

ONPOINT / A legal update from Dechert's Financial Services Group

SEC Adopts Rule and Form Amendments Relating to Tailored Shareholder Reports and Fee Information in Registered Investment Company and Business Development Company Advertisements

Authored by Brenden P. Carroll, James V. Catano, Stephen T. Cohen, Megan C. Johnson, Edwin Batista, Yanyu Mao, Brendan Powell, Robert Spiro and J.D. Williams

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The Securities and Exchange Commission recently adopted (i) rule and form amendments for mutual funds and exchange-traded funds registered on Form N-1A (collectively, funds)¹ that will substantially impact the design, content and transmission of shareholder reports and (ii) rule amendments that will require fee comparability in investment company advertising (collectively, Final Rules or amendments). The Final Rules reflect the SEC's goal of requiring funds to present key information to shareholders clearly and concisely.

While the Final Rules were largely adopted as proposed, there were several modifications. Notably, the SEC did not adopt proposed Rule 498B under the Securities Act of 1933 (1933 Act), which would have provided an alternative approach to satisfy prospectus delivery requirements for existing fund investors, or the proposed amendments to funds' prospectus fee and risk disclosures. The Final Rules, among other things:

- Require funds to transmit concise and visually engaging annual and semi-annual reports.
- Require many funds to adopt a new "broad-based securities market index".
- Require funds to make available online certain information currently included in shareholder reports that the SEC believes may be less relevant to retail investors and of more interest to financial professionals.
- Amend the scope of Rule 30e-3 under the Investment Company Act of 1940 to exclude investment companies registered on Form N-1A.
- Update requirements for the presentation of fund fees and expenses in advertisements and sales literature for registered investment companies and business development companies (BDCs), in order to improve consistency with presentations in other documents.

The SEC provided an 18-month transition period for most of the amendments (ending July 24, 2024). Notably, shareholder reports transmitted to shareholders after such date will be required to comply with the amendments.

¹ [Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Release No. IC-34731 \(Oct. 26, 2022\) \(Adopting Release\)](#). At times, this *Dechert OnPoint* tracks the Adopting Release without the use of quotation marks. Terms not defined in this *Dechert OnPoint* have the meaning assigned to them in the Adopting Release. The amendments were proposed by the SEC in August 2020. [Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Release No. IC-33963 \(Aug. 5, 2020\) \(Proposing Release\)](#). For additional information regarding the Proposing Release, please refer to *Dechert OnPoint*, [SEC Proposes to Modernize Disclosure Framework for Mutual Funds and Exchange-Traded Funds, Modify Fee Information in Investment Company and Business Development Company Advertisements](#).

Accordingly, the first shareholder reports required to comply with these amendments will be those that cover the fiscal year/period ending May 31, 2024, which will likely be transmitted to shareholders after the compliance date.

This *Dechert OnPoint* provides a detailed overview of the principal elements of the Final Rules as well as a summary of select considerations for implementation.

Executive Summary and Overview

Under the Federal securities laws, a fund (or a financial intermediary) must deliver to shareholders copies of the fund's annual and semi-annual shareholder reports, which provide information about the fund's operations during the most recent full- or half-year period, respectively. In the Adopting Release, the SEC stated that, based on investor feedback, it believes that investors prefer and would benefit from more concise, layered disclosure with graphical representations of information rather than long, complex and technical disclosure. As such, the SEC adopted the Final Rules to create a new layered disclosure approach for shareholder reports. The new approach aims to highlight information that the SEC believes best helps investors assess and monitor their investments, taking into consideration their different levels of knowledge and experience. Additionally, the SEC updated requirements regarding fee and expense presentations in advertisements. Principal components of the Final Rules are summarized below.

Shareholder Reports Tailored to the Needs of Retail Investors

The SEC adopted, substantially as proposed, new Item 27A to Form N-1A, which specifies the design and content of funds' annual and semi-annual shareholder reports.

Under the amendments, shareholder reports will be modified to highlight key information that the SEC believes is particularly important for retail investors to assess and monitor their fund investments, including: fund expenses; performance; portfolio holdings; and material fund changes during the reporting period. In the Adopting Release, the SEC estimated that each shareholder report, which will cover a single fund or class (for multi-class funds), will be three to four pages in length or shorter. However, such reports will not be subject to a page or word limit. In connection with the Proposing Release, the SEC published a hypothetical streamlined shareholder report² and requested feedback on the report. Although the SEC has not published an example of a shareholder report that corresponds to the Final Rules, fund groups may wish to refer to the hypothetical streamlined shareholder report in the Proposing Release for context.

The amendments require that material fund changes be disclosed in annual reports and permit disclosure of material fund changes in semi-annual reports. The amendments also encourage funds to use, as appropriate, graphic or text

² See [Hypothetical Streamlined Shareholder Report](#) (August 5, 2020).

features (e.g., tables, bullet lists, question-and-answer formats) to promote effective communication and to use online tools to enhance an investor's understanding of the material in the shareholder reports.³

Availability of Additional Information on Form N-CSR and Online

Under the Final Rules, certain information currently included in shareholder reports as discussed below will continue to be filed with the SEC on Form N-CSR but will not be included in shareholder reports. This information will be made available online on a specified website and will be delivered in paper or electronically upon request free of charge to shareholders.⁴ The information provided on Form N-CSR and on the website may include information for multiple funds and classes.⁵

Amendments to the Scope of Rule 30e-3 to Exclude Open-End Funds

Currently, funds may rely on Rule 30e-3 to satisfy shareholder report transmission requirements by making shareholder reports and other materials available online and providing notice of the reports' online availability. Investors may request a complete paper shareholder report, to be provided free of charge. The SEC adopted this "notice and access" approach to transmitting shareholder reports in 2018.

