JEREMY ROSEBERRY
Petitioner — SEC Rulemaking Petition File No. 4-891
petition@pagproject.com

July 15, 2026

The Honorable Paul S. Atkins
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Filed as a comment to Petition File No. 4-891 (via rule-comments@sec.gov and the Commission's electronic comment system)

Re: Demand That the Commission Give Investors the Truth It Has Held for Six Years — Petition for Rulemaking File No. 4-891 — by August 15, 2026; the Interpretive Answers and the Interim Investor Alert Are Enclosed in Final, Actionable Form (Exhibits A and B)

Dear Chairman Atkins:

This letter asks for one thing, in three forms, by one date: that investors be told the truth about the securities they are buying, by August 15, 2026. It asks something else as well, because this harm has outgrown the Commission: that the Petition be sent to Congress. The truth at issue is not mine. It is not in doubt. The funds compute it every trading day — the exact amount of already-earned, undistributed income embedded in each share's price, and the "unnecessary tax" the buyer will owe on the return of that money, as if it were gain.

The funds hold that figure in their own data and withhold it from the investor who is about to pay for it. Their prospectuses, meanwhile, describe the risk in time-limited language — "shortly before," "just prior to" — that the funds' own records show to be materially false and misleading. The number exists. The buyer never sees it. And what is sold — at a price the fund knows to be inflated by a liability it has not disclosed — is a security with a hidden tax attached to it.

What this letter presents, Mr. Chairman, is therefore not a policy question. It is the question your agency was created to make impossible: whether the institution Congress built to guarantee investors the truth, will continue to withhold it.

Petition for Rulemaking File No. 4-891 was filed March 19, 2026, and sits on the Commission's public docket (https://www.sec.gov/files/rules/petitions/2026/petn4-891.pdf). The first three requests below are drawn from its expressly severable categories of relief, are ordered by the speed with which the Commission can act, and are constructed so that the first two require no rulemaking, no new policy, and no finding about any party's past conduct. No rationale that might counsel deliberation on the third can explain deferral of the first two, and no single response can answer them all.

First, direct a Commission-level response to the sixteen interpretive questions in Section IV of the Petition. The questions are not requests for new policy. They are fund-accounting and settled-law questions — does realized income accrue into NAV when earned; does a purchaser pay for it; do funds compute the embedded amounts daily — that the industry answers every trading day in the ordinary course of computing NAV. They are also built so that each admits one honest answer, and each answer follows from the one before it: the first is bare arithmetic no one disputes, and the sixteenth is the conclusion the arithmetic compels. Because the questions form a single staircase, a response that confirms the arithmetic while declining the conclusions it compels is not an answer to Section IV — it is a recorded refusal to state one. The Petition makes each question severable for exactly this reason: no question may be left unanswered without a specific, stated ground for that refusal.

Proposed answers to all sixteen are enclosed as Exhibit A, short, fact-based, and grounded in standard registered-fund accounting and settled precedent. The Commission may adopt them, refine them, or rebut them. If it disputes any answer, I ask only that it identify the specific premise in dispute — mechanical operation, economic consequence, materiality standard, or legal principle — and the basis for that dispute. If no premise is disputed, the answers should issue.

Answered, these sixteen questions accomplish the mission itself: they tell investors the truth about how the securities they buy actually work and the risk they assume upon purchase. Shown the figure the funds compute daily and withhold — how much of today's price is income the fund already earned, and the unnecessary tax the buyer will owe on its return — an investor can avoid the charge outright, by waiting until the distribution has been paid or by holding the shares in a tax-advantaged account.

Information that would change whether, when, and how a reasonable investor buys is, under the settled test, material: "a substantial likelihood that a reasonable [investor] would consider it important." *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); *Basic Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988). This figure changes all three. It is withheld all the same, and the investor pays what the industry's own materials call "an unnecessary tax bill" on the return of his own money. That is the materiality standard, applied. It answers itself.

Second, issue an interim investor alert before this year's distribution season. The Office of Investor Education and Advocacy issues such alerts routinely, on matters of far smaller consequence. A model alert, drafted in the form and voice of that Office and suitable for issuance as written, is enclosed as Exhibit B. Every factual statement in it is established by the Petition's record. Issuing it requires no rulemaking and no prejudgment of the Petition — only a decision that investors should be told, before they buy, what the industry's own documents concede. This alert should be issued as soon as possible.

Third, decide the Petition's rulemaking request. Grant it, deny it, or defer it — but decide it, as the Administrative Procedure Act requires: "within a reasonable time, each agency shall proceed to conclude a matter presented to it." 5 U.S.C. § 555(b). If the Commission denies the Petition in whole or in part, I ask only for what the statute already commands: "a brief statement of the grounds for denial." Id. § 555(e). Rulemaking proceeds on a longer track than the first two requests — which is precisely why the Petition made its categories severable, and precisely why the first two requests do not wait on this one.

The Law Already Requires This. It Needs Applying.

None of what this letter asks waits on Congress to pass a new statute. The laws that require truthful, adequate disclosure are already on the books — Section 34(b) of the Investment Company Act, Securities Act Rule 156, and the antifraud provisions that reach every prospectus and every sales communication. They do not need amending; they need applying. The disclosures at issue are not incomplete for want of a rule that tells funds what to say. They are misleading under the rules that already exist. Nothing in this letter asks the Commission to invent an obligation. It asks the Commission to apply one that has governed these funds for decades — and to stop letting the funds satisfy the letter of a filing requirement while defeating its purpose.

In January 2025, the Commission charged Vanguard under the very statute named above — Section 34(b) of the Investment Company Act — for prospectuses it found "materially misleading" about the tax consequences of the fund's distributions. It ordered $106 million in remediation to the investors harmed, distributed through a Fair Fund. In re Vanguard Group, Inc., Investment Company Act Release No. 35453 (Jan. 17, 2025).[1] The Commission's own Asset Management Unit Chief stated the principle in terms that decide this letter: accurate information about capital gains and taxes is "critical to investors saving for their retirements."[2] And the disclosures the Commission condemned in Vanguard were accurate as far as they went. The prospectuses said the funds' distributions "may be taxable" and that capital gains "could vary considerably from year to year" — true statements the Commission nonetheless found materially misleading, because they omitted a specific, foreseeable risk the fund knew and did not disclose.

The disclosures at issue here are not true statements rendered misleading by omission. They are affirmatively false: they tell investors the risk arises only "shortly before" a distribution, when the funds' own daily accounting shows it is present nearly every trading day of the year.

And the falsehood runs in one direction — toward convincing investors to "buy now." An investor told the risk appears only in the days before a distribution believes the fund is safe to buy on every other day. An investor told the truth — that a fund preparing to pay a large capital-gains distribution in December already carries that embedded tax liability today — waits, and buys in January, after the

---

[1] *In the Matter of The Vanguard Group, Inc.*, Securities Act Release No. 11359, Investment Advisers Act Release No. 6830, Investment Company Act Release No. 35453, Admin. Proc. File No. 3-22435 (Jan. 17, 2025), https://www.sec.gov/files/litigation/admin/2025/33-11359.pdf. The Section 34(b) finding appears at ¶ 40; the materially-misleading findings at ¶¶ 33, 35; the quoted prospectus language at ¶ 32. The $106 million figure reflects the total remediation across the coordinated SEC, New York Attorney General, and NASAA resolutions; the civil penalty imposed in the Commission's order is $13.5 million (¶ IV.D).

