proposals would make streamlined (3-4 page) annual and semi-annual shareholder reports the primary source of fund disclosure.[1] Certain information now required in a fund's shareholder reports, such as the fund's financial statements, would no longer appear in these reports. Instead, this information would be made available online and delivered free of charge upon request, and filed with the SEC on a semi-annual basis on Form N-CSR.
- Funds would no longer be required to deliver an updated prospectus to existing shareholders who purchase additional shares. Instead, funds would rely on their shareholder reports to keep shareholders informed, along with (i) timely notification to shareholders of any material changes to the fund through prospectus supplements and (ii) the availability of the fund's prospectus online and on request.
- The Proposals would also amend the advertising rules for funds (including closed-end funds and business development companies ("BDCs").

THE FOLLOWING PROPOSALS ARE PARTICULARLY IMPORTANT:

1. The Proposals would preclude funds and ETFs from relying on Rule 30e-3. Many fund sponsors have been working on compliance with Rule 30e-3 since its adoption in 2018 so that their funds, beginning in 2021, could meet their shareholder report delivery requirements by making the reports accessible at a website address specified in a written notice mailed to shareholders. The Proposals would render this work, and the notices many mutual funds and ETFs have been including in their prospectuses, summary prospectuses and shareholder reports for more than a year, moot.
2. The Proposals would amend mutual fund and ETF prospectus disclosure requirements regarding fees, expenses and principal risks.
   - The Proposals would not require a fund's acquired fund fees and expenses ("AFFE") to be presented as a line item in the prospectus fee table, unless more than 10% of the fund's total assets were invested in acquired funds for the prior fiscal year.
   - A summary prospectus would be required to describe the fund's principal risks *in order of importance*, with the most significant risks appearing first. Although the staff of the SEC has inquired about the ordering of principal risks in connection with its review of disclosures, this would represent the first requirement to present risks in order of importance. Many fund complexes have been reluctant to order principal risks by significance because of the possibility that such an ordering is difficult in practice and might be criticized with the benefit of hindsight. The Proposals expressly state, however, that a fund may use any reasonable means of determining the significance of risks.

[1] First-time fund investors would continue to receive summary or statutory fund prospectuses.

– The Proposals would also introduce a standard for determining whether a risk is a principal risk – whether the risk would place more than 10% of the fund's assets at risk or is reasonably likely to do so in the future.

3. Following the occurrence of a material change with respect to certain specified topics, the Proposals would require a fund to deliver a prospectus supplement to all existing shareholders within three days of filing the supplement with the SEC, including existing shareholders that are not purchasing additional shares. Presently, a fund is not required to mail prospectus supplements to shareholders until they make an additional purchase. If the material change occurs shortly before a fund transmits a shareholder report, and the fund is unable to disclose the material change in its shareholder report, the delivery of the prospectus supplement to non-purchasing shareholders who have not consented to electronic delivery would involve additional expense.

The Proposals are summarized in detail below.

I. Proposed Rule 498B and Annual Prospectus Updates

For new investors, the Proposals would not change the requirement that a fund precede or accompany the sale of its shares with a prospectus.

The Proposals include proposed Rule 498B under the Securities Act, which would permit a fund to satisfy its prospectus delivery obligations to existing investors under Section 5(b)(2) of the Securities Act by complying with the conditions of the proposed Rule.[2] Rule 498B and its conditions are described in detail below.

Website Availability of Certain Fund Documents. To rely on Rule 498B, a fund would be required to make accessible, free of charge, at the website address identified on the cover page of the fund's streamlined annual and semi-annual reports, the fund's current summary and statutory prospectus, SAI, and most recent annual and semi-annual shareholder reports (the "Required Online Fund Documents"). The required materials are identical to the materials accessible online for funds currently relying on Rule 498 (the summary prospectus rule).