The amendments modify the scope of Rule 30e-3 to exclude investment companies registered on Form N-1A (i.e., mutual funds and ETFs). The Adopting Release notes that the amendments to Rule 30e-3 will ensure that all fund shareholders experience the anticipated benefits of the new tailored disclosure framework. The Final Rules do not affect the availability of Rule 30e-3 for other registered investment companies (such as registered closed-end funds) or unit investment trusts (other than as described below with respect to variable contract UITs). Thus, annual or semi-annual reports must be delivered to fund shareholders either in paper or (if the shareholder has so elected) electronically.

Fee and Expense Information in Registered Investment Company and BDC Advertisements

The Final Rules require that presentations of registered investment company and BDC fees and expenses in advertisements and sales literature be consistent with relevant prospectus fee table presentations and be reasonably

³ The Final Rules provide flexibility as to the tools that funds can use. See Amended Form N-1A Item 27A(a) Instruction 8. "Funds also may include: (i) a means of facilitating electronic access to video or audio messages, or other forms of information (e.g., hyperlink, website address, Quick Response Code ("QR code"), or other equivalent methods or technologies); (ii) mouse-over windows; (iii) pop-up boxes; (iv) chat functionality; (v) expense calculators; or (vi) other forms of electronic media, communications, or tools designed to enhance an investor's understanding of material in the annual or semi-annual shareholder report." The SEC adopted certain accessibility-related requirements to help ensure that investors can easily reach and navigate the information that appears online and reminded funds, in the Adopting Release, of requirements to comply with applicable accessibility-related requirements, such as those under the Americans with Disabilities Act.

⁴ Funds will be required to make their annual and semi-annual shareholder reports, along with certain other fund documents, available online in accordance with the requirements of Rule 498 under the 1933 Act, as applicable.

⁵ Amended Rule 30e-1(b)(2) states that only the disclosures required by Items 7 through 11 of Form N-CSR (i.e., not including the shareholder reports that may only cover one fund and one class (of a multi-class fund)) must be publicly accessible, free of charge, at a specified website, no later than 60 days after the end of the fiscal half-year or fiscal year of a company. However, to satisfy this requirement, a fund may make its most recent report on Form N-CSR available on such website. See also Item 27A(i) of Amended Form N-1A. Such information may be made available on either the fund's website or another website belonging to, for example, the fund sponsor.

current. In particular, an advertisement that provides fee or expense figures for a registered investment company or BDC must include, at least as prominently as any other fee or expense figure included in the advertisement: (1) the maximum amount of any sales load or other non-recurring fee and (2) total annual expenses without any fee waiver or expense reimbursement. If the advertisement provides net expenses after a fee waiver or reimbursement arrangement, the advertisement must disclose the expected termination date of the fee waiver or expense reimbursement arrangement.

Annual and Semi-Annual Reports

Scope of Annual and Semi-Annual Report Disclosure

The Final Rules require that funds prepare and transmit separate annual and semi-annual reports for a single fund and share class. As a result, shareholders will receive annual and semi-annual reports pertaining only to the series and class in which they are invested. This is a change from current practice, under which funds may send shareholder reports containing information covering multiple series or classes, including series or classes in which a shareholder does not invest. Although this approach will reduce some of the efficiencies created by the streamlined shareholder reports, the SEC emphasized that this change would further its goal of enabling shareholders to better assess and monitor their investments by reducing the length and complexity of shareholder reports and stated that it believes shareholders are more likely to read a shareholder report that focuses solely on their specific investments.

The amendments will generally allow a fund to include in its annual and semi-annual reports only the information specifically required or permitted by Item 27A of Form N-1A⁶ and will generally require funds to reorganize the presentation of currently-required information. If a fund's unique circumstances cause the required disclosure to become misleading, the amendments will allow a fund to add information that is necessary to make the disclosure not misleading (*i.e.*, information required by Rule 8b-20 under the 1940 Act), which the Adopting Release notes generally should be brief. Funds will be permitted to omit information required by Item 27A that is inapplicable, and funds also may modify a required legend or narrative information if the modified language contains comparable information to what is required. Additionally, under the Final Rules, funds are not allowed to incorporate by reference any information into their annual and semi-annual reports.

The amendments regarding annual and semi-annual shareholder report disclosure will apply only to shareholder reports for investment companies registered on Form N-1A and will not extend to other registered investment companies, such as UITs, closed-end funds, or open-end managed investment companies not registered on Form N-1A.

⁶ For example, the SEC stated in the Adopting Release that the Final Rules will not allow funds to include any additional information—such as a fund president's letter to shareholders, interviews with portfolio managers, general market commentary, and other similar information—in the shareholder report. The SEC clarified that additional information could, however, accompany the shareholder report provided that it meets the prominence requirements for materials that accompany the report. See Instruction 12 to Item 27A(a) of amended Form N-1A. As exceptions to the "greater prominence" requirement, the SEC identified summary prospectuses, statutory prospectuses, notices of the online availability of proxy materials, and other shareholder reports.

Contents of the Annual and Semi-Annual Report⁷

The Final Rules reimagine the contents and presentation of annual and semi-annual shareholder reports, which will be prepared for a single fund and share class. The principal elements of these new content and presentation requirements are summarized below.

