E-DELIVERY: MODERNIZING THE REGULATORY COMMUNICATIONS FRAMEWORK TO MEET INVESTOR NEEDS FOR THE 21ST CENTURY

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The Securities Industry and Financial Markets Association (SIFMA) is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly one million employees, we advocate for legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. With offices in New York and Washington, D.C., SIFMA is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

SIFMA's Asset Management Group (SIFMA AMG) brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceed $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit http://www.sifma.org/amg.

The Financial Services Institute (FSI) is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has successfully promoted a more responsible regulatory environment for nearly 90 independent financial services firm members and their 160,000+ affiliated financial advisors – which comprise over 60% of all producing registered representatives. We effect change through involvement in FINRA governance as well as constructive engagement in the regulatory and legislative processes, working to create a healthier regulatory environment for our members so they can provide affordable, objective advice to hard-working Main Street Americans. For more information, please visit financialservices.org.

The Investment Adviser Association (IAA) is the largest organization dedicated to advancing the interests of investment advisers registered with the Securities and Exchange Commission. For more than 80 years, the IAA has been advocating for advisers before Congress and U.S. and global regulators, promoting best practices and providing education and resources to empower advisers to effectively serve their clients, the capital markets, and the U.S. economy. The IAA's member firms manage more than $25 trillion in assets for a wide variety of individual and institutional clients, including pension plans, trusts, mutual funds, private funds, endowments, foundations, and corporations. For more information, please visit www.investmentadviser.org

Chapter 1 - Executive Summary

With more than 90% of adults in the United States using the internet, nearly 89% filing federal taxes electronically, and most clients of financial firms choosing electronic delivery for investment-related communications,[1] the Securities Industry and Financial Markets Association (SIFMA), the SIFMA Asset Management Group, the Financial Services Institute (FSI), the Investment Advisers Association (IAA), the Committee of Annuity Insurers, the Insured Retirement Institute (IRI), and the American Council of Life Insurers (ACLI) (together "the Associations") urge the Securities and Exchange Commission (the "SEC" or the "Commission") to update its rules and related guidance to reflect this reality and implement a digital approach establishing electronic delivery as the primary means for delivering investor communications.[2]

The Associations are proposing that the SEC amend relevant investor communications rules[3] to permit firms to shift the default delivery method from postal delivery to delivery through email, via a firm's application or website, or by other means of electronic transmission as may be available today or developed in the future (collectively, "e-delivery"), with appropriate notifications and safeguards. Following a one-year transition period, firms could begin delivering required investor communications electronically to existing clients for whom the firms have email addresses or other means to provide notice electronically that documents are available, with appropriate notice but without the need to obtain affirmative consent. New clients would be informed that they will be enrolled in e-delivery if they provide an email or other e-delivery address at account opening, even if they complete a paper application, unless they elect otherwise. Firms would not have to take follow-up steps to confirm electronic delivery. In all circumstances, investors who do not provide a means for receiving required disclosures via e-delivery would continue to receive paper delivery, and any investor could elect to receive paper delivery at any time.

E-delivery with notifications via email, website or mobile application, or text messaging is faster, safer, and more timely than physical delivery through the postal service. As the Commission has acknowledged[4] e-delivery allows investors to review documents in more user-friendly formats, when and where they choose, leveraging modern communications technology to create deeper and more productive investor engagement.

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[1] See Section 4.1 below. This statistic on electronic filing with the IRS is for 2019 and likely will be higher for 2020; see https://www.irs.gov/statistics/returns-filed-taxes-collected-and-refunds-issued.

[2] Each of the Associations may have additional, complementary commentary and suggestions that would address industry-specific needs and concerns.

[3] A non-exhaustive list of key rules is included in Appendix A.

[4] The Commission for example specifically focused elements of its recent amendments to Form ADV to "encourage the use of electronic formatting and graphical, text, online features and layered disclosures" in complying with new requirements to provide relationship summaries to retail investors. See Form CRS Relationship Summary; Amendments to Form ADV, Rel. Nos. 34-86032, IA-5247 (June 5, 2019) ("Form CRS Release"), generally and quote at p. 54, available at https://www.sec.gov/rules/final/2019/34-86032.pdf.

