

November 3, 2022

SEC Adopts Streamlined Shareholder Reports for Mutual Funds and ETFs; Fee Information in Fund Advertisements

On October 26, 2022, the SEC unanimously adopted a release (the “[Release](#)”) containing rule and form amendments to require open-end funds to transmit “concise and visually engaging annual and semi-annual reports to shareholders” that highlight key information deemed “particularly important for retail investors to assess and monitor their fund investments.” Other information, including financial statements, will no longer appear in funds’ shareholder reports but, instead, must be available online, delivered free of charge upon request and filed on a semi-annual basis on Form N-CSR.

In particular, the Release amendments:

- Require that open-end fund shareholders receive annual prospectus updates, as well as new “streamlined” shareholder reports;
- Prohibit open-end funds from relying on existing Rule 30e-3 to satisfy shareholder report transmission requirements by making these reports and other materials available online and providing a notice of that availability;
- Require open-end funds to prepare and transmit shareholder reports that include only a *single share class* of a *single fund* in which the shareholder is invested, even where the fund offers multiple share classes or where the fund is a series of a multi-series investment company.

Separately, the Release amends the advertising rules for all registered investment companies, including closed-end funds and business development companies, to require that a presentation of an investment company’s fees and expenses in advertisements and sales literature must be “consistent with the relevant prospectus fee-table presentations and be reasonably current.”

This Alert summarizes the Release in detail below, including notable departures from the August 2020 proposing release (the “proposing release”).¹

Compliance Date

The Release’s rule and form amendments are effective 60 days after the publication of the Release in the *Federal Register*. The compliance date is 18 months following the effective date (*i.e.*, roughly, May 2024).

Shareholder Reports

I. Registrants Subject to Amendments and Scope of Shareholder Report Disclosure

The streamlined shareholder report requirements apply only to Form N-1A registrants, and do not apply to other investment companies such as closed-end funds, unit investment trusts or open-end managed investment companies not registered on Form N-1A (*e.g.*, issuers of variable annuity contracts registered on Form N-3).

Series (Fund) Scope. Currently, Form N-1A registrants may prepare a single shareholder report that covers multiple series. Because the length and complexity of multi-series shareholder reports are inconsistent with the SEC’s goal of creating streamlined shareholder reports, the Release amends Form N-1A to require funds to prepare separate shareholder reports (including both annual and semi-annual reports) for each series. Thus, a fund shareholder will receive a shareholder report covering each individual fund in which the shareholder is invested.

¹ The proposing release is described in Ropes & Gray’s August 14, 2020 [Alert](#).

Class Scope. In a change from the proposing release, the Release will require that a fund prepare and transmit to a shareholder a shareholder report that includes only the single class of a multiple-class fund in which the shareholder invested. The SEC’s rationale is that this requirement will “reduce the complexity of disclosure” as well as “provide more tailored information that is specific to a shareholder’s investment in the fund.”

In recognition of the fact that shareholders and other market participants may benefit from information about the other share classes offered by a multi-class fund, the Release requires website posting of fund documents to enable these persons to obtain information about other share classes more easily. Further, the Release requires funds to tag shareholder report content in a structured, machine-readable data language, thereby making shareholder report disclosure, including class-specific disclosure, easily accessible for aggregation, comparison, filtering and related analysis.

Scope of Content of Streamlined Shareholder Report Generally. The Release generally permits a fund to include in its annual and semi-annual shareholder reports only the information specifically permitted or required by new Item 27A of amended Form N-1A. In addition, the Release adopts three provisions in the instructions to amended Form N-1A concerning the content of a fund’s shareholder report:

- If a fund’s particular circumstances cause the required disclosures to be misleading, a fund is permitted to add information to the report that is necessary to make the required disclosure items not misleading. The Release notes that disclosure in response to this provision generally should be brief;
- If a required disclosure is inapplicable, a fund may omit the disclosure, and a fund similarly may modify a required legend or narrative information if the modified language contains information comparable to what is otherwise required; and
- A fund may not incorporate by reference any information into its shareholder reports.

Separately, amended Form N-1A permits funds to provide additional information to shareholders in the same transmission as the shareholder report, provided the shareholder report is given “greater prominence” than any other materials included within the same transmission, except for certain specified disclosure material.² The excepted disclosure materials include summary prospectuses, statutory prospectuses, notices of the online availability of proxy materials, and other shareholder reports.