- Cover Page or Beginning of Report. The amendments to Form N-1A require that the cover page or the beginning of the annual and semi-annual report contain: the name of the fund; the class to which the annual and semi-annual report relates; the exchange ticker symbol of the fund's shares (or class thereof); the principal U.S. markets on which the fund's shares are traded (for ETFs); a statement identifying the document as an "annual shareholder report" or "semi-annual shareholder report"; a legend;⁸ and a prominent statement, in bold-face type, that the report describes changes to the fund if such changes are reported.⁹ The Adopting Release states that the reference to the "beginning" of a shareholder report is meant to address circumstances where there is no physical cover page preceding the report (for example, when the report is viewed on a computer or mobile device).
- Fund Expenses. Funds must provide a table showing the expenses associated with a hypothetical \$10,000 investment in the fund during the preceding reporting period as a dollar amount and a percent of a shareholder's investment in the fund (*i.e.*, the expense ratio from the most recent audited financial statements, or, for semi-annual reports, the fund's expense ratio calculated in the manner required by Instruction 4(b) to Item 13(a) of Form N-1A using expenses for the most recent half-year).¹⁰ This simplified table will replace the current disclosure, which requires two different tables and a narrative preamble.
- Management's Discussion of Fund Performance (MDFP). The Final Rules largely maintain the current requirements for the MDFP section of the annual shareholder report (semi-annual reports will not be required to include an MDFP section), with a few narrowly tailored changes.
 - *Narrative MDFP Disclosure (Not Required for Money Market Funds)*. Annual reports will continue to include a narrative discussion of factors that materially affected a fund's performance during the most recent fiscal year. However, the Final Rules encourage more concise MDFP disclosure, specifying that the disclosure must "briefly summarize" the "key" factors that materially affected fund

⁷ See Appendix – Table 1: Annual Report Contents for a table describing annual report amendments and their applicable rule and form provisions. This table summarizes the contents that funds will be required to include in their annual reports—or, alternatively, file on Form N-CSR—in comparison to current shareholder report disclosure requirements.

⁸ Item 27A(b)(4) requires that the following statement be included: This [annual or semi-annual] shareholder report contains important information about [the Fund] for the period of [beginning date] to [end date]. You can find additional information about the Fund at [_____]. You can also request this information by contacting us at [_____].

⁹ As noted above, funds will be permitted to omit information required by Item 27A that is inapplicable (for example, if there were no material changes since the beginning of the reporting period).

¹⁰ If the 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. Extraordinary expenses are distinguished by their unusual nature and by the infrequency of their occurrence. Unusual nature means the expense has a high degree of abnormality and is clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the fund, taking into account the environment in which the fund operates. See Instruction 1(d) to Item 27A(c) of Amended Form N-1A. The amendments also include specific instructions with respect to feeder funds and reports covering periods of time that are less than a full reporting period.

performance during the last fiscal year (including the relevant market conditions and the investment strategies and techniques used by the fund's investment adviser), and funds are instructed not to include lengthy, generic or overly broad discussions of these factors. Funds also are directed to use graphics or text features such as bullet lists or tables to present the key factors. The Final Rules do not permit the inclusion of additional information such as portfolio manager interviews or general market commentary in the shareholder report.

- *Performance Line Graph.* The Final Rules retain requirements for the performance line graph currently included in annual reports, with minor amendments. In particular, the line graph may not cover periods longer than the past ten fiscal years. Additionally, consistent with the requirement that a shareholder report may only cover one share class, such report may only present performance information for the class contained in the report.
- *Use of Market Indexes in Performance Disclosure.* The Final Rules also amend the definition of an appropriate “broad-based securities market index”¹¹ to require that all funds compare their performance to an index that represents the overall applicable domestic or international equity or debt market, as appropriate. Funds may compare their performance to other, more narrowly tailored indexes (such as those reflecting the market segments in which the fund invests) in addition to the overall applicable securities market. While an additional index can be a blended index, a fund's broad-based securities market index cannot be a blended index.¹²

Importantly in the Adopting Release, the SEC stated that it does not believe that indexes that include characteristics such as “growth,” “value,” “ESG,” or “small- or mid-cap” represent the overall market, and thus would not be appropriate broad-based securities market indexes under the Final Rules.¹³ As a result, it is likely that many funds will need to adopt new performance benchmarks (although funds should be able to retain their existing performance benchmarks – as an additional index – that do not meet the new definition, if desired).

According to the SEC, this amended definition is designed to ensure that a fund's broad-based index is one that provides investors with a clear picture of how their investments compare to the broader securities market (even if the broader securities market is not representative of a fund's investments).

¹¹ Similar to current requirements, an “appropriate broad-based securities market index” must continue to be “administered by an organization that is not an affiliated person of the fund, its investment adviser or principal underwriter, unless the index is widely recognized and used.” This amended definition also applies to fund prospectuses.

¹² As noted by the SEC in the Adopting Release, “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 index – as an additional index to supplement the appropriate broad-based securities market index(es) that the fund includes.”

¹³ As explained by the SEC in the Adopting Release, 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, the Adopting Release states, “for 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.”