Notice of Material Changes. Rule 498B would require a fund to give existing shareholders notice of a material change with respect to certain topics specified in Rule 498B. The particular topics are the same types of material changes the Proposals require in the proposed streamlined annual report. See "Material Fund Changes" in Section II below. If one of the specified material changes occurs, the fund presumably will file a prospectus supplement (or even a post-effective amendment or "PEA") with the SEC. For new investors, the supplemented or amended prospectus would, as always, be required to precede or accompany the sale of shares. For existing shareholders, Rule 498B would require notice of the material change to be provided within three business days of (i) the filing date of the prospectus supplement filing or (ii) the effective date of the PEA, by first-class mail or other means designed to ensure equally prompt receipt. If a shareholder has not specified a delivery preference, Rule 498B would require that the notice be provided in paper. However, notices of material changes could be delivered electronically to shareholders who elect electronic delivery.

Delivery Upon Request of Certain Fund Documents. Rule 498B would require a fund (or a financial intermediary through which shares of the fund may be purchased or sold) to deliver, in a manner consistent with the requestor's delivery preference, a copy of any requested Required Online Fund Documents. If a paper copy is requested, the fund or intermediary must send requested paper documents within three business days of the request.

II. Changes to Annual Reports

The Proposals would (i) add new Item 27A to Form N-1A to specify the design and content of funds' annual and semi-annual reports and (ii) remove the portions of existing Item 27 of Form N-1A concerning annual and semi-annual reports. The Proposals limit the length and complexity of fund shareholder reports and the SEC stated that "funds generally would

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[2] In general, an "existing shareholder" is a shareholder to whom a summary prospectus or statutory prospectus has been previously sent or given in order to satisfy any obligation under Section 5(b)(2) of the Securities Act to have a statutory prospectus precede or accompany the carrying or delivery of fund shares and that has continuously held fund shares. The definition is slightly different with respect to money market fund shareholders.

be able to reduce the length of their annual reports from more than 100 pages on average to a more concise presentation that is approximately 3 to 4 pages in length."

In addition to limiting the content a fund may include in its annual report, the Proposals also would require separate annual reports for each fund so that a shareholder would receive an annual report only for the fund(s) of which he or she is a shareholder.[3] On its website, the SEC posted a three-page Hypothetical Annual Report (available here). The Proposals would require information in a fund's annual report to appear in a specified order. The changes the Proposals would make to fund semi-annual reports largely track the changes to the annual report, and are similarly specified in new Item 27A of Form N-1A. Like annual reports, the information in a semi-annual report must appear in the order specified in proposed Item 27A.

The following table outlines the information the Proposals would generally require funds to include in their annual reports, as well as the similar current Form N-1A requirements.

	Description	*Proposed Item of Form N-1A*	*Current Item of Form N-1A Containing Similar Requirements*
Cover Page or Beginning of Report	Fund/Class Name(s)	Item 27A(b)	---
	Ticker Symbol(s)	Item 27A(b)	
	Principal U.S. Market(s) for ETFs	Item 27A(b)	
	Statement Identifying as "Annual Shareholder Report"	Item 27A(b)	
	Legend	Item 27A(b)	
Content	Expense Example	Item 27A(c)	Item 27(d)(1)
	Management's Discussion of Fund Performance	Item 27A(d)	Item 27(b)(7)
	Fund Statistics	Item 27A(e)	n/a
	Graphical Representation of Holdings	Item 27A(f)	Item 27(d)(2)
	Material Fund Changes	Item 27A(g)	n/a
	Changes in and Disagreements with Accountants	Item 27A(h)	Item 27(b)(4)
	Statement Regarding Liquidity Risk Management Program	Item 27A(i)	Item 27(d)(6)(ii)
	Availability of Additional Information	Item 27A(j)	Item 27(d)(3) through (5)
	Householding Disclosure (optional)	Item 27A(k)	n/a

[3] A single shareholder report could cover multiple classes of a multi-class fund.

Some of the annual report items in this table are self-explanatory. The discussion below focuses on the items that require some elaboration.

Legend. The Proposals would require a legend on the cover page of a fund's annual report to the effect that the annual report contains certain important information for the fiscal year covered and instruct the reader how to obtain more information.

Expense Example. The Proposals replace the two expense examples now required to be included in a shareholder report with one simplified expense table in the following format, based upon a hypothetical $10,000 investment in the fund during the reporting period.