II. Specific Content Requirements Applicable to Streamlined Shareholder Reports

The contents of the new “streamlined” shareholder reports for open-end funds are specified in amended Form N-1A. The Release adds new Item 27A to Form N-1A and deletes the provisions in Item 27 of current Form N-1A that relate to annual and semi-annual reports. The following table summarizes the information that funds must include in their annual reports, as well as references to the corresponding item number of both amended and current Form N-1A. The instructions to Item 27A provide that the information in shareholder reports must be presented in the order specified in Item 27A.

² Footnote 132 of the Release states that the SEC “would consider a fund to satisfy the ‘greater prominence’ requirement if, for example, the shareholder report is on top of a group of paper documents that are provided together or, in the case of an electronic transmission, the email or other message includes a direct link to the report or provides the report in full in the body of the message.”

Shareholder Report Contents

	<i>Description</i>	<i>Item of Amended Form N-1A</i>	<i>Item Current Form N-1A with Similar Requirements</i>
Cover Page or Beginning of Report (new identifying information)	Fund/Class Name	Item 27A(b)	n/a
	Ticker Symbol	Item 27A(b)	
	Principal U.S. Market(s) for ETFs	Item 27A(b)	
	Identifying Statement (“[Annual/Semi-Annual] Shareholder Report”)	Item 27A(b)	
	Legend (how to obtain additional information)	Item 27A(b)	
	Statement on Material Fund Changes in the Report (if any)	Item 27A(b)	
Content	Expense Example (retained in a more concise form)	Item 27A(c)	Item 27(d)(1)
	Management’s Discussion of Fund Performance (retained in a more concise form) (optional in semi-annual reports)	Item 27A(d)	Item 27(b)(7)
	Fund Statistics (new)	Item 27A(e)	n/a
	Graphical Representation of Holdings (retained)	Item 27A(f)	Item 27(d)(2)
	Material Fund Changes (new) (optional in semi-annual reports)	Item 27A(g)	n/a
	Changes in and Disagreements with Accountants (retained in summary form)	Item 27A(h)	Item 27(b)(4)
	Availability of Additional Information (a general reference to the availability of additional fund information)	Item 27A(i)	Item 27(d)(3) through (5)
	Householding (optional disclosure on revoking householding consent)	Item 27A(j)	n/a

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

General. The Release states that a shareholder report “will not be subject to page or word limits.” The SEC stated that it believes that “the proposed restrictions on the contents of these reports would naturally limit their length, which would support our goal of concise, readable disclosure without the need for further restrictions on page length or word count.”

Nonetheless, footnote 369 of the Release notes that a shareholder report would be approximately three to four pages in length.

Cover Page/Beginning of Report. The Release adopts a requirement that, if the shareholder report describes “material fund changes,” the fund must include the following prominent statement, or a similar clear and understandable statement, in bold-face type: “This report describes changes to the Fund that occurred during the reporting period.” The definition of “material fund changes” is discussed below.

Expense Presentation. The Release amendments require a simplified expense presentation in the shareholder report, replacing the current shareholder report expense examples (which consists of two different tables, along with a narrative preamble). As shown below, the Release’s simplified expense presentation requires a fund to provide a table showing the expenses associated with a hypothetical \$10,000 investment in the fund during the preceding reporting period in two formats (i) as a percentage of a shareholder’s investment in the fund (*i.e.*, expense ratio) and (ii) as a dollar amount.

What were the Fund costs for the last [year/six months]?
(based on a hypothetical \$10,000 investment)

[Fund or Class Name]	Costs of a \$10,000 investment	Costs paid as a percentage of a \$10,000 investment
	\$	%

The instructions direct funds to calculate “Costs of a \$10,000 investment” by multiplying the figure in the “Cost paid as a percentage of a \$10,000 investment” column by the average account value over the period based on an investment of \$10,000 at the beginning of the period. In an annual report, the figure in the “Cost paid as a percentage of your investment” column is the fund’s expense ratio as it appears in the fund’s most recent audited financial statements or financial highlights. In a semi-annual report, the fund’s expense ratio will be calculated using the expenses for the fund’s most recent fiscal half-year.