[2] Press Release, U.S. Sec. & Exch. Comm'n, Vanguard to Pay More Than $100 Million to Resolve Violations Related to Target Date Retirement Funds (Jan. 17, 2025), https://www.sec.gov/newsroom/press-releases/2025-21 (statement of Corey Schuster, Chief, Division of Enforcement Asset Management Unit).

distribution has passed and the liability with it. The investor who buys now starts the fund's fee clock now. The investor who waits starts it in January, or never starts it at this fund at all.

The industry has said in writing why the “buy-now” outcome is the one it protects: asked why the available fix to fund pricing would never be adopted, a senior fund-administrator executive explained that "we bill on the [inflated] NAV." A disclosure that confines the danger to a handful of days a year, when the fund's own accounting shows it present on nearly all of them, keeps investors buying — on a price the fund knows to be inflated, and on which its fees are charged. The statute the Commission enforced in Vanguard required no proof that anyone intended to mislead. Here, the intent is in the record, in the industry's own words.

Vanguard's harm was episodic, one complex, and over. This harm is continuous, industry-wide, and recurs every trading day. Vanguard's harm was $106 million, once. This harm is estimated to exceed $100 billion, every year — approximately a thousand times larger, and it has not stopped. If the Commission's reasoning in Vanguard was correct — and the Commission stated it publicly, over its own name — then the affirmatively false disclosures this letter concerns are misleading beyond dispute. And the standard that produced a nine-figure penalty for the smaller, milder failure cannot be unavailable for the one a thousand times greater and industry-wide. The Commission applied that standard in Vanguard. It has only to apply it again.

And if that is wrong — if there exists any provision of law that exempts the Commission from ensuring truthful disclosure on this subject, any statute, rule, or precedent under which investors are not entitled to know the quantified and unnecessary tax liability embedded in the price they are paying — I ask that the Commission cite it in its response. I am aware of none. The Petition identifies none. None exists.

The Question Is Institutional, and It Is Yours

I write to you rather than to the staff because the staff cannot commit the institution, and this is an institutional question. The Securities Act of 1933 announces its purpose in its opening line — "to provide full and fair disclosure of the character of securities sold" — and for more than ninety years the Commission has called it the "truth in securities" law. The Supreme Court has described the fundamental purpose of the federal securities laws as the substitution of "a philosophy of full disclosure for the philosophy of caveat emptor." *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963). Ensuring that investors receive the truth is not an item on the Commission's agenda. It is the reason there is a Commission — and it is the entire source of the institution's authority. The Commission's power has never rested on its budget or its enforcement statistics. It rests on a public conviction, built over nine decades, that when the truth about a security is in the Commission's possession, the Commission is on the investor's side of it.

This docket tests that conviction in its simplest possible form. What is being withheld from investors is not in dispute; the industry's filed documents concede it, quantify it daily, and explain in writing why it persists. The only open question is who is withholding it.

For decades, the answer was the industry. Since June 2020, when the matter first entered the Commission through its whistleblower program, and unmistakably since March 19, 2026, when it was docketed for decision, the answer has also been the Commission. Every trading day of silence, the agency of full and fair disclosure stands between investors and a truth sitting in its own files — an inversion of its charter that no enforcement statistic and no rulemaking agenda can offset, because it contradicts the premise on which all the rest depends.

And the answer — or the silence — will be yours. The Commission's response to this Petition will issue under your chairmanship, and the record will not distinguish between the institution's choice and its Chairman's. I say that without hostility and without insinuation: it is simply what the office is. The Commission's agenda under your leadership is ambitious across many fronts; nothing on it is more fundamental than this, because this is the function every other function assumes. Americans' confidence in their public institutions is not in surplus at this moment, and an agency that polices honesty is judged, in the end, by its own. Sixteen yes-or-no questions about how an investment fund works is as easy as that test will ever be.

The Commission's mission is not a matter of the Chairman's discretion, or of the season's politics. Congress fixed it by statute and placed it first: to protect investors. The agency's other charges — to facilitate capital formation, to keep markets fair and efficient — Congress ranked beneath that one. And it made them depend on it. No market runs for long on capital from investors who have learned they cannot trust what they are told. An agenda may emphasize what it chooses. It may not leave the first duty undischarged while it pursues the rest. For six years, on this matter, that is what has happened. The duty the statute ranks first has gone unmet — in the one place, the point of sale, where investors are told what they are buying.

The Commission Has Never Disputed This Harm, and Never Disclosed It

The harm the Petition documents was never hidden from the industry that causes it. For eight years, I brought this harm to the industry, and its senior executives directly, and the industry did not dispute it. It acknowledged the harm in the words quoted above, declined to correct the inflated fund pricing it knew how to correct, and, when my formal compliance notices reached its 15,266 compliance officers, more than ten major fund complexes quietly deleted the misleading disclaimer language from their prospectuses rather than correct them openly. A firm does not delete language it believes was accurate. The deletion is the industry's own verdict that the words mattered.

Nor can the industry call the correction impracticable, because it already performs one abroad. The same global managers whose U.S. funds are at issue have operated an income-equalisation mechanism for their investors in the United Kingdom for decades. That mechanism is imperfect — it averages across purchasers, creating winners and losers, whereas the method I demonstrated to the Commission is exact to each investor — but it acknowledges the harm, and it substantially protects the investors who receive it.

What these firms operate for investors in London, they decline to operate for investors in America. The difference is not capability. It is jurisdiction. And the refusal was not the failure of one firm, or of one layer.

Over nearly eight years, I deliberately tested every level of the compliance architecture Congress and the Commission built to protect investors: the fund managers themselves; their boards of directors; the 15,266 chief compliance officers who received formal written notice; the outside securities counsel at twelve of the largest law firms in the country; the Big Four audit firms; the exchanges; the custodians; the brokerages. Every level failed. Not one gatekeeper, at any level, acted to protect a single investor.

The machinery did not fail by accident, and the industry did not expect it to catch them. Its own executive explained the wager in a sentence — the firms "bill on the [inflated] NAV," and the fix that would end that revenue was the fix they declined. A system that every regulated party has correctly assumed will not enforce against them is not a safeguard. It is a formality the industry had priced and paid nothing for — until now.

That real-time testing of our compliance infrastructure, and the universal failure it produced, are sworn under penalty of perjury in the Declaration attached to the Petition as Exhibit 1. A single firm's failure is a matter for a penalty against a single firm. The sworn, documented failure of an entire self-policing system is something else: it is the machinery built to catch this harm, reporting and proving that it does not work.

The Division of Enforcement concentrates its resources, by its own stated criteria, on misconduct that is egregious and extensive, on harm that is widespread, on investors who are particularly vulnerable, and on wrongdoing that ordinary detection would miss. This record satisfies every one of them at once. The failure is sworn, eight years long, and industry-wide. The harm reaches 160 million investors, most of them retirees and ordinary savers. And the practice went undetected by SEC examination because the industry concealed it.