- *Performance Table.* Substantially as proposed, the Final Rules retain the current requirement that annual shareholder reports include a table presenting average annual total returns for the past 1-, 5- and 10-year periods, as applicable. Accordingly, the Final Rules require the table to include the average annual total returns of an appropriate broad-based securities market index and the fund's average annual total returns without sales charges (in addition to current disclosure showing returns reflecting applicable sales charges).¹⁴ Funds are permitted to add brief disclosure to contextualize the line graph and average annual returns table, such as describing a material change during the performance period (e.g., a change to the fund's investment adviser or investment strategies) by adding a brief legend or footnote to such change and when it occurred.
- *Other MDFP Amendments.* The Final Rules simplify the requirements for a fund to discuss the effect of any policy or practice of maintaining a specified level of distribution to shareholders (in other words, a stable distribution policy). Under the Final Rules, a fund that has a stable distribution policy and was unable to maintain the specified level of distribution or had distributions that resulted in returns of capital during the past fiscal year will be required to disclose that fact.
- Fund Statistics. The Final Rules require funds to disclose certain fund statistics in their annual and semi-annual reports, including: net assets; total number of portfolio holdings; portfolio turnover rate (for funds other than money market funds); and the total advisory fees paid (in dollars paid) by the fund during the reporting period.¹⁵ A fund also may disclose any additional statistics reasonably related to the fund's investment strategy that the fund believes would help shareholders better understand the fund's activities and performance during the reporting period. The Final Rules mandate that required fund statistics precede any additional disclosed statistics and do not permit a footnote presentation. The Final Rules require that multi-class funds calculate and present certain statistics on a fund-level basis (e.g., total amount of advisory fees paid and number of holdings) and other statistics on a class-level basis (e.g., performance). Finally, if a fund provides statistics that are also required under Form N-1A, the Final Rules mandate that the fund follow Form N-1A instructions describing the calculation method for such statistics.¹⁶
- Graphical Representation of Holdings. Under the Final Rules, the current requirements regarding the graphical representation of holdings that funds include in their shareholder reports are retained, with revisions designed to improve the current requirements. Currently, and under the Final Rules, funds must disclose one or more tables, charts or graphs showing the fund's portfolio holdings by category, as of the end of the reporting period. These visuals must be reasonably designed to clearly depict the types of investments made by the fund, given its investment objectives. Under the Final Rules, funds are permitted to show their holdings based on total exposure to particular categories of investments (e.g., asset class,

¹⁴ The Final Rules require a more simplified statement to accompany that the line graph and table—that the fund's past performance is not a good predictor of the fund's future performance. Such statement will be made noticeable and prominent through text features (such as graphics, larger font size or different colors or font styles).

¹⁵ Total advisory fees paid by the fund are not required to be disclosed in the semi-annual report and should include any reduction or reimbursement of such fees.

¹⁶ In addition, if a statistic is included in, or could be derived from, a fund's financial statements or financial highlights, the Final Rules require a fund to use or derive such statistic from the fund's most recent financial statements or financial highlights. See Instruction 5 to Item 27A(e).

industry or sector, geographic region or credit quality¹⁷) in addition to methods currently available (e.g., percentage of net asset value or total investments attributable to each category). In an additional change from the proposal, funds also are permitted to include, along with the graphical representation of holdings, a list of their ten largest portfolio holdings and the percentage of the fund's net asset value, total investments or total exposure attributable to each such holding. Funds may base the graphical representation of holdings on net exposure, as long as total exposure also is presented. The SEC has expressed that showing only a net exposure of holdings may not be representative of a fund's exposures, especially for funds that hold both long and short positions. For example, allowing net exposure presentations could lead investors to wrongly believe that a fund's exposure to a particular sector or industry is lower than the actual exposure.¹⁸

- Material Fund Changes (Optional for Semi-Annual Shareholder Reports). The Final Rules require funds to briefly describe in the annual report material changes that occurred since the beginning of the reporting period. If the report contains material fund changes, the cover page (or beginning of the report) must contain 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." A fund will be required to describe a material change with respect to any of the following:
 - A change in the fund's name (as described in Item 1(a)(1) of Form N-1A).
 - A change in the fund's investment objectives or goals (as described in Item 2 of Form N-1A).
 - A change in the fund's annual operating expense, shareholder fees or maximum account fee (as described in Item 3 of Form N-1A), including the termination or introduction of an expense reimbursement or fee waiver arrangement.
 - A change in the fund's principal investment strategies (as described in Item 4(a) of Form N-1A).
 - A change in the principal risks of investing in the fund (as described in Item 4(b) of Form N-1A).
 - A change in the fund's investment adviser(s), including sub-adviser(s) (as described in Item 5(a) of Form N-1A).¹⁹

Under the amendments, a fund also may describe in its shareholder reports other material changes that the fund would like to disclose to its shareholders or changes that may be helpful for investors to understand the fund's operations and/or performance over the reporting period. The Final Rules instruct funds to provide concise descriptions of each change that include enough detail for shareholders to understand what has changed and how

¹⁷ In the Adopting Release, the SEC noted that current disclosures regarding credit quality (including how credit quality is determined, how credit ratings are used and why the fund selected a particular credit rating) can be lengthy, and the Final Rules instruct that such disclosure must be brief and concise.

¹⁸ For example, if a fund had a 5% long position in one security from a particular industry while simultaneously holding a 4% short position in another security in the same industry, a total exposure presentation will require the fund to show a 5% long position and 4% short position in the same industry. A net exposure presentation only would show a position of 1% in this industry, based on the assumption that the two investments are inversely correlated. However, such assumed correlations do not always hold.

¹⁹ In response to comments, the SEC removed portfolio manager changes from the list of material changes that must be reported in a shareholder report.

this may affect them. The Final Rules also permit, but do not require, funds to discuss material planned changes in connection with updating their prospectuses for the current fiscal year.²⁰

The SEC declined to define a material change for shareholder report purposes as a change that would require a fund to file an amendment to the fund's registration statement pursuant to Rule 485(a) under the 1933 Act. Funds instead must determine whether a change is material based on "the facts and circumstances of the fund and the specific change." The Adopting Release provides guidance about the factors that funds may wish to consider in making a determination of materiality, including: the nature of the change; whether it reflects a material change in the way the fund is currently being managed; whether it reflects a material change in the fund's risk profile; which section(s) of the prospectus the change affects; and how likely the change would be to influence a shareholder's decision to continue to invest in the fund.²¹

