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Invested in America

| asset management group

August 11, 2015

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Investment Company Reporting Modernization
File No. S7-08-15
Amendments to Form ADV and Investment Advisers Act Rules
File No. S7-09-15

Dear Mr. Fields:

The Asset Management Group (the "**AMG**") and Asset Managers Forum (the "**AMF**") of the Securities Industry and Financial Markets Association ("**SIFMA**") appreciate the opportunity to provide comments to the United States Securities and Exchange Commission (the "**Commission**" or "**SEC**") on the Commission's proposals to modernize and enhance the reporting and disclosure of information by investment companies and investment advisers (the "**Proposals**").[1]

The AMG is the voice for the buy side within the securities industry and broader financial markets, which serves millions of individual and institutional investors as they save for retirement, education, emergencies, and other investment needs and goals. The AMG's members represent U.S. asset management firms whose combined assets under management exceed $30 trillion. The clients of AMG member firms include, among others, registered investment companies, separate accounts, ERISA plans, and state and local government pension funds. The AMF, which is the operations-focused group within the AMG, brings subject matter expertise from across the buy-side operations community to bear on developing practical solutions to highly topical operational challenges.

[1] Investment Company Reporting Modernization, Investment Company Act Release No. 31610 (May 20, 2015), 80 Fed. Reg. 33590 (June 12, 2015) (the "**Fund Proposal**"); Amendments to Form ADV and Investment Advisers Act Rules, Investment Advisers Act Release No. 4091 (May 20, 2015), 80 Fed. Reg. 33718 (June 12, 2015) (the "**Advisers Act Proposal**").

We support the Proposals and the Commission's initiative in formulating and publishing them for comment. Our members, in their capacity as fiduciaries for the millions of investors they serve, are deeply committed to ensuring the Commission's continuing ability to fulfill its three-fold mission: investor protection; maintenance of fair, orderly, and efficient markets; and facilitation of capital formation.

We believe that the AMG and AMF together offer a valuable and unique perspective on the areas where the Commission has requested comments. Our members represent a significant and representative cross section of the registered investment companies ("**funds**") and advisers that are the subject of the Proposals. Our response to the Commission's request for comment brings together the practical experience and insight of investment, operations, finance, legal, and other relevant personnel from across the broad range of our member organizations.

An executive summary of our comments as well as our specific comments follow.

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I. Introduction and Executive Summary

A. The Proposals and the Commission's Request for Comment

On May 20, 2015, the Commission published two releases (the "**Releases**") setting forth the series of proposed rules, forms and amendments that comprise the Proposals, for the purpose of modernizing and enhancing the reporting and disclosure of information by investment companies and investment advisers. The new information is primarily intended to help the Commission in fulfilling its mandate as the industry's regulator in the face of fundamental changes in financial markets and technology. In addition, the Commission believes that this information may be used by investors to assist their investment decision making.

As explained in the Fund Proposal:

> Collectively, these amendments would, among other things, improve the information that the Commission receives from investment companies and assist the Commission, in its role as primary regulator of investment companies, to better fulfill its mission of protecting investors, maintaining fair, orderly and efficient markets, and facilitating capital formation. Investors and other potential users could also utilize this information to help investors make more informed investment decisions.[2]

The Proposals are part of a broader set of rulemaking initiatives the Commission has undertaken to help ensure that its regulatory program for funds and advisers registered under the Investment Company Act of 1940 (the "**1940 Act**") and the Investment Advisers Act of 1940 (the "**Advisers Act**"), respectively, is fully addressing the increasingly complex portfolio composition and operations of the asset management industry, in light of long term trends, the evolution of the asset management industry, and other developments.[3]

The Proposals have five basic components:

- A new monthly Form N-PORT, which would require funds to provide substantially expanded information about fund portfolio holdings (including derivatives), returns, risk metrics, and other matters, in a structured (not human readable) format. Information reported on Form N-PORT filed for the third month of a fund's fiscal quarter would be publicly available, 60 days after the end of the quarter. In conjunction with the adoption of Form N-PORT, the Commission proposes to rescind Form N-Q, but to require the information required in Form N-Q, as expanded by other parts of the Proposals, to be included in human readable form as an exhibit to Form N-PORT filed for the third month of a fund's first and third fiscal quarters;

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[2] Fund Proposal, *supra* note 1 at 33590.