The COVID-19 pandemic has further demonstrated the effectiveness of new communications technology for uses ranging from routine personal tasks to functions vital to our economy and our financial markets, such as virtual annual shareholder meetings and investor conferences, initial public offering roadshows, and meetings between clients and financial professionals. These developments highlight the need for major changes to our existing delivery framework for investor communications.[5]

This past June, SEC Chairman Jay Clayton acknowledged the shift in the preferred means of communication and heightened attention to e-delivery during the COVID-19 pandemic in his testimony before the House Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets. In response to a question on whether the SEC is looking to expand electronic delivery, he stated:

> [My] view on this has been further shaped by the work we have done in this COVID environment. It is clear that we live in an electronic communication world. Let me say that I am of the view that anyone who wants paper should be able to get paper, but what this period has shown us is the importance of electronic delivery and the effectiveness of electronic delivery.[6]

When the SEC opened the door to electronic delivery 25 years ago, it unleashed an evolutionary process driven by technological development that created a new paradigm in investor communications. If the SEC lifts today's regulatory barriers, it similarly will foster the next evolution in the quality of investor communications and engagement. The Associations urge the SEC expeditiously to commence a review of its rules on the delivery of investor communications and foster an e-delivery framework suitable for the 21st century.

Chapter 2 - Background

The SEC's current electronic delivery framework was groundbreaking when it was established, but it has not kept up with the current widespread investor preference for non-paper delivery of important information and has become a hindrance to improvements that would benefit investors and other market participants.

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[5] Dalia Blass, Director of the SEC's Division of Investment Management, echoed these observations in a July 2020 speech when she asked whether the Commission should "consider guidance that treats physical and electronic delivery as equals rather than measuring delivery against a paper standard." She further asked whether the Commission could "open the door to allowing funds and advisers to communicate with shareholders and clients using electronic contact information." Speech: PLI Investment Management Institute (July 28, 2020), available at https://www.sec.gov/news/speech/blass-speech-pli-investment-management-institute.

[6] House Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets (June 25, 2020). In advancing his question to Chairman Clayton, Representative Sherman asked: "Is the SEC looking at expanding electronic delivery for [investor] documents beyond the shareholder reports? [A]s my colleagues have heard me say, if you mail it to me I'll lose it, if you email it to me, then . . . I can look at it on my iPad while I'm in this room."

In the 1990s, the SEC was a leader in recognizing and enabling the use of new communications technologies by, for example, providing interpretive guidance on the electronic delivery of public company prospectuses and other reports. Under this construct, regulated entities are required to deliver materials physically on paper, unless an investor affirmatively consents to electronic delivery or the regulated entity has evidence to show such delivery (e.g., an email received by the investor with the document attached or linked with a return receipt to the firm). While as noted below an updated delivery model is now available for mutual fund shareholder reports and proxy materials, this model is still unavailable for most investor communications. In other words, under most circumstances, the current default is physical delivery of paper materials through the postal mail service. This made sense in the mid-1990s, when only 14% of adults in the United States had online access, mostly through slow dial-up connections,[7] but internet access and electronic communication are ever-present today.

The Commission has progressed beyond its original approach in limited circumstances since the 1990s. In 2005, for example, it permitted the delivery of final prospectuses via filing on EDGAR, subject to certain conditions.[8] In 2007, the Commission adopted Rule 14a-16, allowing an issuer to post proxy materials and annual reports online instead of mailing them, so long as it provided notice to investors of its intent to do so and a means for investors to elect to continue to receive paper delivery. In adopting Rule 14a-16, the Commission cited advances in communications technology and the growing adoption of electronic delivery by investors. It stated in its adopting release over thirteen years ago:

> [W]e believe that current levels of access to the Internet merit adoption of the notice and access model as an alternative to the existing proxy distribution system. In this regard, we note that more than 10.7 million beneficial shareholders already have given their affirmative consent to electronic delivery of proxy materials and approximately 87.8% of shares voted were voted electronically or telephonically during the 2006 proxy season. Moreover, research submitted to us during the comment period indicates that approximately 80% of investors in the United States have access to the Internet in their homes, a greater percentage than we estimated at the proposing stage.[9]

This was a significant step by the Commission, since proxy statements are transactional documents that relate to the important decision to approve the election of nominated directors and, often, to other important matters, such as increases in shares that may be issued under employee benefit plans.