- Changes in and Disagreements with Accountants. The Final Rules require funds to include in the annual and semi-annual shareholder reports a concise description of certain disagreements with accountants. If a fund had a material disagreement with an accountant that has resigned or been dismissed, the Final Rules require the fund to include in the annual and semi-annual report: a statement of whether the accountant resigned, declined to stand for re-election or was dismissed, and the date thereof; and a concise, plain English description of disagreement(s) with the former accountant during the fund's two most recent fiscal years and any subsequent interim period disclosed on Form N-CSR. This represents a high-level summary of more detailed information that is currently required to be disclosed in shareholder reports.
- Availability of Additional Information. The Final Rules mandate that funds include a short, plain English statement in the shareholder report informing investors about certain additional information that is available on the fund's website.²² The statement must include, as applicable: descriptions of the fund's prospectus; financial information; holdings; and proxy voting information. Funds are permitted to refer to additional materials available on the website, if funds believe shareholders would likely view such information as important.²³ If the shareholder report appears on the fund's website or otherwise is provided electronically,

²⁰ A fund will not be required to disclose a material change that occurred during the reporting period and otherwise would be required to be disclosed if the fund already disclosed the change in its last annual shareholder report because, for example, the fund planned to make the change in connection with updating its prospectus (and chose to disclose it in the last annual report) or the change occurred before the last annual shareholder report was transmitted to shareholders. See Instruction 3 to Item 27A(g) of Amended Form N-1A.

²¹ For example, the Adopting Release notes that if a change to the fund's principal risks is due to a change in the way the fund is managed, such a change would likely be considered a material change. By contrast, if a fund that invests heavily in a foreign country changes its description of that foreign country risk as a result of changes in the country's political landscape, such a change would likely not constitute a material change.

²² In the Adopting Release, the SEC notes that such information may be available either on the fund's website, or another website belonging to, for example, the fund sponsor.

²³ In the Adopting Release, the SEC states that the additional information referred to in the annual and semi-annual report would have the same status under the Federal securities laws as any other website or other electronic content that the fund produces or disseminates. The SEC also stated that any information in online tools the fund uses, but is not included in the report the fund files 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, and noted liability, filing and record retention requirements applicable to such information.

the fund also must provide a means of immediately accessing the additional information, such as a hyperlink or QR code.

- **Householding (Not Required for Semi-Annual Report).** In line with the proposed rules, the Final Rules retain the current provisions allowing funds to explain in their annual reports how shareholders can revoke consent to the householding of the annual report. Funds that wish to household shareholder reports based on implied consent still will be required to send notice to investors stating that the investors in the household will receive one report in the future, unless they instruct otherwise.²⁴

Format and Presentation of Annual and Semi-Annual Report²⁵

The amendments adopt general instructions regarding the format and presentation of shareholder reports that streamline such presentation and encourage funds to use “plain English, investor-friendly principles when drafting their reports.” For example, the information included in annual and semi-annual reports must be provided in the same order as it is required to be presented under the amendments to Form N-1A. Funds must also use plain English principles for the organization, wording and design of the annual and semi-annual shareholder report, and they are encouraged to use design techniques to promote effective communication, as appropriate, such as question-and-answer format, charts, graphs, tables, bullet lists, and other graphics and text features to help provide context for the information present. In addition, the scope and content requirements for semi-annual reports are similar to the scope and content requirements for annual reports, with certain modifications for semi-annual reports.

The amendments include certain instructions that clarify the requirements for electronic annual and semi-annual reports and encourage funds to use interactive, user-friendly electronic design features. Such instructions include: ordering and presentation requirements for reports that appear on a website or are presented electronically; instructions providing additional flexibility for funds to add tools and features to reports that appear on a website or are provided electronically; and required links or other means for immediately accessing information referenced in reports available online.

Amendments to Form N-CSR and Availability of Contents of Form N-CSR on Fund Websites

As part of its implementation of the layered disclosure framework, the SEC amended Form N-CSR and Rule 30e-1. The Form N-CSR amendments require funds to include certain information currently required in shareholder reports as part of the information provided in filings made with the SEC on Form N-CSR.²⁶ The amendments to Rule 30e-1 require funds to post on their websites Items 7 through 11 of amended Form N-CSR within 60 days of the end of the

²⁴ At least once a year, funds must explain to investors who have given their written or implied consent, how they may revoke such consent. Such requirement may be satisfied by including a statement in the annual report.

²⁵ See Appendix – Table 2: Outline of Annual Report for a table outlining the location of required items on the annual report.

²⁶ In the Adopting Release, the SEC acknowledged that commenters sought reassurance that information that will now be submitted online on Form N-CSR will still be considered part of the “total mix of information” assessed by courts in instances of shareholder litigation, stating that “[t]he [F]inal [R]ules are not intended to change courts’ assessment of the total mix of information.”

fiscal period.²⁷ While funds must prepare separate shareholder reports for fund and class, funds are permitted to prepare a combined Form N-CSR for multiple series and/or multiple share classes.²⁸

Amendments to Form N-CSR

The amendments require funds to continue to file complete financial statements on Form N-CSR instead of including the entirety of their financial statements in the new, tailored annual and semi-annual shareholder reports and continue to require that annual financial statements be audited (and accompanied by an accountant's report), while the semi-annual financial statements need not be audited.

Consistent with the SEC's concept of a layered disclosure framework, certain shareholder report information also will be disclosed on Form N-CSR, with more detail. For example, a fund's full schedule of investments is not required in the shareholder report, though graphical representations of holdings remain as a component of shareholder reports. However, a fund's full schedule of investments will be included on Form N-CSR as part of the financial statements. Funds must file the entirety of their financial highlights on Form N-CSR, while only a few select pieces of information from the financial highlights will appear in the funds' new, tailored annual and semi-annual reports. When applicable, funds must include in the annual and semi-annual reports a concise discussion of certain material disagreements with accountants that have resigned or been dismissed, complementing the current Form N-CSR requirement of more detailed information about changes in and disagreements with accountants.