The question the Commission should be prepared to answer — to itself, and to the Congress that will receive this record — is not whether this matter meets the threshold the Enforcement Division reserves for its most serious work. It is what open matter meets it more completely. I am therefore copying the Director of the Division of Enforcement on this letter, so that the official who allocates the Division's enforcement resources holds the same sworn record the Chairman does.

How this industry-wide failure was allowed to happen is a question the Commission must answer — to itself, and then to the public. And when a record of that character is placed before a Chairman of the Securities and Exchange Commission — sworn, specific, and eight years old — the proportionate response is not a docket entry. It is to set aside what does not concern the protection of investors and to direct the Commission's resources to an industry-wide enforcement sweep — to investigate the failure, and to hold those responsible to account, at the scale of the failure and not the scale of least resistance.

A systemic wrong is not answered by token penalties spread across its many offenders. That is the arithmetic these firms have already run, and won: a fine smaller than the revenue they generated from the harm, divided among the guilty, and forgotten within months, is not a deterrent but a cost of doing business — and it is that enforcement posture that taught this industry the practice was safe to continue. Leniency did not cause the failure. It ratified it. And an industry that has already deleted the words, declined the fix, and priced the penalty will read a lenient answer here as it has read every one before it — as permission to do it again. That is not conjecture about these firms. It is the record of this case, and the pattern of every one that came before it. Investor protection is not one item on the Commission's agenda. It is the reason the agency has one.

The Commission has had this for six of those eight years, and its part of the record is a sequence of dates. In June 2020, the matter reached the Commission through its whistleblower program, in a submission prepared with counsel who served as the founding Chief of that program. This tip did not sit in a black box. Within months, I presented it directly to a sitting Commissioner, Allison Herren Lee, and shortly after to her counsel. In that second meeting, walking through the funds' own data and the time-limiting language the prospectuses use, her counsel agreed with the assertion at the center of this Petition: that the disclosure does not accurately describe the risk. That was 2020. The Commission has known — from a Commissioner's own office, shown the fund data, in the first year — and in the six years since, it has told investors nothing.

Then, at the Commission's request, I delivered a written plan to correct the pricing, the unnecessary tax loss, and provide adequate real-time disclosure in 2022. Since then, no part of that plan has been implemented. Three times over three years, most recently in May 2026, the Commission received an unsolicited FAR proposal to build the tool that would produce exactly this disclosure and protect investors. Three times it declined the proposal. And in the most recent declination, the Commission described the matter as a "disclosure gap" and an "over-taxation pattern," disputed neither, and told me to refer it to the Internal Revenue Service.

One does not send a petitioner to the IRS with a problem that does not exist. And the Internal Revenue Service does not regulate disclosure. It does not review prospectuses, and it has no power to correct one. That duty belongs to the Commission alone. Nor does one decline, three times, to build a correction that other markets already run. The Commission has been asked three times to procure the tool that would protect investors and produce this disclosure, and declined each time — even as the firms it regulates operate a correction for this exact harm in the United Kingdom.

The record, therefore, leaves one plain question unanswered: why are American investors left unprotected against a harm the industry knows how to cure, and cures elsewhere? The Petition now before you was filed in March 2026. Across six years, the matter has been presented to more than fifty members of the Commission's staff and to multiple sitting Commissioners and their counsel — <u>a correspondence record that now runs to 465 written communications</u>, in both directions.[3] A file of 465 communications, in addition to meeting with multiple sitting Commissioners, does not leave room for the defense of not knowing.

---

[3] Petitioner's correspondence index, June 2020–July 2026, maintained contemporaneously; the complete index is available to the Commission on request and will accompany the Freedom of Information Act and Privacy Act proceedings described below.

Not one has rebutted that these time-limited disclosures are materially false and misleading, or that they fail to give investors what the law entitles them to know. And not one has rebutted the simplest fact of all: the funds withhold the single figure an investor would need to quantify the loss. That figure is the realized income the fund has already earned and embedded in its price — computed every trading day, and shown to no one.

Without it, an investor cannot calculate what he stands to lose. He cannot even begin. A fund that does not know what is coming may tell him it "may" come; a fund that computes the amount daily may not. And that word survives only because the figure is hidden. Hand the investor the number, and he sees at once that the risk is not approaching. It is already inside the price he is about to pay. The Commission was shown all of it. It has acknowledged the Petition, as its rules require. It has not answered it.

Reduced to its core, the record is one sentence: the Commission has treated this harm as real in every forum but the one that reaches investors. It described the harm in its own written FAR disposition. It has left it unrebutted across six years of meetings with its staff and its Commissioners. But it has never stated that truth where an investor deciding whether to buy could read it — and that omission is not incidental to what this Commission is.

The Securities Act of 1933 is called the truth-in-securities law because Congress built the Commission to put the truth about a security into the hands of the person about to buy it: to make the government the investor's guarantor of that truth, not its gatekeeper.

On this record, the Commission has become the gatekeeper. It holds the truth, and it keeps it from the very investor it was created to hand it to. That is the Commission's founding purpose turned exactly on its head. Turning it back is the whole of what this letter asks: that the Commission state in public the truth its own file already concedes — the truth no one at the Commission has disputed in six years of holding it.

This Is No Longer Only a Securities Matter. It Is a Constitutional One, and It Does Not Wait on the Commission's Answer

I want to be precise about the gravity of what the Commission's silence now sustains, because it has passed beyond the securities laws. Whether a prospectus is adequate is a question the Commission may debate. Whether the government may keep tax on money that was never income is not a question the Commission may debate. That much was settled at Runnymede in 1215, and settled again, unanimously, in 2023. When a Form 1099-DIV reports an investor's returned capital as a taxable dividend, the government collects tax on money that was never income. Returned capital is not income, and not under a century of Supreme Court authority defining income as "accessions to wealth." *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955).

The investor who receives back a portion of what he paid is no wealthier. He has been handed his own money and taxed for the privilege of receiving it. The Court's judgment on exactions of this kind is not ambiguous: "The retention by the Government of money wrongfully exacted as taxes is immoral, and amounts in law to a fraud on the taxpayer's rights." *Bull v. United States*, 295 U.S. 247, 261 (1935). And in *Tyler v. Hennepin County*, a unanimous Court traced the rule to the Magna Carta and restated it whole: "a government may not take more from a taxpayer than she owes," and retention of more than is owed is a "classic taking" under the Fifth Amendment. 598 U.S. 631 (2023). The Chief Justice reduced the principle to a line: the taxpayer must "render unto Caesar what is Caesar's, but no more." The rule is older than the Republic. The Commission did not make it. It cannot unmake it by silence.

The principle is not a technicality, and the people it protects are not abstractions. The investors taxed on the return of their own money are retirees drawing down their savings and wage-earners holding funds in taxable accounts, and the loss falls hardest on those least able to absorb it, at a moment when many can absorb nothing. The Court framed its rule around a single taxpayer and what a government may take from her. Here, the same exaction runs across 160 million investors, every year, in amounts each fund computes to the penny and none disclose. Scale does not dissolve the principle. It repeats the exaction.

