



Invested in America

August 11, 2015

By Electronic Mail (rule-comments@sec.gov)

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-1090

Re: Investment Company Reporting Modernization - File No. S7-08-15

Dear Mr. Fields:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the above-referenced release which proposes new rules and amendments designed to modernize the reporting and disclosure of information to investors by registered investment companies. One of the proposals, Rule 30e-3, would permit registered investment companies to transmit certain reports to investors by making those reports accessible online. In this letter, the scope of SIFMA’s comments will focus exclusively on this proposal. SIFMA supports the proposal and the Commission’s initiative in formulating and publishing it for comment, recognizing greater usage of technology for the delivery of materials via the internet. However, we have several concerns about the proposal, and have included recommendations for improving the proposed processes.

SIFMA notes that the proposed rule text does not address the role and obligations of brokerage firms to administer the proposed notice process for clients whose shares they hold in street name. In addition, we believe the rule as drafted would present logistical challenges and that some components would unnecessarily increase complexity and cost without sufficient benefit to mutual funds and their investors. SIFMA’s comments and recommendations follow.

¹ SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over \$2.4 trillion for businesses and municipalities in the U.S., serving clients with over \$16 trillion in assets and managing more than \$62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

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The Proposal Does Not Address How Brokers Would Satisfy New Processing Requirements

While SIFMA supports the goal of reducing printing and mailing costs for mutual funds disseminating interim reports to their investors, our primary concern with the proposal is that it appears to assume that all fund investment positions are registered directly with the fund, whereas a significant majority of accounts in mutual funds are held through brokers and other intermediaries.² With respect to investments held through brokers, the proposal does not address important logistical questions – such as how brokers should obtain copies of certain fund reports and portfolio information that must remain posted on a website. When the Commission adopted final rules for the “notice and access” option for the delivery of proxy materials, both the rules and the Commission release addressed in great detail how the process should work in connection with investors who beneficially owned their shares through a brokerage or other intermediary acting as record holder.³ By contrast, even though the processes called for by the proposal are in many respects more complex than the implementation of the notice and access model for the delivery of proxy materials, they do not address how brokers and other intermediaries should undertake the various components of the proposed new approach, which includes not only dissemination of notice cards, but the collection and maintenance of customer consents, the website availability of portfolio information and a catalogue of current and historical mutual fund reports that must be available for “print on demand” in user-friendly formats. We believe that the Commission could use the approach outlined in the proxy notice and access rules as a basis for adding similar clarification on the role of brokers to proposed Rule 30e-3.

As a practical matter, for accounts held in street name through brokers, all or nearly all of the new proposed mechanisms under proposed Rule 30e-3 would necessarily have to be carried out by such brokers. That is because brokers are legally required to protect the financial privacy and personal information of their clients and such information is necessary to comply with the dissemination of information required by the proposal. For example, Regulation S-P, which implements legislation designed to protect the privacy of personal information an investor has entrusted to his or her broker, mandates that an investor’s identity, contact information, and share position data is within the protections of that Regulation.⁴ We believe that the obligation of brokers to maintain the financial privacy of their customers and customer accounts

² Broadridge Financial Services, Inc. estimates that approximately 75% of accounts are currently held through brokers and other intermediaries, excluding positions held in employer-sponsored plans.

³ See Exchange Act Rule 14a-16(a)(2), (j), and (k), and Rule 14b-1(d) and (e); see also Internet Availability of Proxy Materials, Exchange Act Release No. 55146 (March 30, 2007), at pp. 32-42.

⁴ Subtitle A of Title V of the Gramm-Leach-Bliley Act requires financial institutions to protect certain nonpublic personal and financial information provided by their clients. As noted above, the Commission has interpreted the statute to protect a client’s personal contact details along with information on share positions. See Regulation S-P Rule 3(t); see also Final Rule: Privacy of Consumer Financial Information (Regulation S-P), Exchange Act Rel. No. 42974 (June 22, 2000), at pp. 19-20.

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would be undermined insofar as the proposal assumes that brokers would provide mutual funds with access to information about brokers' clients, and we do not believe that the Commission would be in a position to authorize brokers to provide such access under the current legislative framework. Along the same lines, we also believe that applicable financial privacy laws and regulations could be implicated if the rules operated in such a manner that client information could be inadvertently or indirectly disclosed to mutual funds (e.g., when clients accessed copies of reports and other information from websites maintained by mutual funds or by their agents).

