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2018-2019 Review: Division of Investment Management, Accounting and Disclosure Information Publications

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In 2018, the staff (Staff) of the Division of Investment Management (IM Division) of the US Securities and Exchange Commission (Commission or SEC) began publishing informal guidance and interpretations regarding accounting- and disclosure-related matters in the form of Accounting and Disclosure Information updates (ADIs). The Disclosure Review and Accounting Office (DRAO), the office within the IM Division responsible for preparing the ADIs, intends that the ADIs will "be an aid to practitioners and others who are interested in the law and interpretations concerning disclosure" and assist registrants in preparing SEC filings.[1] Overall, the ADIs clarify and offer insight into the Staff's views regarding various requirements relating to certain discrete accounting and disclosure matters, including topics on which the Staff has received inquiries from the investment management industry.

As noted in the ADIs, these publications are not rules, regulations, or statements of the Commission, and the Commission has neither approved nor disapproved the statements and policies set forth in the ADIs and any future changes in rules, regulations, and Staff no-action or interpretive positions may supersede the information in the ADIs. However, members of the investment management industry may wish to be mindful of, and consider the potential implications arising from, the ADIs. Like the "guidance update" initiative undertaken by the Staff in prior years,[2] certain of the ADIs raise practical considerations that industry participants may wish to take into account in connection with their preparation of SEC filings and other disclosures to investors as well as their review of compliance policies and procedures and related processes.

This article provides a summary of the nine ADIs published by the Staff through October 2019 and highlights certain related practical considerations.

ADI 2018-01—"Expanded Use of Draft Registration Statement Review Procedures for Business Development Companies"

Overview

In 2018, the Staff confirmed that the IM Division, in certain instances, will accept initial registration statements that are submitted by business development companies (BDCs) for nonpublic review, in an expansion of the then-existing process for emerging growth companies (BDC Review Guidance).[3] More specifically, the Staff stated that it will: (i) "accept for nonpublic review draft initial

registration statements that are submitted by BDCs under Section 12(b) of the Securities Exchange Act of 1934 (Exchange Act);" and (ii) "accept for nonpublic review draft registration statements relating to offerings under the Securities Act of 1933 [(Securities Act)] that are submitted by BDCs within one year of an initial offering or of an initial registration under" Section 12(b) of the Exchange Act.

Select Practical Considerations

Despite the nonpublic review offered by the Staff for BDCs in these instances, the Staff of Corporation Finance previously has stated that they "will keep submitted nonpublic draft registration statements confidential subject to the provisions of applicable law."[4] As a result, one key practical consideration is that the SEC and Staff may be required to publicly release confidential draft registration statements, under certain circumstances. In addition, BDCs may wish to review related guidance regarding the availability of confidential review for draft registration statements when contemplating a request to the Staff for nonpublic review.[5]

ADI 2018-02—"Template Filing Relief"

Overview

In ADI 2018-02,[6] the Staff outlined a registration statement review process that fund complexes may wish to follow when making "substantially identical changes to multiple funds," which may avoid the need to make multiple filings pursuant to Rule 485(a) under the Securities Act (Template Filing Guidance).[7] The so-called "template filing relief" would permit a fund complex to make a single filing under Rule 485(a) for Staff review (Template Filing) along with a request for "template filing relief" on behalf of other funds making substantially identical filings (Replicate Filings). Funds relying on the "template filing relief" would make a post-effective amendment filing pursuant to Rule 485(b)(1)(vii) under the Securities Act. Examples of situations identified by the Staff in which it may be appropriate to request this relief include the addition of a new share class to a fund "when that share class is already offered and operates in a substantially identical fashion to other funds within the same fund group."[8]

The Template Filing Guidance details a specific process through which registrants may request "template filing relief" pursuant to Rule 485(b)(1)(vii) under the Securities Act, including the filing of correspondence on EDGAR that, among other things, explains the reasons for filing the post-effective amendment and provides the identity of the Replicate Filings.[9] In addition, the Staff stated that a fund's request letter must include the following representations:

- The disclosure changes in the Template Filing are substantially identical to disclosure changes that will be made in the Replicate Filings;
- The Replicate Filings incorporate changes made to the disclosure included in the Template Filing to resolve any Staff comments thereon; and
- The Replicate Filings will not include any other changes that would otherwise render them ineligible for filing under Rule 485(b).[10]

To rely on "template filing relief" under Rule 485(b)(1)(vii), the Template Filing Guidance notes that the request letter should be filed on EDGAR at least 10 calendar days prior to the date by which the funds requesting relief would otherwise need to make the corresponding Rule 485(a) filings. Additionally, the Template Filing Guidance notes that, if the "template filing relief" is granted, any Replicate Filings made under Rule 485(b)(1)(vii) should include a cover letter or explanatory note in the filing indicating that the filing is being made in accordance with such relief.

Select Practical Considerations

Funds should carefully weigh the potential benefits of "template filing relief," such as cost

savings and resource management, against the potential challenges associated with this process. For example, funds might consider the representations required to obtain "template filing relief," notably the representation that the funds will "resolve" any Staff comments on the Template Filing. This representation might require the fund to acquiesce to previously unresolved comments provided by the Staff, including those unrelated to the specific disclosure changes set forth in the Template Filing. In this regard, the Staff did not provide express assurance that it will limit its review to any particular disclosures or that the comments will be limited to the particular fund covered by the Template Filing. As discussed below, funds may wish to consider the Staff's statement in ADI 2018-06, Requests for Selective Review, that it "retains ultimate discretion to determine the appropriate level of review[.]"[11]

Funds considering requesting "template filing relief" also should be mindful of the specific protocol set forth by the Staff in the Template Filing Guidance, including accounting for appropriate time to make corresponding Rule 485(a) filings if "template filing relief" is not granted. For example, in the Template Filing Guidance, the Staff noted that it may decline such a request if the fund "did not adequately respond" to the Staff's comments on the Template Filing, or if the Staff has not reviewed the Template Filing or Replicate Filings for several years.

ADI 2018-03—"Filing Information Statements in Connection with Multi-Manager Exemptive Relief"

Overview

Under exemptive relief provided by the SEC permitting "manager of managers" arrangements that allow a fund to hire and change subadvisers without shareholder approval, the SEC requires that, among other things, within 90 days of hiring any new subadviser in reliance on the relief, a fund must provide its shareholders with an information statement in accordance with the relevant provisions of the Exchange Act.[12] In particular, Rule 14c-5 under the Exchange Act requires funds to file a preliminary information statement, absent a specific exclusion under the Rule. Although there is no exclusion in the Rule for subadvisory agreements, the Staff confirmed in ADI 2018-03 that the Staff will not object if funds relying on "manager of managers" exemptive relief do not file a preliminary information statement in connection with a subadviser change.[13] Such funds would still be required to file a definitive information statement in accordance with the conditions of its exemptive relief.

Select Practical Considerations

We understand that individual members of the DRAO have informally notified funds that they will not review preliminary filings of information statements relating to subadviser changes in reliance on "manager of managers" exemptive relief. ADI 2018-03 explicitly states the Staff's position that funds are not required to make those preliminary filings. In light of the guidance in ADI 2018-03, funds that operate pursuant to "manager of managers" arrangements may take comfort that the Staff's current position is that preliminary information statement filings are not necessary.

ADI 2018-04—"Marked Copies of Amendments to Registration Statements"

Overview

The Staff issued an ADI in 2018 "remind[ing] funds that the filing of amendments to registration statements under the [Securities Act] must include marked copies indicating the changes effected by the amendment."[14] However, in ADI 2018-04, the Staff stated that it will not object if a fund sends more user-friendly marked copies of the filings to its Staff reviewer via email.