The Petition is careful, and I am careful here, to keep the government's position separate from the industry's. The historical liability is the industry's: it knowingly filed the false returns, designed the practice, and admitted the consequence. But the Court has also defined what notice does to the government's own position. Once a collection's illegality is established, the burden of remedy runs one way. The taxpayer "need not have taken any steps" to discover it, *Reich v. Collins*, 513 U.S. 106, 111 (1994), and due process requires the government to afford "meaningful backward-looking relief," *McKesson Corp. v. Division of Alcoholic Beverages*, 496 U.S. 18 (1990).

Before the Petition, the government collected on returns valid on their face. After it, the government holds formal, documented notice that the information returns underlying billions of dollars in annual collection are materially false. Notice moved the exposure.

Each tax year allowed to close on that notice deepens it, and extinguishes another year of refund claims, permanently. The Commission is the agency whose answer decides whether the 2026 tax year proceeds on returns the government has been told are false. Its silence is not neutral, even as to the Treasury it appears to protect. It is the load-bearing wall of the entire structure — and the Commission, whose officers are sworn to the Constitution and not to the securities laws alone, can remove it by answering. A constitutional wrong the Commission has been formally shown does not wait on a procurement screen, a rulemaking calendar, or a judgment about the adequacy of a prospectus. It is on the docket now. The Commission's silence decides only whether another tax year closes on it.

Why the Date Is August 15, and Not Later

The date is not chosen for haste. It is the last point at which a decision can still protect this year's purchasers, and its reason is the calendar, not my impatience. The fourth quarter is distribution season: the funds' embedded income for 2026 will be declared and paid, for most complexes, in the final weeks of the year. Every purchase made between now and then, in a taxable account, buys a share of this year's embedded tax liability without disclosure of its amount. An answer, or an alert, that issues in late summer can still reach investors before this season closes. One that waits until the distributions are paid arrives after the harm has fallen. And each tax year that closes does more than add another year of over-reported income: it extinguishes another wave of refund claims under the limitations period, permanently. Delay is not neutral here. Delay is how the harm becomes irreversible — and it falls hardest in exactly the months now approaching.

The Work Is Already Done

The ordinary reason petitions wait is that answering them requires work: analysis to be performed, documents to be drafted, alternatives to be weighed. That reason is not available here. The sixteen questions concern accounting mechanics the industry performs every trading day; the proposed answers are enclosed as Exhibit A. The interim protective step is an investor alert; the alert is enclosed as Exhibit B, in issuable form. What stands between the current state of this docket and the protection of this year's purchasers is not analysis. It is a decision. And that decision is yours.

Two Roads to the Same Truth

I want to be plain about what this letter is, and what it is not. It is not a threat, and it does not ask you to weigh a litigation risk. It asks you to make a choice between the two potential ways the same truth reaches the same investors — one voluntary, one compelled — because on this record, there is no third way in which the truth stays hidden.

The voluntary way is the one this letter requests: the Commission answers the sixteen questions, issues the alert, and decides the Petition, and investors learn before they buy what is inside the price they are paying.

The compelled way runs through two federal courts, on two independent legal theories, each aimed at providing investors the truth the Commission continues to withhold. I state its shape plainly, because you are entitled to know what is coming, and because a documented choice is fairer than a surprise.

Requests under the Freedom of Information Act and the Privacy Act have sought the Commission's own half of this record — the processing history of the June 2020 whistleblower tip and of this Petition, and the Commission's side of the 465 written communications exchanged over these six years: the internal routing of each, the meeting notes and memoranda they generated, and what the Commission did with each, and when. Some have been pending for more than a year. The statutory periods to produce them have run, and the Commission has not produced them. <u>Two administrative appeals have been granted. Nothing has been produced.</u> The records suit is ripe now, and I will bring it to compel production. The mandamus follows — on a timetable I will choose, not announce — to compel the decision itself.

On the model of *In re American Rivers & Idaho Rivers United*, 372 F.3d 413 (D.C. Cir. 2004), and the Coinbase proceedings, it seeks the relief the Administrative Procedure Act provides for a matter left unreasonably undecided: an order that the Commission decide this Petition. The Commission knows how the Coinbase pattern ran: a mandamus petition filed nine months after the rulemaking petition; a court order to respond within ten days; and a one-paragraph denial vacated as "conclusory and insufficiently reasoned." *Coinbase, Inc. v. SEC*, No. 23-3202 (3d Cir. Jan. 13, 2025). One action compels the Commission to produce what it knows. The other compels it to answer on the record.

Neither asks a court to decide the merits. Both ask only that the truth stop being withheld — and the answer this letter requests is the one thing that makes either unnecessary.

And it is worth being concrete about what resisting would require, because the Commission's position in either courtroom is not an abstraction. It is a brief, with sentences in it, filed under the Commission's name.

To prevail, the Commission's lawyers would have to stand before a federal judge and argue some combination of the following: that sixteen questions about how an investment fund's share price works — questions every fund complex in America answers internally by the close of each trading day — are too difficult, too premature, or too unimportant to answer six years after they were first presented; that the agency created to enforce full and fair disclosure fined Vanguard for tax-disclosure statements it called materially misleading, yet owes investors no answer on whether the materially similar statements in this Petition are true; and that the 160 million investors the agency exists to protect may be left to buy on those statements without ever being told, by the one institution that knows, whether they are true. And every one of those arguments would be made about statements filed with the Commission — refiled on the Commission's own forms, into the Commission's own system, every year for six years after it was told what they contained.

Each of those sentences can be written. Government lawyers write hard briefs every week. But they do not often write briefs against the founding premise of their own agency — and that is the brief this docket would require. None of its sentences can be defended: not to a judge, not to Congress, and not to the 160 million people on whose behalf the agency holds its charter. And none of them stays in the courtroom.

A brief is a public document. Every sentence the Commission files to establish that it need not say whether fund disclosures are true will be quoted — by the four committees of Congress that oversee the agency, by the press, and above all by the fund industry itself, in every private action investors bring, as the considered position of their own regulator. The Commission would not merely be defending its silence. It would be drafting the fund industry's best exhibit. Whether the Commission is prepared to publish that document, under its own name, is the only question this letter finally asks — because every road away from answering ends in a courtroom where it must be filed.

The Commission should also understand the asymmetry of these proceedings, because it is the reason they are unlike ordinary litigation risk. A court may deny me relief on a procedural ground in either case, and the Commission may win a motion. It cannot win the fact.

A procedural victory leaves standing the one fact these filings exist to display: that the United States Securities and Exchange Commission, the agency Congress built to guarantee investors the truth, went to federal court to avoid telling the investors it exists to protect, the truth that is legally owed to them.

I can lose either case, and the record still shows it. The Commission can win both, and the record still shows it. There is no version of that appearance that the Commission can afford. Its own public docket already shows that it has substantively answered roughly five percent of the rulemaking petitions filed with it since 2018[4]; each of these proceedings would place that record, and this one, before a new audience — a district judge, a court of appeals, an advisory committee the Commission must answer by statute under 15 U.S.C. § 78pp(g), and the four committees of Congress with jurisdiction over the agency and over the tax consequences its silence sustains.

I do not seek that. A quiet, complete answer serves every legitimate interest better than any of it. But the choice between the two roads is the Commission's, and only the first spares the Commission from explaining, in public, why the truth-in-securities agency litigated to keep investors from the truth.