Eleven years after adopting the new approach for the delivery of proxy materials, the Commission adopted Rule 30e-3, establishing a similar approach for the delivery of mutual fund investor reports, calling it "the first major step in a long-term

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[7] Pew Research Center, "How the internet has woven itself into American life," at 77 (Feb. 27, 2014).

[8] See Securities Act Rules 172 and 173, which deem final prospectuses filed on EDGAR, with a notice that the sale was made pursuant to a final prospectus that is not being delivered pursuant to Rule 172, to satisfy prospectus delivery requirements.

[9] Internet Availability of Proxy Materials, Rel. No. 34-55146 (Jan. 22, 2007).

initiative . . . to improve the investor experience by updating the design, delivery, and content of fund disclosure for the benefit of individual investors."[10] The Commission requested feedback on ways to improve disclosure and the investor experience with mutual fund and exchange-traded fund reports as part of its "investor experience initiative," and noted that in the future it would consider applying a similar framework to other types of reports. Following its request for feedback on ways to improve the investor experience, the SEC recently proposed comprehensive modifications to its related disclosure rules.[11]

The Associations laud the Commission's updates since the 1990s addressing the delivery of mutual fund shareholder reports and proxy materials, as well as the Commission's current effort to consider improvements to the retail investor experience through modernized disclosures. The Associations are proposing a further evolution, to permit a variety of forms of e-delivery, among which a "notice and access" approach of the type recognized by Rules 30e-3 and 14a-16 would be a part.

Chapter 3 – The SEC Should Implement a Digital Framework for Investor Communication

The time has come to build on the SEC's prior steps and make e-delivery the default delivery method for required investor communications and disclosures. Most financial firms already communicate with investors electronically (e.g., via e-mail), including delivering disclosures and other communications electronically with investor consent. For example, broker-dealers already open accounts online for the majority of customers and permit customers to access their accounts online. With online brokerage accounts, investors at any time can see their account balances and confirmations of recent trades. Many investment advisers also include consent for e-delivery in management agreements with clients and post required disclosures on the internet or provide hyperlinks to public filings (i.e., to the Investment Adviser Registration Depository) in addition to paper delivery of disclosures. The use of electronic communications in the financial services industry already delivers a client experience that is faster and more secure, allows formats that are more readable, permits access from nearly anywhere, eases storage and retrieval, and saves significant costs – all of which are important to investors. At the same time, investors' desire to have documents physically delivered has steadily declined over the years. For example,

[10] SEC Press Release, "SEC Modernizes the Delivery of Fund Reports and Seeks Public Feedback on Improving Fund Disclosure" (June 5, 2018), available at https://www.sec.gov/news/press-release/2018-103.

[11] See 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, SEC Release Nos. 33-10814, 34-89478, IC-33963 (Aug, 5, 2020) ("2020 Fund Disclosure Release"), available at https://www.sec.gov/rules/proposed/2020/33-10814.pdf. This proposal would establish a disclosure mechanism for information believed to be important for investors to evaluate and monitor their investments. The proposal would eliminate the delivery of annual prospectus updates in favor of shareholder reports for fund disclosure and would prohibit open-end funds from relying on Rule 30e-3, thus requiring annual shareholder reports to be mailed unless shareholders affirmatively elect electronic delivery.

paper delivery of proxy materials has decreased from 89% in 2000 to 19% in 2020; further, of this 19% of paper deliveries, three quarters are notices of internet access under Rule 14a-16.[12]

The change to digital delivery of investor communications by broker-dealers, mutual funds, investment advisers, public companies, and business development companies should include prospectuses and other important investor communications, such as customer account statements, customer confirmations of sale, and investment adviser brochures, and accordingly will require amendments to various SEC, FINRA, and MSRB rules and related guidance. These include the ones identified in Appendix A that require physical delivery unless consent is obtained from the investor for electronic delivery or the firm has evidence of actual receipt by the investor.[13]