Certain information currently included in shareholder reports will only be presented in Form N-CSR filings (and made available online), such as information about matters submitted for a shareholder vote. The SEC stated its belief that the removal of this information from shareholder reports would ensure shareholder reports stay concise and retail-focused. Further, information regarding aggregate remuneration paid to directors, officers and affiliated persons, as well as the statement regarding the basis for the board's approval of the fund's investment advisory contract will be filed on Form N-CSR (and made available online) and not included in shareholder reports.

The annual and semi-annual shareholder report content (*i.e.*, information responding to Item 27A(b)-(h)), which is included in Form N-CSR, will be tagged in Inline XBRL in accordance with Rule 405 of Regulation S-T and the EDGAR Filer Manual. The other information included in Form N-CSR, such as the financial statements, need not be tagged. This requirement continues a trend from the SEC to require more information to be made available for aggregation, comparison, filtering and other analysis.

Website Availability of Information Filed on Form N-CSR

The amendments to Rule 30e-1 require funds to post on their websites Items 7 through 11 of amended Form N-CSR. The required disclosure must be publicly accessible, free of charge, and be made available from 60 days after the end of the relevant fiscal period until 60 days following the end of the next respective fiscal period.

A fund (other than a money market fund) also is required to make its complete portfolio holdings, as of the close of the fund's most recent first and third fiscal quarters, available on a website within 60 days after the close of each

²⁷ Currently, this information is contained within shareholder reports and must be transmitted to shareholders within 60 days of the close of the relevant period. See Rule 30e-1(d). Funds will continue to be required to file the complete Form N-CSR with the SEC within 10 days after transmission of the shareholder reports under Rule 30e-1. See Rule 30b2-1.

²⁸ See Rule 30e-1; see also Adopting Release at 149-150.

quarter and remain publicly accessible online for a full fiscal year.²⁹ Currently, this portfolio holdings information is required in Form N-PORT, and website availability of this information is currently required for funds relying on Rule 30e-3. The SEC stated in the Adopting Release that the new portfolio holdings information will complement the second and fourth fiscal quarter portfolio holdings information that funds are required to make available on the fund's website and will be easier for investors to access than Form N-PORT. To ensure shareholders have access to the information required to be posted online, the website must be specific enough to lead investors directly to the particular information; however, the website address may be a central site with prominent links to the referenced information.

To a certain extent, the amendments provide funds with flexibility to decide how to post the information online. To satisfy the website availability requirement for the newly required information on Form N-CSR, a fund may post its most recent Form N-CSR in its entirety on the website. Additionally, funds may either post the online information separately for each fund or group the information by types of materials and/or by series.³⁰ The required online materials must be presented in a format convenient for both reading online and printing on paper. Persons accessing the materials must be able to permanently retain an electronic copy of the materials in this format, free of charge.

The amendments include a safe harbor providing that a fund will have satisfied its obligations to transmit shareholder reports even if it did not meet the posting requirements of the rule for a temporary time period. To rely on this safe harbor, funds must have reasonable procedures in place to help ensure the required materials appear online in the manner the amendments require. Funds also must take prompt action to correct noncompliance with the rule's website availability requirements. Further, the safe harbor requires prompt action as soon as practicable following the earlier of when the fund knows, or reasonably should have known, the required documents were not available in the manner prescribed.

Finally, funds must deliver the online materials upon request. Funds must send, at no cost to the requestor, any materials required to appear online within three business days after receiving a request for a paper copy. A fund must also send, at no cost to the requestor, by email or other prompt electronic means, an electronic copy of any materials discussed above, within three business days after receiving a request for an electronic copy.

Removal of Certain Information from Annual Shareholder Reports

The Final Rules eliminate the requirement that funds include in their annual reports a table with information about a fund's directors and officers and a statement regarding the liquidity risk management program (this information also will not be required to be filed as part of a fund's Form N-CSR). The management information table is currently required to be disclosed in both the fund's annual report and SAI.

²⁹ See Amended Rule 30e-1(b)(2)(ii). This information already is required to be filed on Form N-PORT; however, the new requirement provides centralized access to this information.

³⁰ Funds will have flexibility in how online information is presented, so long as it meets certain presentation requirements. Funds may either post the online information separately for each series of the fund or group the online information by type of materials and/or by series. The SEC stated that if a fund groups the information on its website by type of materials and/or by series, the grouped information would have to meet certain presentation requirements, including that the grouped information: (1) is presented in a format designed to communicate the information effectively; (2) clearly distinguishes the different types of materials and/or each series; and (3) provides a means of easily locating the relevant information.

Amendments Narrowing Scope of Rule 30e-3

Rule 30e-3 currently permits registered investment companies to satisfy shareholder report transmission requirements through a “notice and access” approach, under which funds are permitted to make the reports and other materials available online and provide notice of internet availability instead of directly mailing the report to shareholders. The amendments limit the scope of Rule 30e-3 to exclude investment companies registered on Form N-1A (including variable contract UITs whose underlying funds are solely funds that are registered on Form N-1A). Variable contract UITs will no longer be able to rely on Rule 30e-3 to satisfy shareholder report transmission requirements pursuant to Rule 30e-2 with respect to underlying funds registered on Form N-1A. As a result, funds may default to mail-based delivery of shareholder reports, though many investors will receive or review shareholder reports online, whether by opting into e-delivery or via links provided in the streamlined shareholder reports.

Investment Company and BDC Advertising Rule Amendments

The SEC adopted the amendments to Rules 482, 433 and 156 under the 1933 Act and Rule 34b-1 under the 1940 Act as part of its efforts to promote more transparent and balanced statements about investment costs in investment company and BDC advertisements. These amendments apply to all registered investment companies, including closed-end funds, and BDCs (for the purposes of this section, closed-end funds, BDCs, mutual funds, and ETFs are referred to as “funds”).