The Release retains three current instructions regarding the expense presentation. First, if a fund incurred any “extraordinary expenses” during the reporting period, the fund may briefly describe, in a footnote to the expense table, what the actual expenses would have been if these extraordinary expenses were not incurred. Second, if a fund is a feeder fund, the fund must reflect the aggregate expenses of the feeder fund and the master fund in the expense table and include a footnote stating that the expense table reflects the expenses of both the feeder and master funds. Lastly, if a fund’s shareholder report covers a period of time that is less than a full reporting period, the fund must include a footnote to the table noting this fact with an explanation that expenses for a full reporting period would be greater than the figures presented.³

Management’s Discussion of Fund Performance. The Release amends the management’s discussion of fund performance (the “MDFP”) requirements, as described below. Under the Release amendments, semi-annual reports do not require the MDFP, but funds may include such disclosure on an optional basis.

- **Narrative MDFP Disclosure.** To make the narrative discussion more concise, the Release amends the current requirement to specify the disclosure must “briefly summarize” the “key” factors that materially affected the fund’s performance, including the relevant market conditions and the investment strategies used by the fund’s

³ The Release states that “if a fund’s particular circumstances may cause the required disclosures to be misleading, the final rules will allow a fund to add information to the report that is necessary to make the required disclosure items not misleading.” Further, Instruction 7 to Item 27 A provides that a fund “may modify a required legend or narrative information if the modified language contains comparable information.” Accordingly, it might be appropriate for such a footnote to explain that for a full reporting period, all things being equal, expenses in dollar terms would, and expenses show as a percentage of an investment might, be greater than the figures presented.

investment adviser. Funds are instructed not to include lengthy, generic or overly broad discussions of these factors. Funds are also directed to use graphics or text features – such as bullet lists or tables – to present the key factors, as appropriate. Finally, funds may not include any additional information (e.g., a fund president’s letter to shareholders, interviews with portfolio managers, general market commentary and other similar information) in the shareholder report.

- ***MDFP – Performance Line Graph and Guidance on Use of Market Indexes in Performance Disclosure.*** The Release retains the requirements for the performance line graph currently included in annual reports, with certain amendments to improve the current presentation and to reflect that a shareholder report will cover a single class of a multiple-class fund. The annual report must include a performance line graph that shows the performance of a \$10,000 investment in the fund and in an appropriate broad-based securities market index over a ten-year period, but the Release removes the current instruction that allows the line graph to cover periods longer than the past ten fiscal years.

In addition, the Release revises the definition of “appropriate broad-based securities market index”⁴ to specify that a “broad-based” index is an index “that represents the overall applicable domestic or international equity or debt markets, as appropriate.” The revised definition is designed to ensure that a fund’s broad-based index is one that reasonably represents the applicable market. To assist funds in their selection of indexes, the Release provides the following general guidance and examples of the types of indexes that would satisfy the amendments:

[F]or a fund that invests primarily in the equity securities of a non-U.S. country, an index representing the overall equity market of the non-U.S. country would satisfy the final rule’s requirements. In contrast, an appropriate benchmark for a fund that invests primarily in the equity securities of a subset of the U.S. market, such as healthcare companies, should show its performance against the overall U.S. equities market, rather than a benchmark consisting of only healthcare companies. Such a fund could also show its performance against an additional, more narrowly tailored healthcare index. We . . . do not believe that indexes that include characteristics such as “growth,” “value,” “ESG,” or “small- or mid-cap” represent the overall market, and therefore these indexes would not be appropriate broad-based securities market indexes under the final rules.

An “appropriate” broad-based securities market index that a fund selects may include components that do not directly overlap with the fund’s investments, if the index’s components share similar economic characteristics to the fund’s investments such that they provide an appropriate point of comparison. For example, funds such as multi-asset and alternative strategy funds that do not invest within a single overall debt or equity market could select an index that shares other economic characteristics with the fund, such as an index that has similar volatility to the fund. Additionally . . . a fund that invests in both equity and debt securities could include more than one appropriate broad-based securities market index. Such a fund could also include a blended index – one that combines the performance of more than one index, such as equity and debt indexes – as an additional index to supplement the appropriate broad-based securities market index(es) that the fund includes.