At a more fundamental level, we are concerned that the proposal does not acknowledge the important role played by brokers and other intermediaries in our capital markets, including the protection of their client's financial information. Clients look to their brokers to provide guidance and to protect their legitimate interests when it comes to matters affecting their accounts. While clients rely on their brokers to effect transactions in securities, they also expect that each brokerage firm will provide a consolidated and uniform source of information and support with respect to multiple securities included in a given client account. Brokers accordingly are in a position to address client needs in a holistic manner, and provide an overall positive client experience. Proposed Rule 30e-3 is in some respects directly inconsistent with the format of the client-broker relationship. For example, the requirement that fund investors consent on an investment-by-investment (or series) basis is inconsistent with the way brokers manage client relationships, which is on an account or whole-portfolio basis.

In this connection, we are also concerned that implementation of a notice and access model for the delivery of mutual fund interim reports may erode the overall experience of our clients as compared to other approaches, such as the direct electronic delivery of such reports. According to Broadridge Financial Services, Inc. ("Broadridge"), such direct electronic delivery today accounts for nearly 45% of all annual and semi-annual report deliveries for funds held in brokerage accounts, and it predicts that this percentage will markedly increase over the next few years. We recommend below that the final rules should permit brokers to include information on notice cards transmitted on behalf of their clients urging them to choose direct electronic delivery of account information to the extent that it is available through the brokerage firm or otherwise.

Some Aspects of the Proposal Could Be Costly and Result in Questionable Benefits

Various features of proposed Rule 30e-3 would make the rule unnecessarily complex and costly to implement, given necessary initial investments in new systems, as well as ongoing operational costs. We urge the Commission to weigh the new operational costs and complexity against the benefits of the new rules when it considers specific features of their operation.

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The proposal to obtain investor consent to electronic access to the reports on an investment-by investment (or series) basis would require re-tooling of established systems for collecting consents and related processes that focus on accounts rather than on specific portfolio investments. As investors buy and sell specific portfolio investments, brokers would be obligated to continuously make inquiries of clients and reset their preferences and consents. Faced with constant requests to update their consents to reflect the purchase of new investments or the disposition of old ones, investors could find the approach overly complex, time-consuming and confusing. The proposed investment-by-investment approach is also inconsistent with the Commission's past approach to proxy notice and access, as well as to householding, which are premised on consents obtained on an account or portfolio basis. While we have not formally surveyed our members, we are not aware of any publicly expressed or widely-held desire of our clients to be able to consent to report delivery options on an investment-by-investment basis, and we question whether the significant costs of implementing such a system, and potential erosion of the overall client experience, are justified by any benefits that may accrue from it.

Recommendation: We urge the Commission tie any affirmative or implied consent requirements on an account or whole portfolio basis.

In addition, the proposed rule would permit the use of affirmative consents to online access obtained from clients, or implied consent under the conditions outlined in the rule. We believe that the proposed rule should be simplified by eliminating the component that anticipates the collection or use of affirmative consents to on-line access as an additional step separate from notice, as the concept does not appear to add any substantive benefit. The incorporation of affirmative consents to the operation of the proposed rule introduces additional complexity to the implementation of the proposed rule, and will impose costs on brokers associated with the collection, maintenance and updating of such data. The current system of notice and access for the delivery of proxy materials relies entirely on an implied consent approach, and in our experience that approach has been successful in accurately capturing the preferences of clients, who have the option of requesting paper copies on either a one-time or on-going basis.

Recommendation: Eliminate from the proposed rule the process for the collection of affirmative consents from investors.

Assuming that the proposed rule were to incorporate the role of brokers in the process, it could be interpreted to contemplate that multiple parties would share responsibility for responding to investor requests. It appears to anticipate that the mutual fund would make available portfolio information and historical fund reports. The brokerage firm would then be left to collect and maintain consents from their clients, and disseminate the notice cards, perhaps reflecting web links to the information provided by mutual funds. As discussed above, such an approach could raise concerns about the protection of the financial privacy of our clients. Assuming such concerns could be adequately

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addressed, a process that includes the provision of information from multiple parties, and the use of multiple website addresses, would be complex and costly to implement. We believe that the participation of multiple parties could also be confusing to investors, who would not necessarily know who maintains the website they may be on at a given moment, and who to call if there is a question or a problem. Indeed, an alternative approach that is simpler and already familiar to investors in the context of the delivery of proxy materials would be more user-friendly in our view.

In the current process for notice and access for proxy materials, investors are able to access materials on a single, third-party website or “landing page,” which mitigates many of the concerns noted above, and also provides a more user-friendly experience for investors. It is unclear from the proposed rule whether such a simplified approach would be permissible, and whether brokerage firms or mutual funds would be responsible for administering it.

