

**SHAREHOLDER NOTICES OF THE SOURCES OF FUND DISTRIBUTIONS -  
ELECTRONIC DELIVERY**

The staff has been asked whether management investment companies (funds) registered under the Investment Company Act of 1940 (1940 Act) that make certain types of distributions to their shareholders may electronically deliver to their shareholders the required “written statement” describing the sources of those distributions. Electronic media may be a more efficient, effective and timely means of delivering the required information to fund shareholders. The staff’s view is that funds may electronically deliver to their shareholders the required “written statement” describing the sources of their distributions.

***Background***

Section 19(a) of the 1940 Act generally prohibits a fund from making a distribution from any source other than the fund’s net income, unless that payment is accompanied by a written statement that adequately discloses the source or sources of the payment.<sup>1</sup> Rule 19a-1 under the 1940 Act specifies the information required to be disclosed in the written statement (Rule 19a-1 Notice).<sup>2</sup> Rule 19a-1(a) also states that every written statement “shall be made on a separate paper.”

As innovations and advances in technology have facilitated the expanding use of electronic media, the Commission has periodically issued interpretive guidance on how registrants may use electronic media to deliver information to investors.<sup>3</sup> This Commission guidance, however, has not focused specifically on Rule 19a-1, and the rule was last amended in 1973, before document delivery through electronic media was possible.

***Electronic Delivery of Rule 19a-1 Notices***

Notwithstanding the rule’s provision referencing “a separate paper,” the staff believes that electronic delivery of a Rule 19a-1 Notice, consistent with the Commission’s guidance, would satisfy the purposes and policies underlying Rule 19a-1.<sup>4</sup> Moreover, electronic delivery may be a more efficient, effective and timely means of providing fund shareholders with the required information.<sup>5</sup> The staff’s view reflects the framework



established by the Commission for satisfactory electronic delivery: notice, access and evidence of delivery.<sup>6</sup> The staff's view is predicated on compliance with all applicable Commission guidance on electronic delivery, including, without limitation: (i) electronic delivery of a Rule 19a-1 Notice in the form of an e-mail message to the fund shareholder containing the Rule 19a-1 Notice or a document link to the Rule 19a-1 Notice; (ii) the fund (or its intermediary) having obtained prior consent of the shareholder to receive fund shareholder communications through electronic means (Consent); and (iii) electronic delivery of Rule 19a-1 Notices only to fund shareholders that provided the Consent, and cessation of electronic delivery of Rule 19a-1 Notices to any fund shareholder who withdraws or revokes the Consent.

### Endnotes

- 1 Section 19(a) was intended to prevent funds from creating a false impression of gains. See *Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76<sup>th</sup> Cong., 3<sup>rd</sup> Sess., 275, 278 (1940)*. See also *In the Matter of Gabelli Funds, LLC, Investment Company Act Release No. 28580 (Jan. 12, 2009) (settlement)* (“The purpose of Section 19(a) and Rule 19a-1 is to afford shareholders adequate disclosure of the sources from which the payments are made so shareholders will not believe that a fund portfolio is generating investment income when, in fact, distributions are paid from other sources, such as shareholder capital or capital gains.” (footnote omitted)); *Investment Company Institute, SEC Staff No-Action Letter (July 22, 1996) (1996 Letter)* (addressing how the requirements of Rule 19a-1 may be satisfied when a fund offers shareholders the option of automatically reinvesting dividends, directing dividend payments, or receiving dividend payments by check).
- 2 Rule 19a-1(g) provides, in relevant part, that “[t]he purpose of this rule, in the light of which it shall be construed, is to afford security holders adequate disclosure of the sources from which dividend payments are made.” In adopting Rule 19a-1, the Commission stated that “[a]n important feature of the rule is the extent to which it requires explicit and affirmative disclosure whenever a dividend is being paid from a capital source.” *Letter of the Director of the Investment Company Division Relating to Section 19 and Rule N-19-1, Investment Company Act Release No. 71 (Feb. 21, 1941)*.
- 3 *Use of Electronic Media for Delivery Purposes, Investment Company Act Release No. 21399 (Oct. 6, 1995)* (“The extent to which required disclosure is made, as opposed to the medium for providing it, should be most important to the analysis of whether sufficient disclosure has occurred under the securities laws.”); *Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information, Investment Company Act Release No. 21945 (May 9,*

1996); Use of Electronic Media, Investment Company Act Release No. 24426 (Apr. 28, 2000) (“2000 Release”).

- 4 The staff’s view also extends to funds delivering Rule 19a-1 Notices pursuant to the 1996 Letter.
- 5 For example, a fund shareholder who has requested electronic delivery by a fund of shareholder documents and communications may overlook a Rule 19a-1 Notice delivered in another medium, *i.e.*, paper.
- 6 See note 3, *supra*. “Issuers and market intermediaries . . . must . . . assess their compliance with legal requirements in terms of . . . notice, access and evidence of delivery.” 2000 Release.

This *IM Guidance Update* summarizes the views of the Division of Investment Management regarding various requirements of the federal securities laws. Future changes in laws or regulations may supersede some of the discussion or issues raised herein. This *IM Guidance Update* is not a rule, regulation or statement of the Commission, and the Commission has neither approved nor disapproved of this *IM Guidance Update*.

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