Funds may also include narrower indexes that reflect the market segments in which the fund invests in its performance presentation, along with the required appropriate broad-based securities market index.

- ***MDFP – Performance Table.*** The Release retains the current requirement that funds’ annual reports include a table presenting average annual total returns for the past one-, five-, and ten-year periods, with certain amendments designed to reflect that a shareholder report covers a single class of a multiple-class fund. The

⁴ The amended definition of an appropriate broad-based securities market index affects performance presentations in fund prospectuses, as well as fund annual reports.

amendments require the table to include several additional pieces of information; specifically, it is required to disclose (i) the average annual total returns of an appropriate broad-based securities market index and (ii) the fund's average annual total returns without sales charges (in addition to current disclosure showing returns reflecting applicable sales charges). This information is required only for the share class to which the report relates.

The Release simplifies the statement that currently accompanies the line graph and table, but funds must use text features to make this statement noticeable and prominent (e.g., through graphics, larger font size, or different colors or font styles). In addition, the Release requires funds that provide updated performance information through widely accessible mechanisms, including fund websites, to include a statement in the shareholder report directing shareholders to where they can find this information.

- **MDFP – Additional Amendment.** The Release requires a fund that has a stable distribution policy and was unable to maintain the specified level of distributions to disclose this fact. The Release does not affect existing disclosure concerning distributions that resulted in returns of capital.

Fund Statistics. The Release requires a fund to disclose certain fund statistics in its shareholder reports, including (i) the fund's net assets, (ii) the fund's total number of portfolio holdings, (iii) for funds other than money market funds, the portfolio turnover rate and (iv) total advisory fees paid by the fund during the reporting period. A fund is 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), although the Release encourages a fund to use tables, bullet lists, or other graphics or text features to present such statistics. If a fund discloses an additional statistic, however, the Release cautions that funds should carefully consider the inclusion of any statistic that requires extensive narrative explanation. In addition, the following conditions apply:

- The required fund statistics must precede any additional permitted statistics the fund chooses to include;
- 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 or similar presentation. However, footnotes may not be employed; and
- Any additional statistic must be reasonably related to the fund's investment strategy.

Graphical Representation of Holdings. The Release eliminates a fund's schedule of investments from its annual report but maintains the existing requirements to disclose one or more tables, charts, or graphs depicting the fund's portfolio holdings by category, as of the end of the reporting period, subject to the following limitations.

- **Presentation Based on Total Exposure.** The Release requires funds to base the tabular or graphic representation of holdings on the fund's total exposure to particular categories of investments. Funds may not base this presentation only on the fund's *net* exposure to particular categories of investments. Instead, funds may show net exposure only in addition to the required total exposure presentation. Thus, a fund that holds both long and short positions and chooses to use total exposure as a basis for presenting the fund's graphical representation of holdings must depict the long and short exposures to each category of investments separately.⁵ A fund that uses

⁵ The Release states that “[t]his approach is consistent with the definition of ‘derivatives exposure’ that the Commission adopted in rule 18f-4.”

total exposure as a basis for representing its holdings may include a brief explanation of this presentation, and such a fund may, but is not required, to show a net exposure presentation.

- ***Funds Depicting Portfolio Holdings According to Credit Quality.*** A fund that depicts its portfolio holdings according to credit quality is currently required to describe how the credit quality of its holdings was determined and, if credit ratings are used, the fund must explain why it selected a particular credit rating. The Release adds instructions to funds to keep these disclosures brief and concise.
- ***New Permitted Disclosure of Top Ten Portfolio Holdings.*** The Release amendments permit a fund to disclose, in a table or chart that appears near the fund's graphical representation of holdings, the fund's ten largest portfolio holdings. A fund that includes this presentation also may show the percentage of the fund's net asset value, total investments or total exposure attributable to each such holding.

Material Fund Changes. The Release requires a fund to describe material changes to the fund in the annual report, while semi-annual reports do not require a discussion of changes (although funds may include such disclosure on an optional basis). Specifically, a fund is required to describe a material change since the beginning of the reporting period briefly with respect to any of the following items:

- A change in the fund's name;
- A change in the fund's investment objectives or goals;
- A change in the fund's annual operating expenses, shareholder fees, or maximum account fee, including the termination or introduction of an expense reimbursement or fee waiver arrangements;
- A change in the fund's principal investment strategies;
- A change in the principal risks of investing in the fund (as described in Item 4(b) of Form N-1A); and
- A change in the fund's investment adviser(s), including sub-adviser(s).