[3] Enhancing Risk Monitoring and Regulatory Safeguards for the Asset Management Industry, Remarks of SEC Chair Mary Jo White before the New York Times DealBook Opportunities for Tomorrow Conference Held at One World Trade Center, New York, N.Y. (Dec. 11, 2014).

- Amendments to Regulation S-X, which would require standardized, enhanced disclosure about derivatives and other matters in investment company financial statements;
- A new annual Form N-CEN, which would require submission of substantial new "census-type" and other fund information to the Commission in a structured data format;
- Amendments to Form ADV, which would require information about separate accounts and other information related to the risk profile of individual advisers; and
- A new rule under the Advisers Act, Rule 30e-3, which would permit electronic delivery of fund shareholder reports, if a fund makes its shareholder reports and other information accessible on a website and satisfies certain other conditions.

The Commission has requested comment on a broad range of general and specific matters relating to each component of the Proposals. As the Commission recognizes, the Proposals are comprehensive, complex and multi-faceted and will, of necessity, impose burdens and costs on the industry, and ultimately investors. For this reason the Commission has urged market participants to review the Proposals carefully and has identified hundreds of specific elements of the Proposals on which it would welcome input, including potential costs and burdens on market participants.

B. Summary of SIFMA AMG/AMF Position

We are generally supportive of the Proposals. The success of our industry, our members, and the investors they serve depends on the Commission's fulfillment of its mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. We applaud the initiative of the Commission, the primary regulator of the asset management industry, in formulating and publishing the Proposals in order to respond to the fundamental changes taking place in financial markets, technology, and global regulation. We also appreciate the Commission's thoroughness both in explaining the reasons for each element of the Proposals and requesting comment on a broad range of general and specific issues.

We have organized our comments to conform to the five components of the Proposals. For most of the elements comprising the Proposals, we simply indicate our support. However, with respect to several aspects of the Proposals on which the Commission has requested comment, we have recommendations that we believe will further the Commission's regulatory goals and enhance the final rules that result from the Proposals.

The following is an introductory summary of our comments on each of the five components of the Proposals:

Form N-PORT

We support the Commission's initiative in proposing monthly reports on Form N-PORT in order to strengthen its regulatory oversight of the asset management industry and protect investors by obtaining more frequent and substantially expanded information about funds, in a structured format. We also support the Commission's proposal, designed to avoid potential adverse effects from public disclosure of this information, that all information filed on Form N-PORT for the first two months of each fiscal quarter, as well as certain information filed for the third month of the quarter, would not be made publicly available.

With a view to maximizing the Commission's achievement of its primary goal in proposing Form N-PORT, which is to obtain the information the Commission needs to effectively oversee the asset management industry, we recommend a change in the Commission's allocation of information to be reported between the existing and proposed reporting forms. Our recommendation has two components. First, the Commission should retain Form N-Q, which, together with Form N-CSR (for fund annual and semi-annual shareholder reports), would continue to serve as the vehicle for providing investors and the public with quarterly information about fund portfolio holdings. The Proposals recognize that Form N-Q is an effective means of conveying this information to investors and, unlike Form N-PORT, is in a format that is familiar to them. Importantly, the information on Form N-Q would be substantially enhanced by the proposals to amend Regulation S-X. Second, Form N-PORT, which would provide the Commission with substantially more detailed monthly information in a structured format for regulatory oversight purposes, should be filed on a non-public basis for all months, not only the first two months of the quarter.