The amendments require that investment company and BDC advertisements providing fee and expense figures include: the maximum amount of any sales load or any other nonrecurring fee; total annual expenses without fee waiver or expense reimbursement arrangements; and the expected termination date of any fee waiver or expense reimbursement arrangement presented. The methods of computing these fees and expenses are based on those prescribed on the applicable registration statement form to promote consistency of such information across different documents.

The Final Rules also include a timeliness requirement for fee and expense information in investment company advertisements. Fee and expense information in advertisements must be as current as the information in the fund’s most recent prospectus, or, if the fund does not have an effective registration statement, its most recent annual report.

These amendments reflect that the SEC is particularly concerned about funds marketing their products as “no-expense” or “zero-expense” funds, even when investors in such funds may incur other investment costs. For example, investors may incur indirect costs of investing that are not reflected in a fund’s expense ratio, or a fund might incur fees and expenses upon the expiration of a fee waiver or expense reimbursement arrangement. The SEC adopted amendments to Rule 156 to “provide that representations about the 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 such fees and expenses associated with an investment in a fund omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading.”

While Rule 156 broadly prohibits the use of materially misleading information in connection with the offer or sale of securities, the amendments to Rule 156 specify certain factors that may be used to determine whether a particular representation is materially misleading. Under amended Rule 156, a fund’s fees and expenses information could be found misleading because of “statements or omissions made 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.” However, the SEC

stressed that the determination of whether or not a particular representation or statement is materially misleading depends on the context in which it is made.³¹

Compliance Period

The amendments became effective on January 24, 2023, with an 18-month compliance period ending July 24, 2024. Notably, shareholder reports transmitted on or after July 24, 2024, such as those with a fiscal year or period ending May 31, 2024, will need to comply with the new shareholder report requirements (such as the content and presentation requirements, Rule 30e-3 amendments and Inline XBRL tagging requirements).

In addition, funds' registration statements and post-effective amendments to registration statements filed on or after July 24, 2024, that are required to include an appropriate broad-based securities market index must include an index that is consistent with the Final Rules' new definition of a "broad-based" index.

Compliance with the amendments to Rules 482 and 433 under the 1933 Act and Rule 34b-1 under the 1940 Act will also be required on or after July 24, 2024. There is no compliance period, however, for the amendments to Rule 156, which address fee and expense information in advertisements that might be materially misleading, which are applicable as of January 24, 2023.

Conclusion and Implementation Considerations

Although the compliance date for most of the Final Rules is July 24, 2024, implementation likely will require substantial coordination with key internal stakeholders and outside service providers well in advance of July 24, 2024. Among other steps, fund complexes should consider the following:

- Production, Design and Transmission of New Reports, Website Changes. Funds should consider engaging with service providers, vendors and relevant management teams regarding, among other things: the content, layout, production and transmission of shareholder reports; enhancements or adjustments to fund websites; and implementation timelines for project management purposes tailored for applicable fiscal period ends. For operational efficiency, funds may wish to consider what types of information will be the same (or substantially the same, with some tailoring) across different share classes and different funds, as well as what types of information processing could be automated. Additionally, internal processes should be reviewed and updated with regard to production and review of shareholder reports and Form N-CSRs as well as web-posting and shareholder report transmission processes, as and when appropriate.
- Benchmark Changes. Each fund should evaluate the definition of an "appropriate broad-based securities market index" and related SEC guidance and assess whether its current benchmark index meets the new requirements. If not, the fund should consider, among other things:
 - What benchmark or benchmarks would be appropriate for performance comparisons and meet such definition and whether current licensing agreements permit the presentation of new benchmark(s) (as applicable).

³¹ Under the amendments, a fund could determine not to include certain information regarding fees and charges from sales literature if, based on an evaluation of the context of the fees and charges presentation, the omission of that information would not be materially misleading.

- Relatedly, if and when the benchmark change should be presented to the fund’s board.
 - Whether the current benchmark(s) will continue to be utilized as (an) “additional index(s)” as described in Form N-1A.
 - Potential broader considerations for benchmark changes, such as website, advisory contract renewal and marketing materials, as well as performance comparison purposes for similar strategies offered in non-US jurisdictions.
 - When the fund would like the new benchmark to first appear in disclosure documents if the compliance period provides for such flexibility (i.e., registration statement, annual report or semi-annual report) and whether these changes would be implemented across a complex at a uniform time. For example, if a fund wishes to first include a new benchmark in its registration statement during its annual update filing as compared to a shareholder report, that fund may need to finalize its decisions well in advance of the compliance date.
- MDFP Changes. Funds should consider engaging with relevant stakeholders to consider the new requirements and SEC guidance regarding MDFPs and consider developing a framework for preparing MDFPs accordingly.
 - Material Changes. Funds should consider whether to implement a monitoring and assessment process (which may include stakeholders from various groups, such as legal, compliance and investment teams) to determine whether changes during the course of a fiscal period are material for the purposes of the amendments and, thus, must be disclosed within the shareholder report or if such changes otherwise may and should be disclosed consistent with the Final Rules.
 - Advertisements. Funds should consider developing and implementing processes to review advertisements for compliance with the Final Rules, specifically, that the maximum amount of any sales load or other non-recurring fee and total annual expenses without any fee waiver or expense reimbursement are presented, and that if the advertisement provides net expenses after fee waiver or reimbursement arrangement, the advertisement discloses the expected termination date of such fee waiver or expense reimbursement arrangement.