In addition, a fund may describe other material fund changes that it would like to disclose to its shareholders and is permitted to describe other changes that may be helpful for investors to understand the fund's operations and/or performance over the reporting period. A fund also may disclose material planned changes in connection with updating its prospectus for the current fiscal year. In each case, a fund must provide a concise description of each change, including enough detail to allow shareholders to understand the change and how it may affect shareholders.

If applicable, this section of the shareholder report must include a legend substantially to the following effect:

This is a summary of certain changes [and planned changes] to the Fund since [date]. For more complete information, you may review the Fund's next prospectus, which we expect to be available by [date] at [website address] or upon request at [toll-free telephone number and, as applicable, email address].

Changes in and Disagreements with Accountants. The Release amendments require funds to include a concise discussion of certain disagreements with accountants in their shareholder reports. Specifically, if a fund has a material disagreement with an accountant that has resigned or been dismissed, the fund must include in its shareholder report (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, plain-English description of disagreement(s) with the former accountant during the fund's two most recent fiscal years and any subsequent interim period that the fund discloses on Form N-CSR. This required information is intended to be a high-level summary of more detailed information that currently is required to appear in funds' shareholder reports. Funds must file the more detailed information on Form N-CSR.

Availability of Additional Information. The Release amendments require funds to include a brief, plain-English statement in the shareholder report that informs investors about certain additional information that is available on the fund's website. This statement must include plain-English references to, as applicable, the fund's prospectus, financial

information, holdings and proxy voting information. In addition, if the shareholder report appears on a fund's website or otherwise is provided electronically, the fund must provide a means of immediately accessing this additional information (such as a hyperlink).

Householding. The Release retains the current provision that permits funds to explain in their annual report how to revoke consent to the householding of the annual report. Rule 30e-1 permits, and will continue to permit, the householding of fund shareholder reports if, in addition to the other conditions set forth in Rule 30e-1, the fund has obtained from each investor written or implied consent to the householding of shareholder reports at such address. The rule will continue to require funds that wish to household shareholder reports based on implied consent to send a notice to each investor stating, among other things, that the investors in the household will receive one report in the future unless the investors provide contrary instructions. In addition, at least once a year, funds relying on the householding provision must explain to investors who have provided written or implied consent how they can revoke their consent. One method to satisfy this annual notice requirement is to include a statement in an annual report, and the Release permits funds to include this statement in the annual report.

III. Transmission of Shareholder Reports

Current Rule 30e-3 generally permits investment companies to satisfy shareholder report transmission requirements by making these reports and other materials available online and providing a notice of that availability instead of directly mailing the report to shareholders. The Release amends the scope of Rule 30e-3 to exclude investment companies registered on Form N-1A, which instead must transmit streamlined annual and semi-annual reports to shareholders. A shareholder must have opted into e-delivery of shareholder reports before a fund may transmit shareholder reports to that shareholder electronically.

IV. Electronic Shareholder Reports

The Release adopts instructions intended to clarify the requirements for electronic shareholder reports and to promote the use of interactive, user-friendly electronic design features. These instructions address:

- Ordering and presentation requirements for reports that appear on a website or are otherwise provided electronically;
- Additional flexibility for funds to add tools and features to reports that appear on a website or are otherwise provided electronically:
 - These instructions encourage funds to use online tools designed to enhance an investor's understanding of material in a shareholder report and also caution that any information in online tools the fund uses – but that is not included in the shareholder report filed on amended Form N-CSR – would have the same status under the federal securities laws as any other website or other electronic content that the fund produces or disseminates.
 - This status instruction is designed to remind funds about liability and any filing requirements associated with any additional information that a fund chooses to include with the online version of its shareholder report. The supplemental information is also subject to a record retention requirement; and
- Required links or other means for immediately accessing information referenced in reports available online.
 - Specifically, if a shareholder report references other information that is available online, the report must include a link (or some other means) of immediately accessing that information. For example, a reference to a fund's prospectus could include a direct link to the prospectus or a link to the landing page that includes prominent links to several fund documents, such as the summary prospectus, SAI and annual reports.