The Compelled Road Has Already Opened

This letter argued above that there is no road on which the truth stays hidden. Between its drafting and its delivery, that stopped being an argument. On July 13, 2026, investors filed a proposed class action in New York state court against BlackRock — the largest asset manager on earth, and the same BlackRock whose own materials, quoted in Question 8 of the Petition, concede that "buying a dividend" hands investors "an unnecessary tax bill." The complaint alleges what the Petition documents: realized income and gains are carried in net asset value, inflating the price of more than seventy equity funds — purchasers receiving fewer shares for their money, and paying management fees on value that was, in substance, a liability, and being issued, knowingly and admittedly, a false 1099-DIV tax form.

Consider the dates, and draw the line they draw. The Petition entered the public docket in March 2026. The complaint was filed in July — some four months later, in the same theory, against a firm the Petition names and quotes. The Commission may make of that sequence what it will. The plaintiffs' bar has already made something of it. And it did not require the Commission's help to do so. Every element of this theory has sat in the Commission's files since June 2020, and on its public docket since March — where any lawyer in America can read it, and any fund's general counsel must be presumed to have.

This suit will not be the last, and the reason is not litigation strategy. It is that the central falsity can be seen. It does not turn on expert dispute or on any contested question of accounting. The prospectuses tell investors the "buying a dividend" risk arises only "shortly before" a distribution. The funds' own daily realized income records say otherwise, and they say it in a form anyone can read: chart the income a fund has accrued across a distribution period, and the line climbs, trading day after trading day, for weeks and months. It does not sit flat and then leap on the eve of the payment as many fund prospectuses falsely claim. The risk the prospectus confines to a handful of December days is present, and growing, on nearly every day of the year — and the fund's own data draws that picture without a word of argument.

No expert is required to see that a line rising for months was not created the night before it is paid out. And that line is not a matter of opinion — it is the fund's own accrual data, which the fund keeps and does not publish. The chart is the whole case. The funds hold the pen. But concealment ends where

[4] Petitioner's analysis of the rulemaking petitions posted to the Commission's public petitions docket, 2018–2026. The underlying tabulation is available to the Commission and to Congress on request.

discovery begins. What a fund withholds from a prospectus, it must produce to a court. And the accrual data is not the only thing waiting in those files. More than three thousand messages to fund and financial services industry executives — setting out the mechanism, proposing the correction, asking that it be made — sit dated in the recipients' own archives. So do the formal compliance notices delivered to 15,266 chief compliance officers. A defendant compelled to produce both is producing the falsity and the proof it was known, in the same box. That is why the chart will be drawn, complex by complex, plaintiff by plaintiff, until the disclosures are corrected or a court corrects them.

There is a further consequence, and the Commission should see it clearly, because it cannot be unseen once noticed. The Petition was filed for a single, stated purpose: to put in front of investors the truth they need to protect themselves. That is what a petition on a public docket now does — but not only for the investors it was meant to warn. A rulemaking petition that has sat unanswered and unrebutted for the length of time this one has is no longer only a request. In the hands of a plaintiff, it is an exhibit. It fixes, with a government date stamp, what the industry was told and when. And the Commission's silence on investor harm — which in six years has disputed none of it — is available to be read not as neutrality, but as the regulator's own tacit assent that the harm is real. The Commission need not intend that reading for a court to adopt it. Every unanswered month, the Commission's own docket becomes better evidence in cases the Commission is not party to and cannot control.

Weigh what that leaves for the Commission, and weigh it with care. Litigation does not wait for guidance. If the Commission stays silent, the adequacy of SEC-filed prospectuses will be decided by state and federal court judges and juries, complex by complex, without one word from the regulator those prospectuses were filed with. Silence no longer preserves the Commission's options. It surrenders the Commission's voice in the construction of its own disclosure regime, on the largest disclosure question before it — and leaves the Commission to be quoted against its own record rather than speaking to it. So the question still reserved to the Commission has now narrowed. It is whether 160 million investors hear the truth from their regulator before this year's distributions, or assemble it, fund by fund and year by year, from complaints, discovery, and verdicts — and whether the Commission speaks in that process, or is merely cited in it. Private litigation compensates some of the harmed, eventually. Only the Commission can protect all of them, now. That choice is still the Commission's. The filings have begun without it.

Institutional Memory

I raise one final point with care, because it is offered as institutional history and nothing else. The Commission has been here before, and within the professional memory of the people now asked to decide. Between 2000 and 2008, a private analyst delivered to the Commission, repeatedly and in mounting detail, a quantitative demonstration that a prominent firm's reported results were mathematically impossible. The submissions were credible, specific, and correct. The Commission's own Inspector General later documented how those detailed complaints produced examinations and investigations that failed — not for want of evidence, but because the evidence in hand was never carried to its conclusion. The harm ran to tens of billions of dollars, and to something the agency has spent the years since trying to rebuild: the public's confidence that when a credible, specific warning reaches the Commission, the Commission acts on it. Congress's response was to build the whistleblower office in which my own submission was first filed, and where it has now sat, without action, for six years.

I do not offer this history as an accusation. I offer it because the pattern it teaches is exact, and because the Commission drew from it, in public and at length, the very lesson this docket now tests: that a detailed, quantitative, correct warning, received and set aside, becomes a catastrophe measured later in dollars and in trust.

That pattern is on the docket again. Only two things have changed, and both cut against waiting. The falsity this time did not have to be inferred from red flags and left for an examination to run down. It was established, before the Commission received it, by my original quantitative analysis of the realized-income data the funds compute internally and do not disclose. That analysis showed these disclosures are false as written, and the industry's own subsequent conduct has only confirmed it.

And the people who bear the harm this time are not a few thousand high-net-worth investors inside one fund. They are 160 million Americans — retirees, wage-earners, families measuring the cost of groceries and gasoline — taxed every year on the return of their own money, in amounts the funds compute to the penny and disclose to none of them. The last time this pattern ran its course, the cost was counted after the fact. This time the Commission has been told the number in advance, and told where the harm falls. The only question the Commission has ever needed to answer is whether it will act on what it has been told. That question is again on its docket. This time it carries a date, and this time the record of what the Commission knew, and when, is already written.

The Requested Actions, Summarized

For clarity, I summarize here the four actions this letter requests, and ask that each be completed by August 15, 2026. The first three are drawn from the Petition's expressly severable categories of relief and are ordered by the speed with which the Commission can act. The fourth is different in character, and its reason is stated below.

1. **Answer the sixteen questions.** Direct a Commission-level response to the sixteen interpretive questions in Section IV of the Petition — adopting, refining, or rebutting the proposed answers at Exhibit A, and identifying, as to any answer disputed, the specific premise in dispute.

2. **Issue the investor alert.** Issue the interim investor alert at Exhibit B, or an improved version of the Commission's own drafting, before the 2026 distribution season.

3. **Decide the Petition.** Decide the Petition's rulemaking request — grant, denial, or deferral — stating, in the case of denial, the grounds, as 5 U.S.C. § 555(b) and (e) require.

4. **Send the Petition to Congress.** Transmit the Petition, together with this letter, to the Senate Committee on Banking, Housing, and Urban Affairs; the Senate Committee on Finance; the House Committee on Financial Services; and the House Committee on Ways and Means.

