

# consumer action

## Education and advocacy since 1971

**Comments to the SEC Investor Advisory Committee  
By Linda Sherry, Director of National Priorities, Consumer Action  
July 14, 2016**

Thank you very much for the opportunity to be here today. I'm Linda Sherry, the Director of National Priorities for Consumer Action. Consumer Action was founded in 1971 to help individual consumers nationwide assert their rights in the marketplace and to advance pro-consumer, industry-wide change for the benefit of all.

Despite the perception that all Americans are thriving in the digital revolution, the reality is that a significant portion of the population lacks regular Internet access. Studies by the Department of Commerce<sup>1</sup> and Pew Research Center,<sup>2</sup> for example, show that more than 30 percent of all Americans still lack broadband, to say nothing of the countless others who lack tech savvy.

We hear from consumers across the country, including seniors, minority Americans, disabled Americans, and those living in rural areas, who struggle with digital literacy and depend on access to paper materials for the information they need. Perhaps these individuals are not always contacting us about mutual fund annual reports, but there is a consensus among the community-based organizations in our network that printed materials continue to play a crucial role in financial education.

Given this reality, Consumer Action has urged the SEC not to finalize the current version of Rule 30e-3. A tiny sliver of the Investment Company Reporting Modernization, Rule 30e-3 would permit mutual funds to shift the default delivery method of shareholder reports from paper

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<sup>1</sup> Exploring the Digital Nation: Computer and Internet Use at Home; US Department of Commerce, November 2011.

<sup>2</sup> Home Broadband 2015; Pew Research Center, December 2015.

documents by mail to simply making the reports accessible on a website, with the option to return to paper delivery by contacting the investment company.

We understand the desire for investment companies, like every other organization in America, to operate as efficiently as possible and to look for opportunities to cut costs and eliminate waste. Consumer Action feels strongly, however, that Rule 30e-3 as currently proposed places a higher priority on efficiency than it does on consumer rights, investor transparency and disclosure. This imbalance would leave American investors – the very population the SEC is commissioned to protect – having to go out of their way to access important information mandated by securities regulators and designed to keep shareholders informed.

### **INVESTORS PREFER PAPER DELIVERY & CAN ALREADY CHOOSE ELECTRONIC DELIVERY.**

According to the SEC’s own study, a majority of American investors said they prefer to read annual reports in paper format rather than online versions, and a large number of respondents also asserted that printed materials yield higher content comprehension.<sup>3</sup>

The SEC’s e-delivery consent process has been in existence for more than 20 years, and while only a minority of investors have consented to it, those numbers are projected to rise in the years ahead. According to statistics compiled by Broadridge, this so-called “problem” seems to be solving itself and adoption of e-delivery will only grow in the years ahead as technology improves and the percentage of the population equipped and ready to embrace it continues to rise.

As an investor myself, I understand firsthand why so many shareholders have expressed a preference for paper reports. While I’ve opted-in to electronic delivery of some statements in recent years, I’ve been careful to maintain paper delivery of my investment reports because I find it to be a far easier, more reliable medium for monitoring my own finances and investments.

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<sup>3</sup> Investor Testing of Selected Mutual Fund Annual Reports (Revised), Siegel and Gale, February, 2012. p. 69.

The policy of “implied consent” which is embedded in Rule 30e-3 is troubling in itself. The majority of investors have clearly demonstrated their preference by not choosing electronic delivery; they should not be switched and now have the onus rest with them to rectify the situation.

More than 500 individuals have filed individual comments with the SEC specifically in response to Rule 30e-3, and 93 percent of them were in direct opposition. Rarely does public sentiment on an issue become clearer than that.

So some of the investors with the ability to speak out against Rule 30e-3 have done so. These are people, by and large, who have submitted a comment online or via email. They likely have Internet access and a degree of tech savvy. Now what about more vulnerable populations who could be even more negatively affected? What would they say?

### **SENIORS WOULD BE DISADVANTAGED BY RULE 30E-3.**

There is little doubt that many seniors would also be severely disadvantaged by Rule 30e-3 – largely because many do not have reliable Internet access.

According to Pew Research Center data, 41 percent of Americans ages 65 and up do not use the Internet,<sup>4</sup> and Americans 55 and older are 16 percent less likely than the national average to have Internet access.<sup>5</sup> A 2011 Department of Commerce report found that 45 percent of Americans over 65 do not even own a computer.<sup>6</sup>

Despite all the evidence pointing to a clear lack of digital access and knowhow among seniors, Rule 30e-3 would force this population – 34 percent of whom own mutual funds<sup>7</sup> – to remember to go online to access the reports they need, or take action to contact an 800 number and provide personal details in order to reinstate paper delivery of investment reports.