- The link cannot lead investors to a home page or section of the fund’s website other than on which the specified item is posted. This requirement is intended to allow an investor to locate easily (*i.e.*, without numerous clicks) the information in which the investor is interested.

Form N-CSR Amendments

I. Form N-CSR Requirements

The Release amends Form N-CSR and Rule 30e-1 to implement a layered disclosure framework for funds’ shareholder reports. Giving effect to the amendments, funds must file on Form N-CSR certain information that is now included in fund shareholder reports. The Release amendments to Rule 30e-1 require funds to make available on a website the information that they newly have to file on Form N-CSR and to deliver such information upon request to shareholders, free of charge.

The following table summarizes the contents that the Release requires funds to include in their Form N-CSR filings and make available online. Other than the new items to Form N-CSR that the Release adds, the current requirements of Form N-CSR remain unchanged.

<i>Description</i>	<i>Current Rule and Form Requirement(s) for Shareholder Report Disclosure (If Any)</i>	<i>New Disclosure Items for Filing on SEC Forms</i>	<i>New Website Availability Requirements</i>
Financial statements for funds	Items 27(b)(1) and 27(c)(1) of Form N-1A	Item 7(a) of Form N-CSR	Rule 30e-1(b)(2)(i)
Financial highlights for funds	Items 27(b)(2) and 27(c)(2) of Form N-1A	Item 7(b) of Form N-CSR	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	Item 10 of Form N-CSR	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	Item 8 of Form N-CSR	Rule 30e-1(b)(2)(i)
Matters submitted to fund shareholders for a vote	Rule 30e-1(b)	Item 9 of Form N-CSR	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	Item 11 of Form N-CSR	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 (not currently required to be filed on Form N-CSR; not required to be filed on new Form N-CSR)	Rule 30e-1(b)(2)(ii)

Specific New Form N-CSR Requirements

- **Financial Statements.** The Release adopts the requirement for a fund to file its most recent complete annual or semi-annual financial statements on Form N-CSR, and provide certain data points from the financial statements (including the graphical representation of holdings) in its annual and semi-annual reports, in lieu of including the fund's complete financial statements in its shareholder reports. Consistent with current requirements, the fund's annual financial statements must be audited and accompanied by any associated accountant's report, while the semi-annual financial statements need not be audited.

The amendments to Form N-1A eliminate a fund's ability to provide a summary schedule in lieu of providing a complete schedule of portfolio investments as part of the financial statements.

As described above, the Release's amendments require separate shareholder reports for each series or portfolio in a trust, as well as for each share class of a fund. In contrast, the amendments to Form N-CSR do not prohibit funds from preparing and submitting multicolumn financial statements that include multiple series or portfolios, or that address multiple share classes of a fund, provided such financial statement presentation is consistent with Regulation S-X.

- **Financial Highlights.** The Release requires funds to file their financial highlights information on Form N-CSR. The information is identical to the information currently required in fund shareholder reports. Funds are not required or permitted to include financial highlights information in their annual or semi-annual reports, with the exception of the following specific data.
 - A fund must disclose its expense ratio in the "Fund Expenses" section of the annual and semi-annual reports. In addition, while funds' shareholder reports will no longer include annual total returns for each of the preceding five years, the MDFP section of the annual report continues to include certain information regarding a fund's annual total returns. Funds must also disclose their net assets and portfolio turnover rate (which are data elements from the fund's financial highlights) as some of the statistics that funds newly include in their annual and semi-annual reports.
 - Item 13 of current Form N-1A requires a fund to include financial highlights information in its prospectus, and an instruction permits a fund to incorporate this information from a shareholder report by reference into its prospectus. Following the Release's compliance date, fund shareholder reports will no longer include financial highlights. Therefore, the Release amends the current instruction to allow a fund to incorporate by reference into its prospectus its financial highlights from its Form N-CSR.
- **Other New Form N-CSR Requirements.** The Release amends Form N-CSR to require a fund to file on Form N-CSR:
 - The disclosures that Item 304 of Regulation S-K currently requires, concerning changes in and disagreements with accountants (this information complements the new requirement that funds must include a high-level summary of changes in and disagreements with accountants in their annual reports);
 - Information about matters submitted for a shareholder vote (identical to the information currently included in fund shareholder reports);
 - Aggregate remuneration the fund paid to its directors, officers, and certain affiliated persons, unless that information is disclosed as part of the financial statements (identical to the information currently required in fund shareholder reports); and
 - A statement regarding the basis for the board's approval of the fund's investment advisory contract (identical to the information currently required in fund shareholder reports).