In addition to the default requirement for paper delivery, several rules impose obstacles to e-delivery because they may trigger the additional complicated consent requirements of the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"). For example, several SEC rules state that a financial intermediary must give or send to its customers "written notification" or notification "in writing" of certain actions or to disclose certain information. Such terminology could bring the relevant communications within the scope of the E-Sign Act, rather than the SEC's rules and interpretations on e-delivery.[14] Thus, as other government agencies have done, the SEC should clarify that its requirements are not intended to trigger the consent requirements of the E-Sign Act or take an affirmative step to exempt appropriate rules from those requirements.[15] For example, the Department of Labor recently used its exemption authority under the E-Sign Act to allow employers to post retirement plan disclosures online or deliver them to workers by email as a default.[16]

[12] Broadridge Financial Solutions, Inc. ("Broadridge") provided the 2000 data, and the 2020 data is included in its 2020 Proxy Season Key Statistics and Performance Ratings. The data reflects the impact of technologies and processing for householding, electronic delivery, and managed account consolidations.

[13] The IRS requires firms to deliver tax notices to clients relating to their investments on paper, and it would help to fully effectuate our proposal if the IRS were to likewise update its rules on electronic delivery. We urge the SEC to coordinate with the IRS, in addition to FINRA and the MSRB, for consistency as it reviews and updates its own rules.

[14] While the SEC's rules and interpretations since the early 1990s permit consent to be obtained over the telephone or on a paper account application form, under the E-Sign Act a firm would be required to seek to obtain or confirm the client's affirmative consent to electronic delivery via email or other electronic means and the client must respond in kind. Applying the E-Sign Act requirements results in a cumbersome, multiple-step process for collecting consents, and, in the experience of financial services firms, many clients become confused, believing that they have already signed up for e-delivery. Not infrequently, clients overlook or ignore the confirming email from the firm or call their representatives to clear up their confusion.

[15] See *Collins v. Missouri Electric Cooperatives Employees Credit Union*, 2006 WL 2189693 (July 26, 2006) (distinguishing statutory requirement to "provide each consumer with a periodic statement," which did not trigger the consent requirements of the E-Sign Act, with provisions explicitly requiring "written" communications or communications "in writing"). The SEC could clarify the application of its digital approach instead of the E-Sign Act by using more general terms, such as by stating that financial intermediaries should "furnish" or "provide" documents, or by exercising authority under section 104(d)(1) of the E-Sign Act, 15 U.S.C. 7004(d)(1), to exempt records from the E-Sign Act consent requirements.

[16] See Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA, 85 Fed. Reg. 31,884, at 31,909 (May 27, 2020) (exempting the Department of Labor's proposed regulations by application of Section 104(d)(1) of the E-Sign Act).

Chapter 3.1 – E-Delivery Benefits

Under the Associations' proposed digital approach, more investors would benefit from the e-delivery systems that many financial services firms have built over the past 20 years to assure faster, more efficient delivery, providing investors better ability to review documents when, where and how they choose and often in a more inviting format than paper. For example, with customer account statements, broker-dealers today send an email or text alerting clients enrolled in e-delivery that their account statements are ready. From a mobile phone or home computer a client can link from the message to the firm's website, authenticate her account, and see her account statement securely behind the firm's firewall. In contrast, paper statements depend on third parties for delivery and therefore are subject to mis-delivery, diversion or theft, as well as, more recently, health concerns including concerns related to COVID-19.

While the default to paper delivery via the postal service has in the past been cited as providing assurance of delivery for sensitive documents, such as brokerage statements and notices of trade execution, the Associations believe that e-delivery not only is more secure, but also permits the application of more up-to-date electronic methods of assuring prompt notice to investors, including pop-up messages from firms' mobile phone applications and text or email alerts, which are used today to provide important notifications of password changes, account profile changes, and electronic payments.

Over time, firms could also develop special tools to service investors preferring a foreign language or investors with disabilities and others who may use specialized software. For example, documents could be translated into any number of languages or could be read via audio capabilities. Investors today have special tools available to them, such as screen readers and other visual aids that could be enhanced with more widespread use of e-delivery.