[Fund or Class Name]	Beginning account value [beginning date]	Total return before costs paid	**Costs paid**	Ending account value [end date] (based on net asset value return)	[ETFs only] Ending account value [end date] (based on market value return)	**Costs paid as a percentage of your investment**
	$10,000	+ (plus) $[x]	- (minus) $[x]	= (equals) $[x]		**___%**

For the "Total return before costs paid" column, a fund would be required to describe qualitatively in a footnote other costs included in total return, if material to the fund (*e.g.*, if material, the fund would state that investment transaction costs, securities lending costs, and/or AFFE reduced the total return). For the final "Costs paid as a percentage of your investment" column (*i.e.*, the fund's expense ratio), a fund would be required to disclose in a footnote that the expense information does not reflect shareholder transaction costs associated with purchasing or selling fund shares.

For an ETF, the expense example would be required to disclose two versions of the ending account value, based on the ETF's (i) NAV return and (ii) market value return.

Management's Discussion of Fund Performance. As described below, the Proposals would amend the management's discussion of fund performance ("MDFP") requirements.

- ***Narrative MDFP Disclosure***. The Proposals retain the existing requirement that funds' annual reports include a narrative discussion of factors that materially affected the fund's performance during the most recent fiscal year. To avoid overly long discussions, the Proposals amend this requirement to specify that the disclosure must "briefly summarize" the "key" factors that materially affected the fund's performance during the last fiscal year. The proposed instructions would also direct funds to use graphics or text features, including bullet lists or tables, to convey the key factors.

- ***MDFP – Performance Line Graph***. The Proposals would retain the requirements for the performance line graph now included in annual reports, with several changes.
  - The Proposals would delete the instruction that permits the line graph to cover periods longer than the most recent 10 fiscal years.[4]
  - The Proposals would define "appropriate broad-based securities market index" as an index that represents the overall applicable domestic or international equity or debt markets. Funds also would be able to include narrower indexes reflecting the market segments in which the fund invests. For a fund that invests in both equity and debt securities, the fund could include more than one appropriate broad-based securities market index.[5]
- ***MDFP – Performance Table***. The Proposals retain the existing requirement that a fund's annual reports must include a table showing average annual total returns for the past 1-, 5- and 10-year periods. The Proposals would also require three pieces of additional information: (i) the average annual total returns of an appropriate broad-based securities market index, (ii) the fund's average annual total returns without sales charges (in addition to current disclosure that must show returns that reflect any sales charges) and (iii) average annual total returns for each class that the report covers. In addition, the Proposals:
  - Permit a fund to include returns information for one or more other relevant indexes, including a more narrowly based index covering the market sectors in which the fund invests.
  - Replace the required statement accompanying the line graph and table with a simplified statement to the effect that the fund's past performance is not a good predictor of how the fund will perform in the future.
- ***Additional MDFP Change***. The Proposals would require a fund that has a stable distribution policy and was unable to maintain the specified level of distributions to disclose this fact. The Proposals would not otherwise affect existing disclosure concerning distributions that resulted in returns of capital.

Fund Statistics. The Proposals require a fund to disclose certain fund statistics in its annual report, including the fund's (i) net assets, (ii) total number of portfolio holdings and (iii) portfolio turnover rate. A fund would be permitted to disclose any additional statistics that the fund believes would help shareholders understand the fund's operations during the reporting period (*e.g.*, tracking error, maturity, duration, average credit quality or yield). However, if a fund discloses an additional statistic, these additional conditions would apply:[6]

- If a fund provides a statistic that is disclosed elsewhere on Form N-1A, the fund must follow the associated instructions concerning the calculation method of the statistic.
- If a statistic is included in, or could be derived from, a fund's financial statements or financial highlights, the fund must use or derive that statistic from its most recent financial statements or financial highlights.
- A fund may briefly describe the significance or limitations of any disclosed statistics in a parenthetical, footnote or similar presentation.
- Any additional statistic must be reasonably related to the fund's investment strategy.

[4] However, a fund would still be permitted to include similar presentations that cover periods greater than 10 years on its website or in other marketing materials.