The first two requests require no rulemaking and can be completed in days. And consistent with Section XIV of the Petition, the requests are severable. No response to the third — including a decision to take more time with it — can serve as a reason to withhold the first two. No response to any of them can serve as a reason to withhold the fourth.

The fourth request stands apart because this record has outgrown the Commission's jurisdiction. The systematic misreporting of returned capital as taxable income on Forms 1099-DIV is not only a disclosure failure. It is an abuse of the federal tax system, repeated every filing season, and it reaches the integrity of the Treasury itself — a matter that belongs before Congress as well as before the Commission.

The four committees named above hold jurisdiction over the agency and over the tax system its silence affects. I have already asked the Commission's Office of Inspector General to report this matter under the seven-day-letter provision, 5 U.S.C. § 405(e), which upon such a report would require the Chairman to transmit it to Congress within seven days. To my knowledge, no report and no transmittal has occurred. Congress will receive this record in any event — the Petition, this letter, and the correspondence beneath them are being provided to the four committees directly. The only question your transmittal decides is whether Congress receives this record from the Commission, or about it.

Where This Now Stands

After six years, candor is owed in both directions. This is mine.

The requests in this letter are made in good faith, on the Commission's own terms: through its whistleblower program, its staff and its Commissioners, a rulemaking petition, and now this letter. They ask for nothing but the truth the Commission already holds. That door is real, and it is still open — answer the questions, issue the alert, decide the Petition, and nothing that follows is necessary.

But a seventh year of waiting is not on offer.

For over six years, 160 million Americans have been unjustly taxed on the return of their own money, as if it were gain, by an industry that admits the harm and declines to end it. The industry has been candid about why. An executive of the market's central clearing utility explained the position to me in substance: this is not an issue for his company, because if the Commission is not talking about it, the Commission must not think it is a problem — and if it is not a problem for the Commission, it is not a problem for them. Notice the securities laws did not figure into his calculus.

Mark what that concedes. The institutions holding Americans' savings do not ask whether a practice harms their investors. They ask whether the regulator has publicly said so. Their fiduciary duty, as they practice it, is not proactive; it waits on the Commission's voice.

The old maxim holds that silence gives consent, and the industry has applied it to the letter: over six years of the Commission's silence, priced as six years of permission — and an estimated half a trillion dollars in investor losses. That is what the Commission's silence is purchasing, every quiet month.

For six years, I have met the Commission's process with patience and cooperation. I will no longer meet its silence with my own. Every lawful avenue is now in motion, and none of them waits on August 15: two federal courts, the Congress that oversees this agency, and the public record this letter joins. So the question before the Commission is no longer whether investors will learn the truth. They will. The only choice the Commission has left is its role in the telling.

This letter is filed as a comment to Petition File No. 4-891, so that it enters the record where the Petition sits. That record is nearly complete. It holds the industry's admissions, the funds' deletions, the Commission's declinations, and six years of its silence. The one line still missing is the Commission's answer — and the record will be read, in two federal courts and before Congress, with that line written or with it blank. It has been over six years. This letter is the last one that asks. Until August 15, how the truth reaches investors is still the Commission's choice. After that, the truth stops waiting.

Should you or your staff wish to meet, in person or by video, that door too remains open, at the Commission's convenience.

Semper Fidelis,

/s/ Jeremy Roseberry
Jeremy Roseberry
Petitioner, SEC File No. 4-891

Enclosures:

– Exhibit A — Proposed Answers to the Sixteen Interpretive Questions
(Petition § IV)

– Exhibit B — Model Investor Alert, in a form suitable for issuance
by the Office of Investor Education and Advocacy

cc:

– The Honorable Hester M. Peirce, Commissioner
– The Honorable Mark T. Uyeda, Commissioner
– Professor George S. Georgiev, Chair, Investor Advisory Committee
– Vanessa A. Countryman, Secretary
– David Woodcock, Director, Division of Enforcement
– Office of Inspector General, U.S. Securities and Exchange Commission
– U.S. Senate Committee on Banking, Housing, and Urban Affairs
– U.S. Senate Committee on Finance
– U.S. House Committee on Financial Services
– U.S. House Committee on Ways and Means

EXHIBIT A

Proposed Answers to the Sixteen Interpretive Questions (Petition § IV)

The questions below are reproduced verbatim from Section IV of the Petition. The answers are short and fact-based; they reflect standard registered-fund accounting and settled law. They are offered not to relieve the Commission of its duty to make them authoritative, but to demonstrate that the duty is ministerial: the answers are determinate, the industry computes the underlying figures daily, and only the Commission's silence keeps them from investors. The Commission is free to adopt, refine, or rebut them on the docket — but if it disputes any answer, Section IV asks that it identify the specific premise in dispute (mechanical operation, economic consequence, materiality standard, or legal principle) and the basis for the dispute.

Question 1. Under standard fund accounting and pricing practices, is it correct that realized income (ordinary dividends, short-term capital gains, long-term capital gains) is: (a) Recognized and accrued into NAV at the time the fund earns or realizes it — when a portfolio holding goes ex-dividend, earns/receives interest from an underlying holding, or when a gain is realized through sale of a security; (b) Embedded in NAV continuously on each subsequent trading day from the date of recognition until the date of distribution to shareholders or until gains are offset; and (c) Not something that suddenly appears in NAV only on days immediately "shortly before" or "just prior to" a distribution record date?

Answer. Yes to (a), (b), and (c). Realized income is recognized and accrued into NAV when the fund earns or realizes it and remains embedded in NAV continuously until it is distributed or offset. It does not first appear "shortly before" a distribution. This is ordinary daily NAV accounting.

Question 2. If "Yes" to Question 1, is it correct that any purchaser who buys fund shares on any trading day after the fund has recognized and accrued realized income into NAV, but before that income has been distributed or gains offset, necessarily pays a purchase price (the NAV) that includes that accrued-but-undistributed realized income?

Answer. Yes. A purchaser who buys after income has accrued into NAV but before it is distributed necessarily pays a price (the NAV) that includes that accrued-but-undistributed income. There is no other possibility.

Question 3. If "Yes" to Questions 1-2, is it correct that when a purchaser buys one share for $100 — where the fund has a pending $3.00 distribution fully baked into that $100 NAV at the time of purchase — and subsequently receives that $3.00 distribution, the following economic sequence occurs: (a) The fund returns to the purchaser, in cash or reinvested shares, the same Embedded Realized Income Amount the purchaser paid for as part of the purchase price; (b) The fund's NAV declines by approximately the per-share distribution amount, reducing the value of the purchaser's shares by the same amount received; (c) Assuming no market movement, the purchaser's total economic position — cash received plus current share value — equals the purchaser's initial investment (before considering unrelated portfolio performance); and therefore (d) The purchaser has received back, as a "distribution," the same dollars the purchaser paid as part of the purchase price, experiencing no net increase in wealth from the Embedded Realized Income Amount?

> **Answer.** Yes. The investor pays $100, receives $3.00 back, and holds shares worth $97.00. Cash plus shares equals the original $100. The "distribution" returns the investor's own purchase dollars and produces no gain. This is arithmetic, not opinion.