Select Practical Considerations

Funds should continue to be mindful of the requirements of Rule 472 under the Securities Act and Rule 310 of Regulation S-T in preparing amendments to registration statements under the Securities Act. For example, funds might review existing processes and practices, including the practices of their financial printer and EDGAR filing agent, as applicable, and consider potential refinements to those processes and practices to ensure that filings meet the Rule requirements with respect to marking changes. In addition, funds might evaluate the extent of the changes involved in the post-effective amendment when determining whether to "<R>" tag documents or, alternatively, provide marked copies to a Staff reviewer via email.

ADI 2018-05—"Use of Rate Sheet Supplements in Connection with Variable Insurance Products"

Overview

In 2018, the Staff issued an ADI regarding the use of rate sheet supplemental filings for variable insurance products.[15] A rate sheet is a document that concisely discloses certain product information, such as fees and withdrawal rates. In ADI 2018-05, the Staff stated that it "believes that highlighting disclosure of [product] features that are both material and subject to frequent change by use of a rate sheet . . . [can] allow investors to more easily find this information and make more informed investment decisions."[16] Accordingly, the Staff stated that, a variable insurance product may make changes to disclosures regarding product benefits and fees by filing a supplement pursuant to Rule 497 under the Securities Act in lieu of filing a post-effective amendment pursuant to Rule 485(a) under the Securities Act, subject to the guidance set forth in ADI 2018-05.

In the guidance, the Staff elaborated that it would not object to the use of a rate sheet if one of two approaches is taken. In the first approach, the rate sheet must establish a rate for a set period and the end date cannot be superseded by a subsequent filing. The second approach would require that a registrant specify a rate that applies beginning on a particular date without indicating an end date, provided that (1) the supplement prominently discloses that the rate can be superseded at any time and identifies how and when investors will be notified of the current rates and (2) a superseding rate sheet is filed pursuant to Rule 497 within a reasonable time prior to its effective date.

ADI 2018-05 sets forth specific procedures to follow when planning to utilize a rate sheet for this purpose. For example, the Staff noted that the form of the rate sheet proposed to be used and a prospectus including a description of the rate sheet should be filed under Rule 485(a) for Staff review the first time a rate sheet is used.[17]

Select Practical Considerations

Although the use of a rate sheet may ease certain burdens for variable insurance product registrants, registrants should carefully review the detailed explanations and processes described in ADI 2018-05 and appropriately memorialize such processes in related compliance or other procedures. For example, the Staff noted delivery obligations associated with rate sheets, Website posting considerations and prospectus disclosure implications. To the extent that a registrant plans to rely on ADI 2018-05, the registrant might wish to develop an appropriate timetable and checklist to address these and other similar items described in the guidance.

ADI 2018-06—"Requests for Selective Review"

Overview

The Staff published an ADI encouraging mutual funds, exchange-traded funds, closed-end funds, and similar investment funds and insurance product securities to request selective review in connection with certain SEC filings that contain disclosure that is not "substantially different" from the disclosure

contained in one or more prior filings by the same fund complex (Selective Review Guidance).[18] The Staff explained that its disclosure review process "seeks to achieve accurate, clear, and concise disclosures and help ensure that funds comply with the federal securities laws." The Staff described its risk-based approach to determining the filings and disclosures it views as warranting a greater degree of review, which includes possibly assessing the fund type and strategy, current market conditions and the results of risk-based analytics, among other factors.

When a fund believes that a selective review is appropriate (that is, a review that focuses on certain disclosures and determining that a filing is in good order), the Staff asks that the fund submit a request letter that provides certain information, including "any specific areas that the registrant believes warrant particular attention."[19] Based on such a request, the Selective Review Guidance explains that the DRAO will determine whether it agrees that the current filing qualifies for selective review based on a comparison of the current filing to a prior filing made by the same complex, which analyzes, among other things, the type and classification of the fund, the fund's investment strategies and the extent to which disclosure is the same.