[5] A fund would also be permitted to include a blended index to supplement the appropriate broad-based securities market index(es) that the fund includes. The Proposals' change to the definition of an appropriate broad-based securities market index would also affect the performance presentations in fund prospectuses.

[6] With respect to any additional statistic, the Proposals' relevant instruction encourages a fund to use tables, bullet lists or other graphics or text features to disclose the statistics.

Graphical Representation of Holdings. While the Proposals would eliminate a fund's schedule of investments from its annual report, the Proposals would maintain the existing requirements for the graphical representation of fund holdings in shareholder reports, subject to the following revisions.

- At present, a fund may base the tabular or graphic presentation of its holdings on the fund's net asset value or total investments. The Proposals permit a fund to present its holdings based on either the fund's *net exposure*, or *total exposure*, to particular categories of investments. This change is intended to provide a more meaningful presentation of holdings for funds that use derivatives to obtain investment exposures as part of their investment strategies. This change also is designed to provide a more meaningful presentation of the holdings for a fund that holds both long and short positions – the long and short positions may be presented separately (*i.e.*, total exposure) or showing the combined exposure (*i.e.*, net exposure). In all cases, the fund must select a basis of presentation (*i.e.*, according to the fund's net asset value, total investments or investment exposures) that is reasonably designed to clearly present the types of investments made by the fund.

- Currently, if a fund depicts its portfolio holdings according to credit quality, the fund must describe how the credit quality of its holdings is determined (if credit ratings are relied upon, the fund must explain why it selected a particular credit rating). The Proposals instruct funds to keep these disclosures brief and concise.

Material Fund Changes. The Proposals add a new section to a fund's annual report to disclose material changes to the fund. Specifically, the fund would be required to briefly describe any material change in an enumerated list of items (as well as any other material change that the fund chooses to disclose) that has occurred since the beginning of the reporting period or that the fund plans to make in connection with its annual prospectus update.[7] Under the Proposals, a fund would be required to briefly describe in its annual report a material change to any of the following items:

- A change in the fund's name.
- A change in the fund's investment objectives or goals.
- An increase in the fund's ongoing annual fees, transaction fees or maximum account fee.
- A change in the fund's principal investment strategies.
- A change in the principal risks of investing in the fund.
- A change in the fund's investment adviser(s), including sub-adviser(s).
- A change in the fund's portfolio manager(s).

The Proposals also would require disclosure of material fund changes in the annual report to be accompanied by a prescribed legend that, among other things, instructs an investor how to obtain more information.

Separately, there may be instances where a material change occurs shortly before a fund transmits its shareholder report. If this occurs, it may be difficult for the fund to disclose the material change in its shareholder report. Under these circumstances, the fund presumably will file a prospectus supplement (or even a PEA) with the SEC. For existing shareholders, Rule 498B would require notice of the material change to be provided within three business days of (i) the filing date of the prospectus supplement filing or (ii) the effective date of the PEA, by first-class mail or other means designed to ensure equally prompt receipt. If a shareholder has not specified a delivery preference, Rule 498B would require that the notice be provided in paper. However, notices of material changes could be delivered electronically to shareholders who elect electronic delivery (for new investors, the supplemented or amended prospectus would, as always, be required to precede or accompany the sale of shares).

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[7] Because a fund's PEA disclosing the changes to its prospectus may be (i) incomplete when a fund transmits its shareholder report and (ii) subject to review by the SEC staff, a fund would need to provide only a high-level description of the anticipated changes in its shareholder report.

Changes in and Disagreements with Accountants. The Proposals would move the required disclosure regarding changes in and disagreements with accountants to Form N-CSR and replace the disclosure in the annual report with (i) a statement of whether the former accountant resigned, declined to stand for re-election or was dismissed and the date thereof and (ii) a brief description of disagreements(s) with the former accountant during the fund's two most recent fiscal years.

Statement Regarding Liquidity Risk Management Program. The Proposals replace the existing disclosure requirements regarding the operation and effectiveness of a fund's liquidity risk management program. Specifically, the Proposals would require a brief summary in a fund's annual report of (i) the key factors or market events that materially affected the fund's liquidity risk during the reporting period, (ii) the key features of the fund's liquidity risk management program and (iii) the effectiveness of the fund's liquidity risk management program over the past year. The Proposals emphasize that the disclosure must be "tailored to each fund and be concise."