Question 4. If "Yes" to Question 3, and assuming a taxable purchaser holds through the relevant distribution dates and reports the distribution on a current-year tax return, is it correct that federal income taxation imposed on the Embedded Realized Income Amount returned to the investor produces a non-market, out-of-pocket cash loss to the purchaser — because tax is assessed on recovery of the purchaser's own invested capital rather than on any actual increase in the purchaser's wealth?

> **Answer.** Yes. The tax falls on the recovery of the investor's own capital, not on any increase in wealth, producing a certain, calculable, non-market cash loss. Income requires an accession to wealth, *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955); Question 3 establishes there is none.

Question 5. If "Yes" to Questions 1-4, is it correct that registered funds, as part of their ordinary daily NAV calculation and distribution accounting processes, know on each trading day the per-share Embedded Realized Income Amounts — by income character: ordinary dividends, short-term capital gains, and long-term capital gains — that have accrued into NAV and remain undistributed?

> **Answer.** Yes. Funds compute these per-share amounts every trading day, by income character, as part of ordinary NAV and distribution accounting. The number exists at the moment of every purchase. What is missing is not the data — it is the disclosure.

Question 6. If "Yes" to Questions 1-5, does the investor risk commonly described as "buying a dividend" exist on every trading day when Embedded Realized Income persists in NAV — meaning continuously from the date realized income is recognized until the date it is distributed or offset, which can span days, weeks, or months — rather than being confined to days immediately "shortly before" or "just prior to" a distribution record date?

> **Answer.** Yes. The "buying a dividend" risk exists on every trading day that embedded realized income persists in NAV — continuously, for days, weeks, or months — not only "shortly before" or "just prior to" a distribution.

Question 7. If "Yes" to Question 6, is the prospectus language stating or implying that "buying a dividend" risk exists only "shortly before" or "just prior to" distributions factually inaccurate as a description of when the risk exists and when purchasers will experience the economic harm?

> **Answer.** Yes. "Shortly before" does not describe a risk that exists continuously for weeks or months. The language is not imprecise; it is false as to when the risk exists and when the harm is incurred.

Question 8. BlackRock, the world's largest asset manager, states in its customer service materials that "buying a dividend" generates "an unnecessary tax bill" because "a portion of the investment is returned to the investor as a taxable distribution." Similar acknowledgments appear in materials from other major fund complexes. Does the Commission agree that these statements accurately describe the economic consequences that occur when investors purchase shares containing Embedded Realized Income?

> **Answer.** Yes. The statements accurately describe the economics. The only alternative answer is that the world's largest asset manager publishes false statements to its own customers — a conclusion that itself compels Commission action. There is no third option.

Question 9. If "Yes" to Questions 4-8, does the Commission agree that the economic consequences established by the preceding answers — specifically, that a fund's NAV includes a quantifiable amount of Embedded Realized Income that diminishes the purchaser's purchasing power, that a taxable purchaser will incur a determinable non-market cash loss from taxation of the Embedded Realized Income Amount, that this risk exists continuously throughout the accrual period rather than only "shortly before" distributions, and that the fund knows these facts and can quantify the expected harm before the purchase occurs — constitute material information that a reasonable investor would consider important in deciding whether and when to purchase fund shares, under the standard articulated in *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)?

> **Answer.** Yes. A known, quantifiable, non-market cash loss — calculable by the fund before the trade — is information a reasonable investor would consider important in deciding whether and when to buy. Under *TSC Industries*, that is the definition of materiality. A "No" answer would contradict fifty years of settled law.

Question 10. If "Yes" to Questions 6-9, does the Commission agree that prospectus and sales literature language that describes "buying a dividend" risk as existing only "shortly before" or "just prior to" distributions — and that frames the risk as something that merely "may" occur — constitutes a materially misleading statement or omission under Investment Company Act § 34(b) and Securities Act Rule 156?

> **Answer.** Yes. The language misstates when the risk exists, omits its continuous nature and the determinable cash loss, falsely implies the risk can be avoided by buying earlier, and conceals that the fund can calculate the harm before trade execution. Any one of those defects is a materially misleading statement or omission under Investment Company Act § 34(b) and Securities Act Rule 156. All four are present.

Question 11. Does the Commission agree that a fund knows a portion of an investor's initial post-purchase distribution may not be income when the fund's own prospectus states that the distribution "may simply be a return of part of your investment"?

> **Answer.** Yes. The fund drafted the sentence, filed it with the Commission, and delivered it to investors. It cannot disclaim knowledge of its own words. That is scienter.

Question 12 (The GAAP Defense). Does the Commission agree that compliance with Generally Accepted Accounting Principles in the preparation of fund financial statements does not excuse materially misleading disclosures in prospectuses and sales literature — meaning that even if a fund's financial reporting complies fully with GAAP, the fund still violates federal securities laws if its prospectus and sales materials omit material facts or contain statements that are misleading in light of the circumstances?

> **Answer.** Yes. GAAP governs how income is classified on financial statements; the securities laws govern what must be disclosed to investors before they commit capital. Every court to consider the question has so held. *SEC v. Lucent Techs.*; *In re Enron*; *SEC v. Stanard*; *In re NVIDIA*. The precedent is uniform; the defense is foreclosed.

Question 12-A (The "Everyone Does It" Defense). The industry advances two versions of this defense, both of which fail for the same reason. Does the Commission agree that: (a) **The Disclosure Version.** Industry-wide adoption of misleading disclosure language does not transform that language into adequate disclosure — meaning that if prospectus language stating "buying a dividend" risk exists only "shortly before" distributions is materially misleading, it remains materially misleading regardless of how many registrants have filed substantially similar language? (b) **The Accounting Version.** Industry-wide adoption of the practice of booking realized income to NAV does not excuse failure to disclose the consequences of that practice — meaning that even if every registered fund accounts for realized income in the same GAAP-compliant manner, each fund independently violates the securities laws if its prospectus fails to adequately disclose the consequences of that accounting to purchasers?

> **Answer.** Yes to both (a) and (b). Repetition does not make a misleading statement accurate, and universal adoption of an accounting practice does not excuse the failure to disclose its consequences; each fund violates the law independently. A thousand misleading prospectuses are not a defense. They are a thousand violations.

Question 13. Does the Commission agree that registered funds already calculate the Embedded Realized Income Amounts daily as part of ordinary NAV computation, and already publish NAV daily to investors through existing reporting infrastructure?

> **Answer.** Yes. Funds calculate the amounts daily and publish NAV daily through the same infrastructure. Corrective disclosure is one additional data element in a transmission that already occurs. There is no cost defense, which is why the industry has never submitted one.

Question 14. Does the Commission agree that the bond market's established practice of distinguishing between "clean" prices (excluding accrued interest) and "dirty" prices (including accrued interest) — which exists precisely to prevent purchasers from paying for income earned by the seller — reflects the same economic principle at issue in this Petition, and that there is no principled basis for providing this transparency to bond investors while denying it to mutual fund investors who face the identical economic harm?

> **Answer.** Yes. The bond market solved this exact problem decades ago: buyers see accrued interest before they pay for it, recover it at the next coupon, and are not taxed on the recovery. Fund purchasers face the identical economics and receive none of that transparency. No principled basis for the disparity exists, and none has ever been offered.

