

## Public Statement

---

# Statement on Final Rule on the Optional Internet Availability of Investment Company Shareholder Reports, Request for Comment on the Investor Experience, and Request for Comment on Intermediary Fees



**Commissioner Kara M. Stein**

**June 5, 2018**

Yesterday, the Commission adopted a new rule and issued two requests for comment designed to address different aspects of how mutual fund investors receive information. This includes the method of delivery, the information that is delivered, what the information looks like, and the costs associated with the delivery.

Currently, funds are required to deliver annual and semi-annual shareholder reports to investors in print and by mail. Essentially, for those that own mutual fund shares, when you get home this afternoon, you might have a shareholder report sitting in your mailbox, which you can read, stash in your pile of papers to read later, or immediately throw in the trash. It's up to you what you do with the paper report. For the most part, you will get a paper document mailed to your address every six months. That is the default.

The final rule on optional internet availability of investment company shareholder reports, or rule 30e-3, changes this default. If you own shares of a fund that uses rule 30e-3, instead of getting a paper report every six months, you will get a paper notice sitting in your mailbox. The notice will inform you that your shareholder report has been posted online and is ready for viewing. If you want the paper version of the full shareholder report, you will now have to take an active step to request paper delivery. The notice will provide you with instructions on how to make that election, either on a one-time or a permanent basis through a required toll-free (or collect) telephone number. Or, if the fund chooses, it may also provide you with other methods of allowing your preference to be known. But the point is: you have to do something that you didn't have to do before.

The problem is that this extra step is a hurdle for investors, and may be one that, for some investors, is just too high. Or, to frame it differently, will investors *proactively choose* to leap over the hurdle to get the information they need to make informed investment decisions?

Take, for example, 401(k) plans. It is clear that retirement contribution rates go up when companies set employee contributions as a default.<sup>[1]</sup> To change the default, employees have to take active steps. In the context of 401(k) plans, this probably leads to more contributions. In the context of shareholder report delivery, however, I am not sure the outcome is as positive.

Rule 30e-3 shouldn't be seen as simply about delivering documents. The rule sits within a larger disclosure architecture. In fact, the Commission over the years has struggled with how best to engage investors vis-à-vis disclosure. Indeed, Commissions of the past have embarked on different permutations to achieve what is now colloquially called "disclosure effectiveness." These policy initiatives serve to remind us that the Commission has placed reliance on full and fair disclosure as a component of its investor protection mandate. To this end, many of these initiatives have been designed to encourage investors to read the disclosure they receive. After all, disclosure is effective only to the extent that investors read and understand it.<sup>[2]</sup>

In this regard, the inertia that is attendant with a default is powerful. I hope yesterday's shifting of the default does not end badly for investors. That is why I am wary of rule 30e-3, and have struggled with this rule for some time.<sup>[3]</sup> In some ways, it disregards the goals of the Commission's past disclosure effectiveness initiatives by potentially making it more difficult for investors to receive the information they need. As I've long stated, our goal as a Commission should be to engage investors, not to put up barriers to engagement.

What's more, the rule, at its core, is at the intersection of two important Commission objectives: investor protection and the effective use of technology. I have encouraged, time and again, the Commission to embrace the use of technology where doing so helps us be a more effective regulator or helps investors make more informed investment decisions. Technology has many benefits. It can increase efficiency, reduce costs, bolster compliance, help detect fraud, and improve information flow. Technology can also remove barriers. But the use of technology should not be at the expense of the investor. With respect to rule 30e-3, I had feared, and still do fear, that technology is being used in a way that could do more harm than good<sup>[4]</sup>—by introducing barriers, instead of removing them.

With that said, I think we should look at this rule as a pilot program. There are many changes to rule 30e-3 since its proposal. But one component of the initiative that we were asked to vote on is a required lookback. After the rule goes into effect, Commission staff will review and report back to the Commission on the implementation of the rule. Specifically, the report will include an analysis of the ease through which investors can elect their delivery preferences. Such a report should include an evaluation of the number of investors that elect paper delivery. It should also include an assessment of the process that investors go through to make their preference known. In other words, investors shouldn't have to click through three automated telephone menus only then to speak to an operator who doesn't know what to do with the investor's request. Likewise, funds should include, and the release encourages, a feature on a fund's website that allows an investor to make his or her preference for paper delivery known. This process should be easy; it shouldn't include multiple links or steps. And Commission staff should assess this as they look at the effectiveness of the rule.

Importantly, if it is hard for investors to make their preference for paper reports known, then the Commission should, and I hope will, do something about improving the process. Or, if it turns out that most investors want paper reports as the default, then we should reverse course. In short, the staff's review and report allows the Commission to review whether the disclosure delivery mechanism used by funds is effective, promotes informed decision-making, and is compliant with rule 30e-3, and therefore, will hold funds accountable.