Availability of Additional Information. The Proposals would require funds to include a statement in the annual report that informs investors about additional information that is available on the fund's website. The proposed new statement would consolidate several currently required statements about the availability of information (including the quarterly portfolio schedule, proxy voting policies and procedures and proxy voting record) with a single statement. In addition, the required statement would inform investors that the fund's financial statements are available and remind investors about the availability of the fund's current prospectus.

III. New Form N-CSR and Website Availability Requirements

The Proposals amend Form N-CSR and Rule 30e-1 to implement the SEC's layered disclosure framework. Certain information currently required in shareholder reports would instead be required to be filed on Form N-CSR. The Proposals' amendments to Rule 30e-1 would require a fund to make available on its website the information that it would newly be required to file on Form N-CSR (and to deliver such information upon request, free of charge).

The following table shows information now required to be included in a fund's annual and semi-annual reports and outlines how the Proposals would require a fund (i) to include the information in its Form N-CSR filings and (ii) to make the information available online.

	Current Rule and Form Requirement(s) for Shareholder Report Disclosure (If Any)	*Proposed New Disclosure Items for Filing on SEC Forms*	*Proposed Website Availability Requirements*
Financial statements for funds, including schedule of portfolio holdings	Items 27(b)(1) and 27(c)(1) of Form N-1A	Proposed Item 7(a) of Form N-CSR	Proposed rule 30e-1(b)(2)(i)
Financial highlights for funds	Items 27(b)(2) and 27(c)(2) of Form N-1A	Proposed Item 7(b) of Form N-CSR	Proposed rule 30e-1(b)(2)(i)
Remuneration paid to directors, officers and others	Items 27(b)(3) and 27(c)(3) of Form N-1A	Proposed Item 10 of Form N-CSR	Proposed rule 30e-1(b)(2)(i)
Changes in and disagreement with accountants for funds	Items 27(b)(4) and 27(c)(4) of Form N-1A; Item 304 of Reg. S-K	Proposed Item 8 of Form N-CSR	Proposed rule 30e-1(b)(2)(i)
Matters submitted to fund shareholders for a vote	Rule 30e-1(b)	Proposed Item 9 of Form N-CSR	Proposed rule 30e-1(b)(2)(i)
Statement regarding the basis for the board's approval of investment advisory contract	Item 27(d)(6) of Form N-1A	Proposed Item 11 of Form N-CSR	Proposed rule 30e-1(b)(2)(i)
Complete portfolio holdings as of the close of the fund's most recent first and third fiscal quarters	Currently required in Part F of Form N-PORT and website availability currently required for funds relying on Rule 30e-3	N/A	Proposed rule 30e-1(b)(2)(ii)

Website Availability. The Proposals would require a fund to post online all information that the Proposals newly require on Form N-CSR. A fund would be required make this information available from 70 days after the end of the relevant fiscal period until 70 days following the next respective fiscal period (*i.e.*, until the time at which the information is required to be updated for the next fiscal period).

In addition, the Proposals would require a fund (other than a money market fund) to make its complete portfolio holdings, as of its most recent first and third quarter, available on its website. This information would have to be posted within 70 days after the close of each such quarter. The fund's first and third fiscal quarter portfolio holdings would be required to remain publicly accessible online for a full fiscal year.[8] As with other materials required to be posted online, the Proposals would require a paper copy to be delivered to any requestor.

IV. Management Information Table Deleted

Currently, a fund is required to disclose certain information about each of its directors and officers in its annual report ("management information table"). This information is also required to be included in the fund's SAI. The Proposals would remove the management information table from the annual report and Form N-CSR as "unnecessarily duplicative."

V. Amendments to Fund Prospectus Disclosure Requirements

In General. The Proposals would amend Form N-1A requirements specifying disclosure of fees and risks. In addition, the Proposals permit funds that make *limited* investments in other funds to disclose Acquired Fund Fees and Expenses ("AFFE") in a footnote to the fee table and fee summary instead of reflecting AFFE as a line item in the fee table and fee summary. These changes are described below.