In general, it appears that the Staff will consider whether a review would be duplicative of a review the Staff already has undertaken and whether the filing is routine and does not present novel questions of law or fact. As an example, the Staff stated that registration statement filings made solely to add an insurance product fund clone of a retail fund may qualify for limited review. However, as noted above, the Staff may determine that a comprehensive review is more appropriate based on a risk-based analysis.

Select Practical Considerations

When preparing certain filings, funds might consider whether a request for selective review may be appropriate to avoid duplicative Staff review by evaluating the considerations described in the Selective Review Guidance. If the fund determines that a filing is an appropriate candidate for selective review, the fund might also evaluate the processes and steps set forth in the Selective Review Guidance. However, registrants should be mindful when seeking selective review that, as noted in the Selective Review Guidance, "the [S]taff retains ultimate discretion to determine the appropriate level of review." As a result, notwithstanding a fund's request that the Staff focus its review on a particular area, the Staff reviewer in the DRAO may conduct a review that is more comprehensive than requested and, as a result, the Staff may provide comments on portions of the filing that are outside the scope contemplated by the request letter.

ADI 2019-07—"Review of Certain Filings under Automatic Effectiveness Rules"

Overview

In 2019, the Staff issued an ADI addressing certain considerations relating to the automatic effectiveness of post-effective amendments to registration statements filed pursuant to Rule 485(a) under the Securities Act (Automatic Effectiveness Guidance).[20] Rule 485(a) allows certain investment company registration statement amendments to become automatically effective, subject to the requirements under the Rule.[21] In the Automatic Effectiveness Guidance, the Staff urged funds to contact the Staff prior to making a Rule 485(a) filing to discuss matters that may "raise material questions of first impression" or that "address issues in a manner inconsistent with previous precedent." In addition, the Staff asked that funds generally respond to Staff comments issued on a Rule 485(a) filing at least five business days before the filing is scheduled to become effective automatically.

Select Practical Considerations

Funds planning to make Rule 485(a) filings may consider whether it would be appropriate to engage in a dialogue with the Staff prior to completing the filing. In addition, funds making Rule

485(a) filings should be mindful that, to meet the timeline articulated by the Staff in the Automatic Effectiveness Guidance, the response letter to the Staff's comments may need to be drafted quickly. The Staff generally aims to provide comments on Rule 485(a) filings approximately 45 days after the post-effective amendment is filed. To comply with the Staff's request that funds respond to Staff comments at least five business days before the filing is scheduled to become effective automatically, funds may need to finalize and file response letters in as few as 10 days.[22] Such timing may require a fund to dedicate significant resources and attention to promptly address novel or otherwise material Staff comments.

ADI 2019-08—"Improving Principal Risks Disclosure"

Overview

In ADI 2019-08, published in September 2019, the Staff articulated its views regarding the disclosure of principal risks in fund summary prospectuses (Principal Risk Guidance).[23] Providing context for its suggestions to improve principal risk disclosures, the Staff stated that, although summary prospectuses are designed to promote informed investment decisions with easy to use and readily accessible information, some funds provide overly lengthy and technical risk disclosures.

The Staff made three suggestions related to principal risk disclosures: (1) ordering risks by importance; (2) tailoring risk disclosures; and (3) disclosing that a fund is not appropriate for certain investors.[24]

1. *Ordering Risks by Importance*. The Staff "strongly encourage[d]" funds to consider approaches to better highlight the risks that investors should consider most carefully and stated that "[f]unds that list their principal risks in alphabetical order could obscure the importance of key risks, especially when a fund includes many principal risks."[25] However, the Staff expressly acknowledged that the suggested approach would require subjective determinations and the relative importance of risks can change based on market conditions or adjustments in fund investments. Accordingly, the Staff stated that it "would not generally expect to comment on a fund's ordering of risks by importance."[26]
2. *Tailoring Risk Disclosures*. The Staff articulated its preference for funds to tailor risk disclosures specifically for each fund, rather than using "generic, standardized, risk disclosures" across a group of funds. The Staff acknowledged that standardized risks may be appropriate for certain risks, but requested that funds take into account a fund's particular operations and tailor risk disclosures to more closely resemble the principal risks associated with an investment in that fund.
3. *Disclosing that a Fund is Not Appropriate for Certain Investors*. The Staff noted that, although some funds may suggest certain types of investors for which the fund is intended, a fund should also consider noting any investors for which the fund is not appropriate given the fund's characteristics.