There are several other changes in the final rule from the proposal that will benefit investors, and these changes give me some comfort. First, the rule now expressly permits the paper notice that is delivered to shareholders' addresses every six months to include content from the shareholder report. Permissible content includes information about the fund, the fund sponsor, fund performance, and more. The notice may include, and in my opinion should include, graphics and other design elements, so long as they are not misleading. I believe this is an improvement from the proposed rule, as it means that funds can engage investors in new and possibly better ways. I would caution, as the release notes, that any information from the shareholder report that is included in the notice is still subject to the anti-fraud provisions of the federal securities laws.

Second, the paper notice delivered to investors every six months can also be coupled with the investor's account statement. I believe that investors tend to look at their account statements, because they contain personalized information about the funds in which they invest. And when looking at them, investors might be more likely to see and take action on the notice which will prompt them to elect paper delivery, if they so choose.

Finally, the final rule now includes a generous transition period. The first day a fund can rely on rule 30e-3 is January 1, 2021. In order to rely on it then, the fund must have included two years' worth of notifications on the front page of each mailed prospectus, summary prospectus, and shareholder report, notifying investors of the upcoming change from paper to electronic delivery, with instructions on how to elect the delivery method they prefer. This transition period will hopefully give investors a better chance to make their actual preference known before the change occurs. This is certainly an improvement from the proposed rule, which would have only required a 60-day information statement to be sent to investors prior to the fund switching to electronic delivery.

Although I ultimately supported the rule with these changes, yesterday's action does not solve the real challenge, which is how to make disclosure more useful to investors in the Digital Age. I believe that investors would be more likely to read and make more informed investment decisions if the content included in fund disclosures was more helpful and easy to use.

That is why I am happy to see that the staff is exploring ways to improve the investment company disclosure regime more broadly. And I was happy to support yesterday's recommendation to publish a request for comment regarding the investor experience. I think the staff has done an excellent job of coming up with questions about how investors make decisions, who they look to for advice, and where and how they get information. I am particularly pleased that the request for comment is aimed at retail investors. I encourage retail investors to, at the very least, use the included feedback flier to respond to the Commission's questions. I hope the staff uses the information and data they collect to help the Commission improve our disclosure regime for investors.

Ultimately, I envision the Commission as a data provider that provides investors with decision-useful data to make the most informed decisions possible. Why can't investors go to a website—whether it's the Commission's or otherwise—and, using structured data submitted by issuers, compare investment products from different companies at no cost? An investor should be able to search, filter, and extract the amount and type of data they see fit to make investment decisions. I hope retail investors respond to this request for comment. When you do respond, think of your favorite consumer product website and tell us why it's your favorite. Why does it work well? And more broadly, how does or could technology help you better make investment decisions?

The final piece of yesterday's package is a request for comment on the framework under which intermediaries charge fees to deliver certain shareholder documents, such as prospectuses and annual

reports. The Commission is seeking comment on a number of areas related to this issue, and I encourage market participants to give us your best thoughts on this topic.

I appreciate the staff's hard work on the rulemaking package. In particular, I would like to thank J. Matthew DeLesDernier, John Lee, Angela Mokodean, Michael Kosoff, Michael C. Pawluk, and Jennifer McHugh.

---

[1] See, e.g., Jeff Reeves, "Auto enrollment in 401(k)s takes the guesswork out of retirement," USA Today (Aug. 16, 2015), *available at* <https://www.usatoday.com/story/money/personalfinance/2015/08/13/auto-enrollment--401k-plans/30203375/> .

[2] See Commissioner Kara M. Stein, Statement on Proposals Relating to Regulation Best Interest, Form CRS, Restrictions on the Use of Certain Names or Titles, and Commission Interpretation Regarding the Standard of Conduct for Investment Advisers (Apr. 18, 2018), *available at* <https://www.sec.gov/news/public-statement/stein-statement-open-meeting-041818>.

[3] See Commissioner Kara M. Stein, Statement on Adoption of Investment Company Reporting Modernization (Oct. 13, 2018), *available at* [https://www.sec.gov/news/statement/stein-second-statement-open-meeting-101316.html#\\_ftnref4](https://www.sec.gov/news/statement/stein-second-statement-open-meeting-101316.html#_ftnref4).

[4] While technology can often improve investor protection, it can also be used as a tool to exacerbate fraud. For example, technology can be used to hide or mask wrongdoing, or, at least, make it more difficult to uncover. It can also serve as a fraud unto itself. See, e.g., U.S. Securities and Exchange Commission, Investor Alert: Ponzi Schemes Using Virtual Currencies (Jul. 23, 2013), *available at* [https://www.sec.gov/investor/alerts/ia\\_virtualcurrencies.pdf](https://www.sec.gov/investor/alerts/ia_virtualcurrencies.pdf). In short, using the power of technology also involves respecting the required responsibility that comes with it.