Fee Summary. The Proposals would replace the existing fee table in the summary section of the statutory prospectus with a simplified "fee summary." The current fee table, which now contains more detail, would be moved to the statutory prospectus. Certain terms in the current fee table would be replaced with terms that the SEC believes investors will more easily understand (*e.g.*, "Annual Fund Operating Expenses" would become "Ongoing Annual Fees").

The Proposals' requirements for the fee summary are shown in right column of the following chart, with current fee table line items shown on the left.

Current Form N-1A Fee Table	Proposed Form N-1A Fee Summary
Shareholder Fees (fees paid directly from your investment)	***Transaction Fees*** (fees paid each time you buy or sell)
Maximum Sales Charge (Load) Imposed on Purchases (as a percentage of offering price) _____%	Purchase Charge (as a percentage of your investment) [Up to] % (Or [up to] $___, if you invest $10,000)
Maximum Deferred Sales Charge (Load) (as a percentage of _____) _____%	Exit Charge (as a percentage of ______) [Up to] % (Or [up to] $___, if you invest $10,000)
Maximum Sales Charge (Load) Imposed on Reinvested Dividends [and other Distributions] (as a percentage of _____) _____%	Maximum Purchase Charge Imposed on Reinvested Dividends [and Other Distributions] (as a percentage ______) [Up to] _________% (Or [up to] $___, if you invest $10,000)
Maximum Sales Charge (as a percentage of _____) _____%	Maximum Combined Purchase and Exit Charge (as a percentage of _____) _____%
Redemption Fee (as a percentage of amount redeemed, if applicable) _____%	Early Exit Fee (as a percentage of amount redeemed [Up to] _________% (Or [up to] ____, if you invest $10,000)

[8] At present, funds must disclose their holdings as of the end of each fiscal quarter in reports on Form N-PORT that are filed with the SEC and available on EDGAR. The Proposals' requirements are intended to provide a central source of data available instead of requiring investors to access a fund's Form N-PORT reports separately for each quarter.

Exchange Fee _____%	Exchange Fee [Up to] _________ % (Or [up to] ____, if you invest $10,000)
Maximum Account Fee _____%	[This item moved to its own heading, see immediate below.]
	Maximum Account Fee [Up to] _________% (Or [up to] ____, if you invest $10,000)
Annual Fund Operating Expenses (expenses that you pay each year as a percentage of the value of your investment) Management Fees _____% Distribution [and/or Service] (12b-1) Fees _____% Other Expenses _____% _____________________________ _____% _____________________________ _____% Acquired Fund Fees and Expenses _____% Total Annual Fund Operating Expenses _____%	***Ongoing Annual Fees*** (estimated expenses you pay each year as a percentage of the value of your investment) Ongoing Annual Fees __________ % (Or $___, if you invest $10,000) Ongoing Annual Fees with Temporary Discount ______% (Or $___, if you invest $10,000) *Discount expected to end on [date]. [Funds that invest 10% or less of their total assets in acquired funds may omit AFFE from the Ongoing Annual Expenses and instead disclose this amount in footnote.]
Example This example is intended to help you compare the cost of investing in the Fund with the cost of investing in other mutual funds. The Example assumes that you invest $10,000 in the Fund for the time periods indicated and then redeem all of your shares at the end of those periods. The Example also assumes that your investment has a 5% return each year and that the Fund's operating expenses remain the same.	***Example*** This example may help you understand the costs of investing in the Fund. The example assumes that: (1) you invest $10,000 in the Fund; (2) your investment has a 5% return each year; and (3) the Fund's operating expenses are based on the table above.
1 year 3 years 5 years 10 years Although your actual costs may be higher or lower, based on these assumptions your costs would be: $_____ $_____ $_____ $_____	1 year 10 year Although your actual costs may be higher or lower, based on these assumptions, your costs would be: $_____ $_____
1 year 3 years 5 years 10 years You would pay the following expenses if you did not redeem your shares: $_____ $_____ $_____ $_____	1 year 10 year If you sold your shares at the end of the relevant period, your costs would be: $_____ $_____