Question 15. If the Commission answers "Yes" to Questions 9-13 — meaning current disclosures are materially misleading, the omitted information would be important to a reasonable investor's decision whether and when to purchase, the funds possess this information contemporaneously, and the infrastructure to deliver it already exists — does the Commission agree that registered funds have an existing obligation under the federal securities laws to disclose the Embedded Realized Income Amounts to investors before trade execution?

> **Answer.** Yes. Material information, known to the fund at the moment of sale, deliverable through infrastructure that already exists, cannot lawfully be withheld from the purchaser. The duty exists now, under current law. Rulemaking would standardize its form and timing — the obligation is not waiting for a rule.

Question 16. Based on the Commission's answers to Questions 1-9, does the Commission agree that the economic effect described in the prospectuses of BlackRock, Vanguard, State Street, Fidelity, and other major fund complexes — that "buying a dividend" causes investors to incur an "unnecessary tax bill" because a portion of the investor's purchase is effectively returned as a taxable distribution — is an accurate description of what happens to taxable purchasers in the ordinary course? (a) **If "Yes"** — meaning SEC-filed prospectuses accurately describe that investors are taxed on amounts representing return of their own capital — does the Commission agree that referral of this record to Treasury and the IRS is warranted for evaluation of whether information-return filing practices that report the Embedded Realized Income Amount as taxable dividends are consistent with Internal Revenue Code provisions governing information-return accuracy, including 26 U.S.C. §§ 6721-6722? (b) **If "No"** — meaning the prospectus descriptions are not accurate — does the Commission agree that such inaccurate prospectus statements constitute materially false or misleading statements under Investment Company Act § 34(b) and Securities Act Rule 156, requiring immediate corrective disclosure?

> **Answer.** Yes as to (a). The prospectuses accurately describe what happens: amounts representing a return of the purchaser's capital are reported to the IRS as taxable income. That warrants referral to Treasury and the IRS under 26 U.S.C. §§ 6721-6722. Sub-(b) applies only if the descriptions are inaccurate — in which case the prospectuses are themselves materially false under § 34(b) and Rule 156. One of the two must be true. The Commission cannot answer both "No."
>
> **The only conclusion these answers permit.** Each question admits of one honest answer, and each answer follows inexorably from the one before it. Together they compel a single result: **any prospectus or sales-literature disclosure stating or implying that "buying a dividend" risk arises only "shortly before" or "just prior to" a distribution — or that it merely "may" occur — is materially false and misleading under Investment Company Act § 34(b) and Securities Act Rule 156.** The risk is continuous, not momentary; the funds know it and quantify it daily; the resulting harm is certain and calculable; and the disclosure tells investors the opposite. That is the definition of a material misstatement — and it is filed, today, in the prospectuses on which 160 million Americans rely.

EXHIBIT B

Model Investor Alert

The following is a model Investor Alert, drafted in the form and voice of alerts issued by the Commission's Office of Investor Education and Advocacy, so that the interim protective step requested in this letter — warning investors before this year's distribution season — requires no drafting, only a decision. Every factual statement in it is established by the record of the Petition and by the answers at Exhibit A. The Commission is free to adopt, adapt, or improve it.

INVESTOR ALERT

"Buying a Dividend" — A Fund Distribution Can Return Your Own Money and Leave You With the Tax Bill

The SEC's Office of Investor Education and Advocacy is issuing this Investor Alert to help investors understand a risk known as "buying a dividend," which can result in investors owing tax on distributions that do not increase their wealth. This risk is greatest for purchases made in a taxable account in the weeks and months before a fund pays a distribution — including the final months of the calendar year, when many mutual funds and ETFs pay their largest distributions.

Understanding the risk

Mutual funds and ETFs regularly earn dividends and interest from their holdings and realize gains when they sell securities. Under standard fund accounting, that income becomes part of the fund's share price — its net asset value, or NAV — from the day it is earned or realized, and it stays in the share price until the fund pays it out to shareholders as a distribution.

If you buy shares while that income is part of the price, you are paying for income the fund earned before you invested. When the fund later pays its distribution, part of what you receive is simply that money coming back to you — and the fund's share price drops by roughly the amount of the distribution. Your overall wealth has not increased. But if you hold the fund in a taxable account, the distribution may be reported to you, and taxed, as income.

> **Example:** You buy one fund share for $100 at a time when $3.00 of income and realized gains the fund has already earned is included in that price. The fund then pays a $3.00 per-share distribution. You receive $3.00, and the share price falls to approximately $97.00. You have $100 of total value — exactly what you started with — but you may owe tax on the $3.00 "distribution" of your own purchase price, creating a non-market related tax loss.

What many investors do not realize

The "buying a dividend" risk does not exist only in the days immediately before a distribution. Because income becomes part of the share price when it is earned — and can remain there for days, weeks, or months before it is paid out — the risk can be present on almost any trading day, and it generally grows as a distribution date approaches. Investors should not assume that avoiding purchases in the final days before a distribution eliminates this risk.

Funds calculate the income and realized gains embedded in their share prices every day as part of computing NAV. This information exists at the time of your purchase.

What you can do before you invest

Before buying shares of a mutual fund or ETF in a taxable account — particularly in the second half of the year — consider taking these steps:

– **Check the fund's distribution schedule and call the funds portfolio manager.** Fund websites typically
publish the dates of upcoming distributions, and many publish distribution estimates in the fall.

– **Ask how much undistributed income and realized gain is currently
included in the fund's share price**, per share, broken out by type — ordinary dividends, short-term capital gains, and long-term capital gains. Funds calculate these amounts daily.

– **Ask what the next distribution is expected to be**, when it will
be paid, and how it is expected to be taxed.

– **Ask whether part of your first distribution will effectively
return the money you just invested** — and whether you would be better off waiting until after the distribution's ex-date to buy.

– **Get the answers in writing**, and consider consulting a qualified
tax professional about the timing of fund purchases, particularly late in the year.

Questions to ask your investment professional

If a broker-dealer recommends a fund purchase to you, Regulation Best Interest requires the recommendation to be in your best interest, taking into account, among other things, its costs and tax consequences to you. If an investment adviser recommends a fund, the adviser owes you a fiduciary duty.

Ask any professional recommending a fund purchase in a taxable account:

– Did you determine how much undistributed income and realized gain is
built into this fund's price right now?

– Will part of my next distribution be taxable to me even though it
returns money I just invested?

– Why is buying before the upcoming distribution, rather than after
it, in my best interest?

An investment professional who recommends purchasing a fund before a large, known distribution — without addressing these questions — may not be meeting the applicable standard of conduct.

The bottom line

A fund distribution is not always new wealth. If income was already built into the price you paid, part of your distribution is your own money coming back — and in a taxable account, you may owe tax on it. Ask before you buy, get the answers in writing, and pay particular attention to purchases made in the months before a fund's scheduled distributions.

Report a problem or ask a question at Investor.gov, or call the SEC's investor assistance line at (800) 732-0330. Receive Investor Alerts and Bulletins from OIEA by email or RSS feed.

This Investor Alert represents the views of the staff of the Office of Investor Education and Advocacy. It is not a rule, regulation, or statement of the Securities and Exchange Commission ("Commission"). The Commission has neither approved nor disapproved its content. This Alert, like all staff guidance, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.