Chapter 3.2 – One-Year Transition Period

The Associations propose a one-year transition period, during which investors who currently receive paper delivery would be notified of the change to the proposed digital framework. Investors would receive notice included with reports they already receive that explains generally how delivery will work under the new framework, and/or individualized notice via an electronic address the firm has on file for the investor that would explain the investor's current delivery method and whether or how it will change under the new framework unless the investor elects otherwise. These notices would indicate that e-delivery will begin on a specified date following the transition period unless the investor elects to receive documents by physical mail or has not provided an electronic address. Firms could explain how the new delivery system will operate and how investors may change delivery options by contacting their firm representatives, calling a toll-free number, accessing a firm's mobile application or online platform, or through other means.

A one-year transition period will also allow firms to communicate with clients and update their systems and/or policies and procedures as necessary.

Chapter 3.3 – Existing Investors Who Currently Elect E-Delivery

Investors who already accept e-delivery would continue to receive their investor communications in the same manner as they currently receive them. There would be no change for these investors following the transition period, unless an investor decides to make changes in response to the notices described above.

Chapter 3.4 – Existing Investors Who Currently Elect Paper Delivery / E-Delivery Address Available

At the end of the transition period, investors who have provided their email addresses or other electronic addresses but who have not yet signed up for e-delivery would commence receiving communications through e-delivery. They would of course always have the option to change their election to paper delivery during or after the transition period. For example:

> Example: Client A of ABC Brokerage provided the firm an active email address when she opened her account with the firm. During the one-year transition period, the firm sends the client notification that as of January 1, 2022, she will begin to receive investor communications through e-delivery at the email address that she had provided. The communication mentions that the investor should contact the firm if the email address changes and that she can easily change her election to another delivery method for a portion or all of her deliveries by either by telephoning her firm representative, using a toll free number, entering the change on the firm's mobile application, or accessing the firm's website. On January 1, 2022, the firm provides the client with email notification that each of her documents (e.g., account statements and confirmations) is available on the firm's secure website, potentially with a link to the secure website where the documents can be viewed.

It is the experience of many Association member firms that investors who provide an email address often assume that their deliveries will be made via email and prefer to receive communications in that manner, and are unaware that additional steps may be necessary to definitively override the default to paper delivery. Thus, for example, the client in our scenario above perhaps preferred to receive communications electronically but had not completed the steps to activate her delivery preference. This is a relatively common situation: after she provides her consent to e-delivery through a telephone conversation with the firm's representative, her representative follows up by sending her an email requiring her to click electronically on a consent.[17] She either overlooks the email request or does not respond as she believes she has already consented during their telephone conversation. She is likely confused as to why the firm is asking her a second time to choose e-delivery, since most electronic and other elections in her personal experience do not require duplicative efforts. This is one way in which the current framework for e-delivery has unnecessarily hindered the ability of firms and their clients to take full advantage of the benefits of e-delivery, as noted in Section 4.1 below.

Chapter 3.5 – Existing Investors Who Currently Elect Paper Delivery / No E-Delivery Address Provided

Existing investors who currently receive paper deliveries would receive notice during the transition period of the new digital approach, along with a request for at least one e-delivery address. The notice would state that if the investor provides an e-delivery address, the firm will use that address for digital delivery of future communications, unless the

[17] The reason for the follow-up email is that her consent to e-delivery involved documents covered under SEC rules and the E-Sign Act, and under the E-Sign Act there is a requirement to consent electronically or confirm the consent electronically. The SEC's interpretations allow for telephonic consent, but that cannot be accomplished with any documents covered by the E-Sign Act. See supra notes 14 and 15 and accompanying text.

investor elects otherwise. An investor who declines to provide an e-delivery address would continue to receive documents via the postal service, even if the investor has not registered any delivery elections.

> Example: Client B of XYZ Investment Adviser has never provided an email or other e-delivery address to the firm. Because she is not comfortable with completing tasks online, she need only decline to provide an e-delivery address or ignore the notice and she will continue to receive paper.

Chapter 3.6 – New Investor Relationships

For new investor relationships, including through paper-based account applications or investment management agreements, investors would be informed that they will be enrolled in e-delivery when they provide an email address or other means to deliver the documents electronically. At the time the relationship is being established, the investor would be able to select paper delivery if she chooses or could simply decline to provide an e-delivery address.