Select Practical Considerations

The Principal Risk Guidance reminds funds to continue to seek to provide disclosures that are user-friendly, concise, and easily accessible. Funds should evaluate the Principal Risk Guidance in light of their particular strategies and the associated principal risks.

Many funds currently alphabetize their principal risk disclosures. If a fund that currently alphabetizes its principal risk disclosures is considering shifting its approach to ordering its principal risks by relative importance, the fund may wish to dedicate appropriate resources and time to develop a framework and process for determining "relative importance" that is scalable and customized, as deemed warranted, for the particular fund. Funds might also weigh other relevant considerations, such as the process to implement these changes across a complex and whether the dynamic nature of certain fund strategies lend themselves to risk disclosures in order of "relative

importance." In addition, a fund might consider an appropriate level of ongoing monitoring of the "relative importance" of principal risks as fund investments and risk exposures change during the year and year-over-year and whether and when disclosure adjustments are warranted. To clarify, many factors outside of the fund's control could be responsible for a possible adjustment to the order of risk disclosures.

ADI 2019-09—"Performance and Fee Issues"

Overview

In ADI 2019-09, the Staff summarized certain issues observed in performance and fee disclosures of various fund filings, including the issues outlined below, and reminded funds to closely review and confirm the accuracy of those disclosures (Performance and Fee Guidance).[27]

- *Performance Presentations*. The Staff noted that some funds have failed to reflect sales loads in their average annual returns table as required by Item 4(b)(2)(iii) of Form N-1A, resulting in overstated fund performance. Additionally, the Staff noted that funds have disclosed negative performance as positive performance in the bar chart and average annual return table and transposed the performance of fund classes and benchmark indices.
- *Incorrectly Showing Net Expenses that Exceed Gross Expenses*. The Performance and Fee Guidance noted that some funds reflect recoupments of previously waived advisory fees or expenses as "positive fee waiver[s]" that cause their net expenses to be higher than their gross expenses in contravention of Form N-1A requirements. The Staff explained that, "because recoupments are expenses to the fund, they should be reflected in the fee table as a separate line-item or included in Other Expenses and reflected in its gross expenses."[28]
- *Failure to Disclose Acquired Fund Fees and Expenses*. The Staff noted that several funds have not disclosed "acquired fund fees and expenses" in their fee and expense tables in conformity with Form N-1A.[29]

Select Practical Considerations

The Performance and Fee Guidance reminds funds that certain fee and performance disclosures may require additional review and controls. Funds may review existing protocols to confirm that those protocols appropriately account for the disclosure requirements and include appropriate checks and balances to ensure that the funds' performance and fee disclosures are accurate and in compliance with applicable Form N-1A requirements. In addition, funds might consider enhancing processes and written or other procedures to account for the issues described in the Performance and Fee Guidance, to the extent necessary.

Conclusion

The nine ADIs published by the Staff offer insight into the Staff's views and interpretations of discrete accounting- and disclosure-related matters. Accordingly, when confronting situations addressed by the ADIs or considering related matters, the investment management industry should continue to be mindful of, and consider the potential implications arising from, the guidance, views and observations articulated in the ADIs as well as any related processes detailed by the Staff.

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NOTES

1 Accounting and Disclosure Information, *https://www.sec.gov/investment/accounting-and-disclosure-information*.

2 *See* Cohen *et al.*, "2016 Year in Review: Division of Investment Management Guidance Updates," 24

The Investment Lawyer 3 (Mar. 2017); Murphy *et al.*, "2014 Year in Review: Division of Investment Management Guidance Updates," 22 *The Investment Lawyer* 2 (Feb. 2015).