Acquired Fund Fees and Expenses. The Proposals would permit a fund that invests 10% or less of its *total assets* (based on the fund's 12-month-end average holdings in acquired funds, excluding money market funds) to omit the AFFE line item in its fee table and, instead, disclose the fund's AFFE in a footnote to the fee table and fee summary. Funds that invest more than 10% of their total assets in acquired funds would continue to be required to present AFFE as a line item in their prospectus fee tables and include AFFE in the bottom-line expense figure.[9]

Portfolio Turnover. The Proposals would include portfolio turnover disclosure in both the fee summary and the full fee table, but would be reduced in length.

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[9] Currently, a fund may disclose its AFFE in the "other expenses" fee table line item, without specifically identifying the AFFE amount, provided the AFFE does not exceed 0.01%, or one basis point, of the fund's average net assets.

Risk Disclosure. The Proposals include revisions to the current provisions and instructions in Form N-1A that require a fund to disclose in its prospectus the principal risks of investing in the fund.

In the summary prospectus, the Proposals include new requirements for principal risk disclosure. The Proposals insert the term "briefly" before the current requirement that the fund summarize its principal risks. A new instruction to the summary prospectus would state that a fund should describe its principal risks *in order of importance*, with the most significant risks appearing first (the new instruction would state that a fund may use any reasonable means of determining the significance of risks).

The Proposals also would affect a fund's principal risk disclosures in the statutory prospectus, as well as the summary prospectus. Specifically, the Proposals include three new instructions concerning Form N-1A Item 9(c), which requires a fund to disclose the principal risks of investing in the fund in its statutory prospectus. Because Item 4 of Form N-1A requires a fund to summarize the principal risks of investing in the fund based on the information the fund provides in response to Item 9(c), the proposed new instructions to Item 9(c) would affect Item 4 disclosure in the summary section of the statutory prospectus (or the summary prospectus, if the fund is relying on Rule 498).

- Proposed Instruction 1 states that, in determining whether a risk is a principal risk, a fund should consider both whether the risk would place more than 10% of the fund's assets at risk ("10% standard"), and whether it is reasonably likely that a risk will meet this 10% standard in the future.
- Proposed Instruction 2 is addressed to a fund that invests in other funds (an "acquiring fund" and an "acquired fund," respectively), commonly known as a "fund of funds." The proposed instruction states that, in the case of acquiring funds, risks should be included only if they are principal risks of the acquiring fund, and that a principal risk of an acquired fund should not be included unless it is a principal risk of the acquiring fund.
- Proposed Instruction 3 is targeted at "go anywhere" funds. This instruction would state that, if the fund's strategy permits discretion to invest in different types of assets, the fund must disclose that an investor may not know, and has no way to know, how the fund will invest in the future and the associated risks.

Prospectuses and SAIs Transmitted Under Rule 30e-1(d). The Proposals would rescind 1940 Act Rule 30e-1(d), which permits a fund to transmit a copy of its prospectus or SAI instead of its shareholder report, provided it includes all of the information that is required in the shareholder report. The SEC believes that funds very rarely rely on rule 30e-1(d).

VI. Investment Company Advertising Rules Amendments

The Proposals would amend the investment company advertising rules – Securities Act Rules 482, 156 and 433 and 1940 Act Rule 34b-1.

- The Proposals would amend Rules 482, 433 and 34b-1 to require that investment company advertisements that provide fee or expense figures must also include certain standardized fee and expense figures. The proposed amendments would apply to advertisements of any registered investment company or BDC. Similarly, the Proposals also would amend Rule 433, which sets forth the conditions for the use of a post-filing free writing prospectus, to require a registered closed-end fund or BDC free writing prospectus to comply with analogous fee and expense standardization requirements. Therefore, regardless of whether a registered closed-end fund or BDC advertisement relies on Rule 482 or Rule 433, the advertisement would be subject to the same standardization requirements regarding fee and expense information.
- The Proposals would amend Rule 156 to provide factors an investment company should consider to determine whether representations about the fees and expenses associated with an investment in the fund could be materially misleading.

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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 attorney.