> Example: Client C of ABC Brokerage opens an account. The account application[18] requests an e-delivery address and states that by providing such address the firm will use that email address as the address of record for delivery of regulatory documents. The application explains how e-delivery will work, how a client can opt out of e-delivery, and that the client can call or access the firm's website to change her elections after the account is open. The client provides her email address, and the firm begins to deliver documents to the client via email.

Chapter 3.7 – Ongoing Changes to Elections

An investor would be permitted to change delivery elections at any time for all documents, or for certain types of documents (for firms in a position to provide the latter option). The available methods to change elections could include changes via the firm website or its mobile application, or by contacting the firm by telephone.

Chapter 3.8 – Communications Interruptions & Security

E-delivery provides better protections that ensure that investors receive communications. Furthermore, firms already have robust systems in place to address electronic delivery failures. They currently see on average 0.48% of electronic deliveries fail because of email bounce backs and similar issues,[19] and virtually all of those are resolved with a back-up

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[18] The format and design of account applications differ among firms, depending among other things on their business models and the nature of their clients, so that this description is only for illustrative purposes.

[19] This is the number of email failures as a percentage of emails sent, and reflects experience with proxy materials, fund reports, and post-sale prospectuses for the 12 months ending June 30, 2019. Data provided by Broadridge.

process. For example, one asset manager and clearing firm with more than $900 billion in assets under management reported a 0.6% failure rate on initial e-deliveries, with a 99.85% success on retry. By contrast, postal mail poses challenges in rectifying undelivered and returned mail, as there is no real assurance that the firm will receive the returned mail, and if it does the process typically is so slow (weeks or months later, typically) that the investor communication in question may well be outdated by the time the problem is rectified. Firms would adopt policies and procedures to follow-up on e-delivery failures (e.g., email bounce backs) with an alternative e-delivery method or a paper mailing.

As noted above, alerts via email, text messaging, or other means can also be a deterrent against fraudulent situations, such as unauthorized account activity or changes. For certain types of document deliveries, such as prospectuses and notices that a trade has been executed, customers could sign up to receive e-alerts as well as other notifications.

Chapter 4 – Our Proposal is Supported by Data and Experience

As noted above, Chairman Clayton observed earlier this year the popular embrace of e-delivery and online interactions in declaring that "we live in an electronic communication world." Even before the COVID-19 pandemic, the data is clear that investors preferred electronic to paper. As the Commission recently observed in its proposal seeking to improve mutual fund and exchange-traded fund disclosure, "investors have shown a general familiarity with using the internet to find information," noting that many investors prefer to receive documents electronically, while some continue to prefer paper.[20]

Chapter 4.1 – E-Delivery is Preferred by, and Accessible to, Most Investors

Data supports further regulatory action by the SEC to increase the scope of documents where electronic delivery becomes a default, while protecting the interests of investors who choose to continue to receive documents physically in paper form. As noted above, most financial firms already open client accounts online, permit customers to access their accounts online, or deliver disclosures electronically with investor consent. For most clients, document delivery is already occurring instantaneously through electronic means and for transactional documents at the point of sale.

Broadband internet access and mobile phones are now prevalent in the United States. In 2000, there were about 7 million broadband subscriptions in the United States, while in 2018 the number had grown to about 111 million.[21] Between 2000 and 2019, the number of internet users grew from about 125 million to over 300 million.[22] Today, not only

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[20] 2020 Fund Disclosure Release, at 31, proposing modifications to mutual fund and exchange-traded fund disclosures.

[21] Statista 2020, sourced from the Federal Communications Commission.

[22] Statista 2020, sourced from Internet World Stats.

are there more than 300 million active internet users, there are almost 250 million mobile internet users and over 200 million users of social media.[23]

Nearly all U.S. adults use the internet, and for the small percentage who do not use it, that is a matter of preference rather than lack of access. According to the Pew Research Center, 90% of adults used the internet as of April 2019, as compared to 52% in 2000, five years after the SEC first adopted its overall framework for electronic delivery.[24] Significantly, among the 10% who did not use the internet as of April 2019, the research organization found that the reasons were primarily personal preference (e.g., lack of interest or perceived difficulty of use) rather than lack of access. Furthermore, according to the Pew Research Center, the number of U.S. adults owning a smartphone has risen from 35% in 2011 to 81% in 2019, and 37% mostly use a smartphone to go online, compared to 19% in 2013.[25] Smartphones by their nature provide online access functionality as well as access through mobile applications and the opportunity to receive SMS alerts.