[3] ADI 2018-01—Expanded Use of Draft Registration Statement Review Procedures for Business Development Companies (as modified June 12, 2018), available at *https://www.sec.gov/investment/adi-2018-01-expanded-use-draft-registration-statement-review-procedures-business*. In 2017, the SEC's Division of Corporation Finance (Corporation Finance) announced that Corporation Finance would accept and confidentially review draft registration statements from all issuers, previously a process reserved exclusively for emerging growth companies as provided in the Jumpstart Our Business Startups Act in 2012. *See* Draft Registration Statement Processing Procedures Expanded, (June 29, 2017 (supplemented Aug. 17, 2017)), available at *https://www.sec.gov/corpfin/announcement/draft-registration-statement-processing-procedures-expanded#_ftn3*; Jumpstart Our Business Startups Act, Section 6(e).

[4] *Id.* at fn. 1 (citing to 5 U.S.C. 552(b)(4) (Exemption 4 of the Freedom of Information Act, which provides an exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential.")

[5] Jumpstart Our Business Startups Act FAQ: Confidential Submission Process for Emerging Growth Companies (Dec. 21, 2015 (revised)), available at *https://www.sec.gov/divisions/corpfin/guidance/cfjumpstartfaq.htm*; EDGAR Filer Manual (Volumes I - II), available at *https://www.sec.gov/info/edgar/edmanuals.htm*.

[6] ADI 2018-02—Template Filing Relief (as modified June 12, 2018), available at *https://www.sec.gov/investment/adi-2018-02-template-filing-relief*.

[7] For additional information regarding "template filing relief," please refer to IM Guidance Update 2016-06 (Dec. 2016), available at *https://www.sec.gov/investment/im-guidance-2016-06.pdf*.

[8] The Staff also specifically identified the following two scenarios: (i) "[c]hanges which may be substantially identical across multiple funds or products, such as disclosures relating to market timing, shareholder information, and descriptions of advisers, underwriters, directors, and officers" and (ii) in variable product filings, "changes to fees, the addition of optional benefits, and changes to base contract language, where such changes are substantially identical and the products operate in a substantially similar fashion." The Staff noted that this list is not exhaustive of the circumstances where the Staff may grant "template filing relief" and encouraged industry members to contact the Staff to discuss other circumstances.

[9] The Staff also specified that the following information should be provided with respect to the Replicate Filings: "the name of the registrant, the Securities Act file number, the series and class name for each of the funds that intend to rely on the relief, and the date each series was last subject to staff review (*i.e.*, the date of the most recent initial registration statement, pre-effective amendment, or rule 485(a) filing that included the series)."

[10] Rule 485(b)(1)(vii) permits the Staff to "approve the filing of a post-effective amendment to a registration statement under [R]ule 485(b) for a purpose other than those specifically enumerated in the [R]ule." *See* Template Filing Guidance at fn. 1.

[11] ADI 2018-06—Requests for Selective Review (as modified June 12, 2018), available at *https://www.sec.gov/investment/adi-2018-06-requests-selective-review*.

[12] These requirements include Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Exchange Act.

[13] ADI 2018-03—Filing Information Statements in Connection with Multi-Manager Exemptive Relief, (as modified June 12, 2018), available at *https://www.sec.gov/investment/adi-2018-03-filing-information-statements-connection-multi-manager-exemptive*.

[14] ADI 2018-04—Marked Copies of Amendments to Registration Statements (as modified June 12, 2018), available at *https://www.sec.gov/investment/adi-2018-04-marked-copies-amendments-registration-statements*. The Staff noted that Rule 472 under the Securities Act requires that registrants file a marked

copy of the amendment to the registration statement indicating "clearly and precisely… the changes effected" by the amendment. The Staff noted that Rule 310 of Regulation S-T under the Securities Act provides that such requirement can be satisfied in filings on EDGAR by inserting an "<R>" tag before and after any disclosure changes.