The Release deletes two items from fund annual reports without moving them to amended Form N-CSR. The information about a fund's directors and officers that now appears in funds' annual reports (the "management

information table”) and SAI will appear only in the fund’s SAI following the Rule’s compliance date. Additionally, the required statement regarding the operation and effectiveness of a fund’s liquidity risk management program is simply deleted.

II. New Website Content and Availability Requirements; Safe Harbor

The Release requires a fund to make available on a website all of the information that will be newly required on Form N-CSR and no longer included in a fund’s shareholder reports. A fund must make the required disclosures publicly accessible, free of charge, and will be required to make this information available from 60 days after the end of the relevant fiscal period – the same time period that funds are required to transmit their shareholder reports – until 60 days following the end of the next respective fiscal period.

In addition, the Release requires a fund (other than a money market fund) to make available on a website its complete portfolio holdings, as of the close of the fund’s most recent first and third fiscal quarters. The fund’s first and third fiscal quarter portfolio holdings are required to remain publicly accessible online for a full fiscal year.

- The website address where the required information appears must be specified on the cover page or beginning of the shareholder report and cannot be the address of the SEC EDGAR system. The website address must be specific enough to lead investors directly to the particular information, but may be a central site with prominent links to the referenced information;
- The required online materials must be presented in a format convenient for both reading online and printing on paper, and persons accessing the materials must be able to retain permanently, free of charge an electronic copy of the materials in this format; and
- Funds have the option to satisfy the website availability requirement for the information that the fund is newly required to file on Form N-CSR by posting its most recent Form N-CSR report in its entirety on the website the shareholder report specifies. Funds may either post the online information separately for each series of the fund or group the online information by types of materials and/or by series.

The Release amends Rule 30e-1 to include a safe harbor providing that a fund shall have satisfied its obligations to transmit shareholder reports, even if it did not meet the posting requirements of the rule for a temporary period of time. To rely on the safe harbor, a fund must (i) have reasonable procedures in place for the purpose of assuring that the required materials appear online in the manner required and (ii) take prompt action to correct noncompliance with Rule 30e-1’s website availability requirements.

III. Delivery Upon Request Requirements

The Release requires funds to send, by U.S. first class mail or other reasonably prompt means, a paper copy of any of the materials that are required to appear online to any person requesting a copy within three business days after receiving the request. The information must be provided free of charge.

Similarly, a fund must also send, free of charge, by email or other reasonably prompt means, an electronic copy of any materials discussed above within three business days after receiving a request for an electronic copy.

These delivery requirements also apply to any financial intermediary through which shares of the fund may be purchased or sold.

The Release also makes a conforming change to the prospectus cover page statement that Form N-1A currently requires. Instead of stating that “the SAI, the Fund’s annual and semi-annual reports to shareholders, and Form N-CSR are available, without charge, upon request,” the required statement is changed to require a fund to explain that “the SAI, the Fund’s annual and semi-annual reports to shareholders, and other information such as Fund financial statements are available, without charge, upon request.”

Prospectuses and SAIs Transmitted Under Rule 30e-1(d)

The Release rescinds Rule 30e-1(d) under the 1940 Act, 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 the “consolidation of a fund’s prospectus, SAI, and shareholder report disclosures into a single document is inconsistent with the layered disclosure framework” and understands that “funds rarely rely on this rule provision in practice.”

Investment Company Advertising Rules Amendments

The Release amends the investment company advertising rules – Securities Act Rules 482, 156 and 433 and 1940 Act Rule 34b-1. These amendments apply to all investment companies that are subject to the SEC’s advertising rules, including mutual funds, ETFs, registered closed-end funds, and business development companies (“BDCs”).