As noted above, e-delivery has also become commonplace in the financial services industry.[26] Although the rates at which clients of financial firms elect e-delivery vary based on the size and type of firm, firms that SIFMA surveyed report material year-on-year increases in e-delivery adoption each year (without exception) by their clients in the last several years. One national broker-dealer and investment adviser with over 5,000 brokers in its organization reported an increase from 65% in 2009 to 81% in 2020. Another increased its electronic participation from 0% in 2016 to 50% in 2020, and a third from 38% in 2009 to 73% in 2019. The number of street-name positions receiving email deliveries (which is only a portion of digital processing) grew by 6 million this proxy season over last season, despite a decline both in the number of shareholder meetings and in the total number of shares processed.[27]

While electronic communications have become commonplace in the financial services industry, the requirement to obtain affirmative consents from investors reinforces inertia among some investors who are willing and able to accept e-delivery but have not completed the steps at each firm with which they maintain a relationship. Furthermore, some firms, such as

[23] Statista 2020, sourced from We Are Social, Hootsuite, and DataReportal.

[24] Pew Research Center, "10% of Americans don't use the internet. Who are they?" (April 22, 2019).

[25] Pew Research Center, "Mobile Technology and Home Broadband 2019" (June 13, 2019).

[26] Approximately three quarters of the positions of financial firm clients are digitally processed, and with an updated delivery model, this trend will only accelerate. Broadridge provided this data, which covers owned positions and is inclusive of e-delivery, householding, and managed account consolidations.

[27] Focusing on proxy processing, in the course of the 2020 proxy season, 81% of the shareholder positions Broadridge administered for proxy materials were processed digitally. The balance were mailed and of this amount approximately three quarters were notices required under the updated approach to delivery of proxy materials described above. Virtually all institutional positions are digital. In the 12 months ending June 30, 2019, for retail investors, 55% of the distributed positions were electronic, 31% were mailed as notices, and 14% were mailed full sets of proxy materials. Distributed positions are net of householding and managed account consolidations. Data provided by Broadridge.

certain asset managers, face added logistical costs and hurdles in obtaining consents from clients insofar as they must independently solicit individual clients, unable to make efficient use of tools such as extensive consent databases established for street-name holdings.

Chapter 4.2 – Communications Technology Can Enhance the Investor Experience and Lead to Greater Engagement

Americans already look to the internet, mobile phones, and mobile applications to organize their personal lives, including purchases and sales of goods and services, entertainment, banking transactions, and communications with family and friends. For most, it is no longer a leap to engage with brokers, investment advisers, mutual funds, and other financial services in the same manner.

The Associations believe that improved and innovative methods for communicating with investors are the key to achieving greater investor participation and engagement for all forms of delivery. Based on the experience of our member firms, providing the investor with a more inviting, user-friendly, efficient, and perhaps even customizable experience will result in more rather than less participation. The Commission recently acknowledged the value of improving investors' overall disclosure experience, as well as the related benefits of tailored and layered disclosure, which is more easily accomplished in an electronic format, in facilitating better-informed investment decisions.[28] As noted earlier, the Associations envision that under our proposed digital approach to delivery, firms could more consistently provide a user-friendly approach, presenting to the investor multiple delivery options – from among physical delivery, online access, email, or a firm's mobile application – and permitting them to change their delivery elections at any time as to one or more category of documents.

We understand that there has been a correlation between one particular method of e-delivery – the use of the internet access approach for the delivery of proxy materials permitted by Rule 14a-16 – and reduced investor voting rates. However, as noted above, we believe that an improved investor experience, particularly with the flexibility afforded by electronic formats and the ability to engage the investor through mobile electronic interactions, will result in greater and more meaningful investor participation.