15 ADI 2018-05—Use of Rate Sheet Supplements in connection with Variable Insurance Products (as modified June 12, 2018), available at *https://www.sec.gov/investment/adi-2018-05-use-rate-sheet-supplements-connection-variable-insurance-products*.

16 *Id*.

17 The Staff stated that a registrant should make a filing under Rule 485(a) for any material changes to the prospectus disclosure relating to the rate sheet or the rate sheet itself, except in cases where the change relates only to the applicable date and the numeric values of the fees or rates disclosed on the rate sheet.

18 ADI 2018-06—Requests for Selective Review (as modified June 12, 2018), available at *https://www.sec.gov/investment/adi-2018-06-requests-selective-review*.

19 More specifically, the Staff stated that the request letter should include: "(i) a statement as to whether the disclosure in the filing has been reviewed by the staff in another context; (ii) a statement identifying prior filings that the registrant considers similar to, or intends as precedent for, the current filing; (iii) a summary of the material changes made in the current filing from the previous filings; and (iv) any specific areas that the registrant believes warrant particular attention."

20 ADI 2019-07—Review of Certain Filings Under Automatic Effectiveness Rules (as modified April 2, 2019), available at *https://www.sec.gov/investment/accounting-and-disclosure-information/adi-2019-07-review-certain-filings-under-automatic*.

21 Rule 485(a)(1) states that post-effective amendments to registration statements become effective 60 days after filing unless a date no later than 80 days after filing is chosen. Rule 485(a)(2) states that post effective amendments to registration statements made to add a new series to an existing fund become effective 75 days after filing unless a date no later than 95 days after filing is chosen.

22 For example, in the case of a filing made pursuant to Rule 485(a)(1) (which may automatically become effective in 60 days), the Staff's request would necessitate that a fund finalize and file a response letter within 10 days based on usual Staff review timelines.

23 ADI 2019-08—Improving Principal Risks Disclosure (as modified Sept. 9, 2019), available at *https://www.sec.gov/investment/accounting-and-disclosure-information/principal-risks/adi-2019-08-improving-principal-risks-disclosure*.

24 The recommendations described in the Principal Risk Disclosure have been previously articulated by Dalia Blass, the Director of the Division of Investment Management. *See, e.g.,* Dalia Blass, Keynote Address, ICI Securities Law Developments Conference (Oct. 25, 2018), available at *https://www.sec.gov/news/speech/speech-blass-102518*. In the Principal Risk Guidance, the Staff also reminded funds of certain other measures that can be taken to improve risk disclosures, particularly in the summary prospectus, such as presenting more detailed information about their principal risks elsewhere in the prospectus.

25 *See* Principal Risk Guidance.

26 *Id.* The SEC's Form N-1A prescribes the content, and, in some cases, the ordering, of mutual fund registration statement disclosures. In particular, Item 4(b)(1)(i) of Form N-1A requires a summary of "the principal risks of investing in the Fund, including the risks to which the Fund's portfolio as a whole is subject and the circumstances reasonably likely to affect adversely the Fund's net asset value, yield, and total return." However, Form N-1A does not expressly require any particular order for these risk disclosures.

27 ADI 2019-09—Performance and Fee Issues (as modified Oct. 2, 2019), available at *https://www.sec.gov/investment/accounting-and-disclosure-information/performance/adi-2019-09-performance-and-fee-issues*. Other common issues noted by the Staff in the Performance and Fee Guidance included failure to correctly calculate the expense example and failure to tag the risk/return summary information

in a prospectus in XBRL, as required by General Instruction C.3.(g) of Form N-1A.

[28] *Id.*

[29] *See* Instruction 3(f)(i) to Item 3 of Form N-1A (providing that, if the fees and expenses incurred indirectly by the fund as a result of investment in acquired funds do not exceed one basis point of average net assets of the fund, the fund may include these fees and expenses under the subcaption "other expenses" in lieu of as a separate line item).