Recommendation: We recommend that the rule be clarified to address in more detail how the process would be administered, including how investors would access mutual fund reports. We recommend further that the proposed rule clarify that the use of a single third party website or landing page where investors can access all relevant materials is permitted. We recommend that that brokerage firms remain responsible for administering the landing page for investors who hold their accounts in street name through brokers, as they are in the context of notice and access for proxy materials. We understand that it may nonetheless be possible for mutual fund reports to be provided by electronic links to mutual fund websites provided by brokers with safeguards to protect the confidential information of investors (e.g., the prohibition against the setting of cookies), and clear guidance to investors as to whose website they are on at a given moment. We believe such an approach may be possible, but that it should remain in the discretion of the brokers to implement. In providing such website links, brokers are in the best position to ensure that applicable data security safeguards are adequate and consistent with their legal obligations. Given the constantly changing landscape of internet security, we further recommend that the rules avoid entrenching this or any other specific approach to linking information from third party websites.

The proposed rule appears to require that investors be provided a separate URL or website address for each current and historical report that must be made available to download. This approach could be overly complex and costly to administer, particularly as new reports and other information are added, and older reports and information are eliminated. It could also be confusing to investors, subject to continuous requests to update their preferences. Making the proposed approach further onerous to investors, each report would have to be assigned its own URL, which could be lengthy, so that an investor would have to retype it into his or her browser (since it is communicated on a paper document). Investors are already familiar with the use of single third party websites or landing pages in the context of notice and access for the delivery of proxy materials, where all reports are listed in a clear, Plain English format, and readily accessible. If such an approach were also

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permissible under the proposed rule, reports would be equally accessible to investors, if not more so, than under a regime where each report were required to have its own web link.

Recommendation: Clarify that the proposed rule does not require a separate website address for each report, and that the use of a single third-party website or landing page is permissible.

The proposed rule would require that a brokerage firm make available a toll-free number and postage-paid envelope for requesting that paper copies be mailed. We recommend that the rule be modified to make the postage-paid envelope optional, rather than mandatory. Today, for proxy notice and access, investors are generally provided with multiple avenues through which to request paper copies including toll-free numbers, online through websites, and email addresses, which allow any investor the opportunity to make their request even in the absence of a postage-paid envelope. The availability of postage-paid envelopes is also inconsistent with the purpose of the proposed rule, which is to eliminate unnecessary use of paper, and all investors should have ready access to telephones even if a few do not have access to the internet. We do not believe that many investors would make use of postage-paid envelopes, and requests communicated in that manner would result in delay as the envelope makes its way through the mail system and is received and processed by the brokerage firm in question.

We also recommend that investors have the option of requesting the reports be emailed to them at an email address that they provide, in order to expedite delivery, save mailing costs, and introduce a delivery method that many investors will likely prefer. We believe that many investors likely will prefer an electronic copy of the report, which they can read on a portable electronic device, and the provision of electronic copies in lieu of paper copies will save paper and associated costs.

Recommendation: Eliminate the requirement that investors be provided with a postage-paid envelope, and acknowledge that providing requests to be made online, by email, and by toll-free telephone is sufficient. Expressly permit investors to request delivery of reports through email as an alternative to paper.

SIFMA Recommends Additional Features

As noted above, electronic delivery of mutual fund reports saves money even as compared to the proposed new system for on-line access, avoids the use of paper and can provide a more-user-friendly option for investors. E-delivery is clearly more economical than online access, since there are no costs associated with sending of periodic paper notices, and investors receive an electronic copy of the report in a format that is user-friendly and easy to view on a computer or portable electronic device. According to Broadridge, approximately 45% of all annual and semi-annual reports are e-delivered currently, and Broadridge estimates that the percentage will

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increase to 60% over the next 5 years. We are concerned that the proposed rule overlooks the concept of e-delivery entirely.

Recommendation: The proposed rule should permit brokerage firms to include on or with any notices disseminated under its terms materials designed to encourage clients to adopt e-delivery as an alternative to online access or the receipt of reports in paper, together with a means for making such an election. Further, the Commission's release on the adoption of final rules should include statements encouraging electronic delivery of mutual fund reports.