Appendix – Table 1: Annual Report Contents³²

Current Annual Shareholder Report Disclosure (current Form provision)	Description of Amendments	New Rule and Form Provisions	Applicable Section in Adopting Release
--	Add new identifying information to the beginning of the annual report	Item 27A(b) of Form N-1A	Section II.A.2.II.A.2.a
Expense example (Form N-1A Item 27(d)(1))	Retain in annual report in a more concise form	Item 27A(c) of Form N-1A	Section II.A.2.II.A.2.b
Management's discussion of fund performance (Form N-1A Item 27(b)(7))	Retain in annual report in a more concise form	Item 27A(d) of Form N-1A	Section II.A.2.II.A.2.c
--	Add new fund statistics section to the annual report	Item 27A(e) of Form N-1A	Section II.A.2.II.A.2.d
Graphical representation of holdings (Form N-1A Item 27(d)(2))	Retain in annual report	Item 27A(f) of Form N-1A	Section II.A.2.II.A.2.e
--	Add new material fund changes section to the annual report	Item 27A(g) of Form N-1A	Section II.A.2.II.A.2.f
Changes in and disagreements with accountants (Form N-1A Item 27(b)(4))	Retain in annual report in summary form The entirety of the currently-required disclosure will move to Form N-CSR and will need to be available online and delivered (in paper or electronic format) upon request	Item 27A(h) of Form N-1A Item 8 of Form N-CSR Rule 30e-1(b)(2) and (b)(3)	Section II.A.2.II.A.2.g Section II.C.2.II.C.1.c
Statement regarding the availability of quarterly portfolio schedule, proxy voting policies and procedures, and proxy voting record (Form N-1A Item 27(d)(3) through (5))	Include a more general reference to the availability of additional fund information in the annual report	Item 27A(i) of Form N-1A	Section II.A.2.II.A.2.h

³² The table shown is substantially reproduced from a similar table set forth in the Adopting Release.

Current Annual Shareholder Report Disclosure (current Form provision)	Description of Amendments	New Rule and Form Provisions	Applicable Section in Adopting Release
--	Add provision allowing funds to optionally disclose in their annual reports how shareholders may revoke their consent to householding ³³	Item 27A(j) of Form N-1A	Section II.A.2.II.A.2.i
Financial statements, including schedule of investments (Form N-1A Item 27(b)(1))	Move to Form N-CSR Will need to be available online and delivered (in paper or electronic format) upon request	Item 7(a) of Form N-CSR Rule 30e-1(b)(2) and (b)(3)	Section II.C.1.II.C.1.a
Financial highlights (Form N-1A Item 27(b)(2))	Retain certain data points, but generally move to Form N-CSR Will need to be available online and delivered (in paper or electronic format) upon request	Item 7(b) of Form N-CSR Rule 30e-1(b)(2) and (b)(3)	Section II.C.1.C.1.b
Results of any shareholder votes during the period (Rule 30e-1(b))	Move to Form N-CSR Will need to be available online and delivered (in paper or electronic format) upon request	Item 9 of Form N-CSR Rule 30e-1(b)(2) and (b)(3)	Section II.C.1.II.C.1.d
Remuneration paid to directors, officers, and others (Form N-1A Item 27(b)(3))	Move to Form N-CSR Will need to be available online and delivered (in paper or electronic format) upon request	Item 10 of Form N-CSR Rule 30e-1(b)(2) and (b)(3)	Section II.C.1.II.C.1.e
Statement regarding the basis for the board's approval of investment advisory contract (Form N-1A Item 27(d)(6)(i))	Move to Form N-CSR Will need to be available online and delivered (in paper or electronic format) upon request	Item 11 of Form N-CSR Rule 30e-1(b)(2) and (b)(3)	Section II.C.1.II.C.1.f
Management information and statement regarding availability of additional information about fund directors (Form N-1A Item 27(b)(5) and (6))	Remove from shareholder reports, but information would remain available in a fund's SAI, which is available online or delivered upon request	--	Section II.D

³³ "Householding" permits funds to deliver a single copy of a prospectus, proxy materials, and a shareholder report to investors who share the same address and meet certain other requirements in order to avoid duplication of materials to investors who invest in funds through a variety of individual and family accounts.

Current Annual Shareholder Report Disclosure (current Form provision)	Description of Amendments	New Rule and Form Provisions	Applicable Section in Adopting Release
Statement regarding liquidity risk management program (Form N-1A Item 27(d)(6)(ii))	Remove from shareholder reports	--	Section II.D
Rule 30e-3 disclosure, if applicable (Form N-1A Item 27(d)(7))	Remove from shareholder reports	--	Section II.E
Funds have discretion to provide other information in their shareholder reports (e.g., president's letter)	Disclosures in the annual report are restricted to that which is required or permitted under Item 27A of Form N-1A (other materials may accompany the transmission of the report, so long they meet the prominence requirements for materials that accompany the report)	Instructions 1 and 12 to Item 27A(a) of Form N-1A	Section II.A.1.c

Appendix – Table 2: Outline of Annual Report³⁴

	Description	Item of Amended Form N-1A	Item of Current Form N-1A Containing Similar Requirements
Cover Page or Beginning of Report	Fund/Class Name	Item 27A(b)	--
	Ticker Symbol	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)	--
	Statement on Material Fund Changes in the Report	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)	--
	Graphical Representation of Holdings	Item 27A(f)	Item 27(d)(2)
	Material Fund Changes	Item 27A(g)	--
	Changes in and Disagreements with Accountants	Item 27A(h)	Item 27(b)(4)
	Availability of Additional Information	Item 27A(i)	Item 27(d)(3) through (5)
	Householding Disclosure (optional)	Item 27A(j)	-- ³⁵

³⁴ The table shown is substantially reproduced from a similar table set forth in the Adopting Release.

³⁵ Rule 30e-1(f)(3) currently requires a fund to explain, at least once per year, how shareholders may revoke their consent to householding. This explanation is not currently required in funds’ shareholder reports. As proposed, the SEC is not requiring it in the annual report.

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