Standardized Fee and Expense Disclosure. The Release amends Rules 482, 433 and 34b-1 to require that investment company advertisements providing fee or expense figures for the investment company include certain standardized fee and expense figures, and that these figures must adhere to certain prominence and timeliness requirements.

- The amendments to Rule 482 require that investment company advertisements providing fee and expense figures include (i) the maximum amount of any sales load, or any other nonrecurring fee and (ii) the total annual expenses without any fee waiver or expense reimbursement arrangement (collectively, the “required fee and expense figures”) based on the methods of computation for a prospectus that the fund’s 1940 Act or Securities Act registration statement form prescribes for those figures. Any advertisement presenting fee and expenses figures must include these items.
- The amendments to Rules 34b-1 and 433 incorporate Rule 482’s requirements for required fee and expense figures. Consequently, regardless of whether an advertisement is in the form of a Rule 482 advertisement or Rule 34b-1 supplemental sales literature, or whether a registered closed-end fund or BDC advertisement uses Rule 482 or Rule 433 for a free writing prospectus, the advertisement is subject to the same requirements regarding fee and expense information.

Prominence, Fee Waivers and Expense Reimbursements, and Timeliness in Standardized Fee and Expense Figures. The investment company advertising rules amendments incorporate prominence requirements for fee and expense figures that appear in investment company advertisements. As amended, investment company advertisements may include other figures regarding a fund’s fees and expenses in addition to the required fee and expense figures that the amendments require. However, such advertisements must present the required fee and expense figures at least as prominently as any other included fee and expense figures.

- The amendments require advertisements that include a fund’s total annual expenses net of fee waiver or expense reimbursement arrangement amounts also to include the expected termination date of the arrangement.
- The amendments include a timeliness requirement for fee and expense information in investment company advertisements. The timeliness requirement applies to fee and expense figures as well as to relevant narrative information. Fee and expense information must be as of the date of the fund’s most recent prospectus or, if the fund no longer has an effective registration statement under the Securities Act, as of its most recent annual report.

Materially Misleading Statements About Fees and Expenses in Investment Company Sales Literature. The Release amends Rule 156 to address statements and representations about a fund’s fees and expenses that could be materially misleading. Specifically, the amendments provide that representations about fees or expenses associated with an investment in a fund could be misleading because of statements or omissions involving a material fact, including situations where portrayals of the fees and expenses associated with an investment in the fund omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading. The

Release states that the SEC is concerned about “funds that market themselves as ‘zero expense’ or ‘no expense funds’ without mentioning other costs investors would incur when investing in the fund.”

Form N-1A Technical Amendments

The Release amends Form N-1A to update the current SAI requirement to provide the age and length of service of a fund’s officers and directors. Funds will be permitted to instead disclose, for each officer and director, their birth year and the year their service began. The Release also amends Form N-1A to permit a fund to disclose the year the portfolio manager’s service began instead of a portfolio manager’s length of service. These changes permit a fund to disclose static dates (*i.e.*, birth year and/or year service began) rather than updating age and/or years of service annually.

Significant Differences from the Proposing Release

The Release does not include the following items, each of which appeared in the proposing release:

- A fund that invests less than ten percent of the value of its total assets in other funds could have disclosed its acquired fund fees and expenses (“AFFE”) in a footnote to the fee table, instead of including AFFE as a fee table line item (which is included as a component of the fund’s bottom-line ongoing annual operating expenses);
- A summary prospectus requirement to describe a fund’s principal risks in order of importance, with the most significant risks appearing first;
- A standard for determining whether a risk is a principal risk (*i.e.*, whether the risk would place more than ten percent of the fund’s assets at risk or is reasonably likely to do so in the future);
- Replacement of the existing fee table in the summary section of funds’ statutory prospectuses with a simplified fee summary, and a simplified fee example in funds’ prospectuses; and
- Proposed Rule 498B under the Securities Act, which would have permitted a fund to satisfy its (i) annual prospectus updates and (ii) prospectus delivery obligations to a fund’s existing investors under Section 5(b)(2) of the Securities Act. New investors would have received a fund prospectus in connection with their initial investment in a fund, but funds could have opted into proposed Rule 498B’s alternative approach under which funds would not deliver annual prospectus updates to investors thereafter.

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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.