Further, the rule should provide for a transition period for larger brokers, allowing them to adopt the requirements one step at a time, such as implementing the requirements with new accounts first or first transitioning only certain types of investments. A transition period of at least 24 months following the effective date of the new rule would allow larger brokerage firms the necessary time to develop the significant new infrastructure and internal procedures required to comply with the rule, and implement it in stages. While mutual funds may commence the processes contemplated by the proposed rule when they are ready operationally to do so, brokerage firms would appear to have no control over timing and may be required to proceed before they are prepared to do so. Accordingly, brokerage firms should have the protection of a reasonable delay in the effective date, and a transition procedure that provides the proposed services in stages beginning from the effective date of the proposed rule.

Recommendation: The Commission should set an effective date for the new rule that provides sufficient time for brokerage firms to invest in new infrastructure, and prepare operations. We recommend 6 months from the date that the final rules are published in the federal register. A transition period of at least 24 months following the effective date of the new rule should permit brokerage firms to implement it in stages.

The Commission Should Not Implement the Proposal Prior to Adoption of a Reimbursement Mechanism

The proposal does not address how brokers will be reimbursed for the initial investment and ongoing costs of implementing the proposal with respect to mutual fund investors who have registered their investments through brokers. Following the adoption of notice and access for proxy delivery, the Commission first determined not to regulate reimbursement rates that brokerage firms and their agents would charge issuers, but subsequently approved rule amendments to NYSE Rules 451 and 465 to provide for the reimbursement of costs associated with the use of the notice and access option by issuers, including mutual funds.⁵ These rule amendments are limited to

⁵ See Order Granting Approval to Proposed Rule Change Amending NYSE Rules 451 and 465, and the Related Provisions of Section 402.10 of the NYSE Listed Company Manual, Exchange Act Release No. 70720 (Oct. 18, 2013).

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reimbursement for the use of notice and access in the distribution of proxy materials, and they do not cover reimbursement for implementation of the mechanisms contemplated by proposed Rule 30e-3.

Rule 451 does already provide for reimbursement for the delivery of interim reports,⁶ and stipulates who is responsible for those payments. However, just as had been the case when the Commission adopted notice and access for proxy delivery, Rule 451 does not yet address reimbursement rates for an online notice and access feature, including the collection of consents and support of full copies of material upon request.

Even if some of these costly features are simplified as recommended above, brokers will incur significant costs in creating a new system contemplated by the proposed rule. The proposed rule would require an initial mailing of a notice card in advance of the anticipated availability of an interim or annual mutual fund report, collection of the responses, storage of investor preferences in a database, and processing thereof in implementing the process for the dissemination of paper reports. Further, brokerage firms would have to institute a new system for the identification of the shareholder, such as the use of control numbers for the distribution of mutual fund reports and tracking requests for paper deliveries. When notice and access for the delivery of proxy materials was implemented, because proxy cards already were assigned control numbers, it was not necessary to create a new system for identifying investors. However, we understand that control numbers are not currently incorporated into the infrastructure for the delivery of interim reports of mutual funds, so a new control number system, or equivalent mechanism would have to be implemented in order to support new features, such as for the collection and proper characterization of consents, and the delivery of paper materials.

Along the same lines, as compared to notice and access for proxy materials, the proposed rule contemplates that a significant amount of information would be made available to investors for lengthy periods of time, such as historical fund reports, and available to investors upon request in a user-friendly format. The requirement to store such data, and make it available upon request will increase the costs of implementing the approach. The notice and access system for proxies operates in a much simpler manner, and requires the storage solely of the proxy materials for the current shareholders meeting up through the date of such meeting.

Recommendation: SIFMA recommends that the fee schedule be supplemented with those additional rates. We urge the Commission to consult with the NYSE in outlining brokers' right to reimbursement, as well as the rates that should apply.

⁶ Rule 451 currently provides that “[f]or interim reports, annual reports if processed separately, post meeting reports or other material, a Processing Unit Fee of 15 cents per account.” While the Rule addresses notice and access, it clearly states that the rates apply to proxy processing. We do not believe that the rates that apply to notice and access for proxy processing likely should be the same as the rates that should apply for providing notice and access for the delivery of interim reports.

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While third party independent contractors such as Broadridge, Mediant Communications, Inc., and INVeSHARE, Inc. have taken responsibility for much of the processing burden of implementing notice and access for proxy delivery, and it is anticipated that such intermediaries will assume some of the responsibility for implementing proposed Rule 30e-3, without further detail, it is unclear how responsibilities may be apportioned.

We greatly appreciate the opportunity to comment on the proposal. If you have any questions concerning these comments or would like to discuss these comments further, please feel free to contact me at 212-313-1287 or egreene@sifma.org.

Respectfully submitted,

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SIFMA