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<sup>4</sup> Older Adults and Technology Use; Pew Research Center, April 2014.

<sup>5</sup> Access for All: American Attitudes Regarding Paper & Digital Information; InfoTrends 2013.

<sup>6</sup> Exploring the Digital Nation: Computer and Internet Use at Home; US Department of Commerce, 2011.

<sup>7</sup> ICI 2015 Investment Company Fact Book, p.116.

### **MINORITY AMERICANS WOULD BE DISADVANTAGED BY RULE 30E-3.**

The digital divide also disproportionately affects certain minority groups – another portion of the population that would be marginalized by Rule 30e-3. Analysis of census data<sup>8</sup> shows that Hispanic Americans are 16 percent less likely and African Americans are 18 percent less likely to have Internet access than the national average. Another study finds that 43 percent of African American households do not have Internet access at all.<sup>9</sup>

Investors in these groups would now face the disproportionate burden of needing to proactively contact their investment companies to maintain the flow of information about their mutual fund investments.

### **“IMPLIED CONSENT” SETS A DANGEROUS PRECEDENT.**

If the data presented thus far is not enough to persuade the SEC to rescind this harmful rule, precedents from other federal agencies should.

Recognizing the dangers of “implied consent,” other agencies have disallowed, or restricted its use in the same ways the SEC proposes to use it. For example, the IRS does not allow financial organizations to use implied consent to enroll investors for e-delivery of tax documents. Instead, investors must opt-in proactively.<sup>10</sup> Similarly, the Department of Labor and Department of the Treasury have concerns with e-delivery, citing issues such as lack of consistency and clarity in presenting Internet content as well as the importance of preserving the option to receive paper.<sup>11</sup>

We all know how things easily disappear or get buried in our email inboxes, and not everyone has the wherewithal to continually keep track of their email correspondence.

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<sup>8</sup> Access for All: American Attitudes Regarding Paper & Digital Information; InfoTrends 2013.

<sup>9</sup> Report: 20 Percent of American Adults Don't Have Internet; DailyTech LLC, August 2013.

<sup>10</sup> Closing the E-Delivery Gap, 2013 Pershing LLC, subsidiary of New York Mellon Corporation Treasury.

<sup>11</sup> Private Pensions; Revised Electronic Disclosure Rules Could Clarify Use and Better Protect Participant Choice, p. 19, United States Government Accountability Office, Sept. 2013.

The SEC's proposed plan to send one Initial Statement postcard advising investors to either begin using the Internet for shareholder reports or take action in order to request continued print delivery is too high-handed. It's also inadequate to ensure shareholders are reminded of what they are about to lose. If indeed the delivery of mutual fund reports is a problem, it is a problem with a rapidly approaching expiration date that will take care of itself in time. It is not a forever problem.

According to 2015 Gallup polling, 55 percent of Americans own stocks – many through mutual fund investments. In many cases, mutual fund investments are the only investments people have made. So we're talking about jeopardizing the receipt of reports that potentially document the changing make up of a family's mutual fund investments – in most cases, if not all, their entire retirement savings. We'd like to see the method of access left up to each investor.

In contemplating this proposal, let's keep in mind the results of a similar SEC initiative in 2007. When the SEC instituted its "e-proxy" rules in 2007 to facilitate the electronic distribution of proxy materials to investors, there was a 75 percent drop in shareholder participation.<sup>12</sup> Follow-up studies revealed that this decrease was likely due to the fact that shareholders were unwilling to take the additional step of visiting the website or were confused about how to access the proxy materials. This time, people may just silently lose access to investment information.

## **CONCLUSION**

Rule 30e-3 might reduce operating costs for investment firms – but would these savings really trickle down to shareholders in any meaningful way? The largest component of operating expenses is the fees paid to a fund's investment manager/advisor. As we know from decades of experience, corporate savings are rarely passed on to consumers in the form of lower direct costs. The vast majority of this rulemaking imposes various modernization requirements on investment companies. Vulnerable populations should not be disproportionately burdened with compliance costs for investment companies nor promised cost savings with measurable impact on returns.

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<sup>12</sup> Briefing for SEC Division of Investment Management Shareholder Report Delivery: Participation and Costs; Broadridge, August 4, 2015.