Chapter 4.3 – Other Regulatory Models Support E-Delivery

The Department of Labor announced a final rule in May of this year that will allow employers to post retirement plan disclosures online or deliver them to workers by email, as a default. The Department explained that:

> Employers who sponsor retirement plans now have additional ways to disclose information, which will benefit workers and retirees by enhancing the availability and effectiveness of communications about their retirement savings.

[28] See 2020 Fund Disclosure Release, supra note 11, and Form CRS Release, supra note 4.

> Workers will be able to decide how they would like to receive their retirement plan information, and they can change their mind at any time. [29]

Outside the United States, the European Union has proposed changing the default delivery mechanism for investor reports and information from paper to electronic, largely consistent with our proposal here. The proposal explains that "[g]iven that clients are widely able to view their investment portfolios online (or contact their investment firm where necessary), providing them with a plethora of paper-based statements has become superfluous" and, further, "slows down the investment process."[30]

Chapter 5 – Conclusion

Broker-dealers, investment advisers, and other financial firms have applied new advances in communications technology to create a more positive experience for their clients. We believe that these advances have led to more informed and engaged investors. We have reached a point, however, at which the SEC's framework for e-delivery no longer reflects prevailing consumer practices and has hindered the adoption of new delivery methods that are in the interests of the investor as well as the financial markets. The time has come to allow firms to "flip the model" of delivery, to utilize digital channels as the default means for communication, with protections to allow those clients who cannot (or decline to) accept electronic delivery to opt for postal mail delivery. Our proposed digital framework recognizes that the preferred or default option for delivery should be the fastest, safest, and most effective form and recognizes postal mail delivery as a method that, while still viable, is not the first and foremost method.[31]

In making this change, the Associations are proposing more than a routine update to rules to ensure that they do not hinder the application of new communications technology. Rather, we propose that the SEC change the standard to allow firms to more readily use e-delivery, and encourage the next phase in the evolution of delivery which we believe will create a more positive experience for investors, as well as enhanced security and timeliness of information that can be accessed from anywhere.

The Associations would be happy to help the SEC map out the implementation process, such as by submitting relevant data, proposed rule amendment text, and input from its members. We also intend to reach out to FINRA, the MSRB and the IRS on elements of our proposal that impact document deliveries governed by their rules, and we urge the SEC to work with those organizations on appropriate rulemakings.

[29] "Electronic Disclosure Safe Harbor for Retirement Plans," Employee Benefits Security Administration, available at https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/electronic-disclosure-safe-harbor-for-retirement-plans.

[30] Proposal for a Directive of the European Parliament and of the Council, amending Directive 2014/65/EU (MiFID II) as regards information requirements, product governance and position limits to help the recovery from the COVID-19 pandemic (July 24, 2020), available at https://ec.europa.eu/finance/docs/law/200724-mifid-review-proposal_en.pdf.

[31] E-delivery may not be the best solution for all types of firms and business models. E-delivery systems can be costly particularly for smaller firms, but since a default to e-delivery would be permitted but not mandated, such firms could choose to deliver via paper mailings for some or all of their clients.

Appendix A: List of Key Documents to Which Paper Delivery Default Applies Under Current Rules[32]

- Operating company, mutual fund and business development company prospectuses[33]
- Confirmations of sale and alternative periodic reporting (Securities Exchange Act of 1934 ("Exchange Act") Rule 10b-10 and FINRA Rules 2230 and 2232)
- Brokerage statements (FINRA Rule 2231)
- Transactional filings (e.g., tender offer materials under Exchange Act Regulation 14D and Rule 13e-4, going-private materials under Exchange Act Rule 13e-3, and merger proxies filed on Securities Act of 1933 Form S-4)
- Regulation Best Interest (BI) (Exchange Act Rule 15l-1)
- Investment adviser brochures (Investment Advisers Act of 1940 ("Advisers Act") Rule 204-3)
- Regulation S-P privacy notices (Regulation S-P Rules 248.4 through 248.9)
- Form CRS for broker-dealers and investment advisers (Exchange Act Rule 17a-14 and Advisers Act Rule 204-5)
- Free credit balance notice requirements (Exchange Act Rule 15c3-3(j))

[32] This list includes key documents but is not exhaustive of all potential required regulatory communications.

[33] Securities Act Rules 172 and 173 already eliminate any kind of actual delivery for qualifying final prospectuses.