This approach will, we believe, build on the Commission's goals, while resulting in three substantial improvements to the Proposals. First, it would enable the Commission to request information more closely aligned with its primary goal – enhancing its regulatory oversight – without compromising the utility of that information by attempting to tailor it for public consumption and investor decision making. Second, we believe it would substantially accelerate the process for adopting Form N-PORT, by eliminating the time consuming regulatory process of trying to develop a one-size-fits-all approach to the information that will be equally appropriate for use by both the Commission and the public. Finally, it would eliminate the potential harm to funds, investors, and managers from public disclosure of information primarily designed for regulatory use, a danger recognized by the Commission, Congress and other regulators and which the Commission clearly takes very seriously, while still providing investors and the public with enhanced quarterly portfolio holdings information in a format that is likely to benefit them.

The Commission has specifically asked for comment on whether all or a portion of the information requested on Form N-PORT should be submitted in non-public reports in order to alleviate potential harm from public disclosure.[4] As stated above, our recommendation is that, in conjunction with retaining Form N-Q, all information on Form N-PORT should be non-public. However, recognizing that the Commission will consider whether public disclosure is appropriate for each item of information requested on Form N-PORT, we also provide a more detailed discussion of the specific items that we believe would, if publicly available, have the greatest adverse impact on investors, funds and advisers.

Amendments to Regulation S-X

We support the Commission's initiative to enhance and standardize the disclosure of derivatives and other portfolio investments in fund financial statements and believe that most of the

[4] Fund Proposal, *supra* note 1 at 33614.

proposed amendments to Regulation S-X will achieve that goal. We recommend adjustments with respect to a few proposed amendments based on concerns about potential harm or investor confusion from the proposed presentation or public disclosure of the proposed additional information.

Form N-CEN

We support the Commission's proposal to replace Form N-SAR with Form N-CEN, which will provide the Commission and the public with substantially enhanced and updated information on a wide range of census-type, compliance, risk assessment, and policy related matters. We identify one item where we request clarification or an alternative formulation, and suggest elimination of two items, one of which we believe the information is better obtained in a different manner.

Amendments to Form ADV – Protection of Client Specific Information

We support the proposed amendments to Form ADV, which will provide the Commission with substantial new information about separate accounts. We have a number of recommendations designed to prevent reported information from being attributed to specific clients. We also have a number of recommendations intended to prevent double counting of information and to ensure consistent reporting among advisers.

Rule 30e-3

We support the Commission's initiative in using technology to expand the opportunity for electronic delivery of shareholder reports and thereby save funds and investors considerable costs. We have a number of recommendations designed to take into account both the significant role played by intermediaries in holding fund shares and delivering shareholder reports, and existing practices with respect to electronic delivery of these reports, which we believe will increase the likelihood that funds will use the new electronic delivery option offered by Rule 30e-3.

In addition, our comments address a number of matters that affect the Proposals more generally:

Compliance Dates

In light of the substantial new infrastructure that our members will be required to build to comply with the new rules and forms, we request a longer compliance period for Form N-PORT and the amendments to Regulation S-X. We also request that the compliance period for Form N-PORT build in the time necessary for Commission and industry testing of the new structured reporting format. Similarly, we request an appropriate compliance period for advisers to come into compliance with the amendments to the Advisers Act and to make the additional disclosures required by the proposed amendments to Form ADV.

Clarity and Consistency of Definitions and Instructions

Because ambiguities in instructions and definitions can both unnecessarily increase the burdens of the new requirements and impair the Commission's goal of comparability across funds and advisers, we suggest a number of clarifications. In addition, to ensure that the final rules eliminate ambiguity prior to commencement of building the new infrastructure, we suggest that the Commission staff hold workshops for the purpose of identifying and resolving such ambiguities.

Harmonization and Elimination of Duplication

We appreciate the concern expressed by the Commission for reducing, where possible and consistent with its goals, the duplication and other potential inefficiencies that may result from the Proposals, and in line with this concern, we make a number of additional suggestions in this area. For example, we suggest that the Commission propose to the Commodity Futures Trading Commission (the "**CFTC**") a "substituted compliance" approach for Form CPO-PQR, the reporting form for commodity pool operators registered with the CFTC, which is designed to serve similar data collection purposes. Under our suggested approach, funds required to report on new Form N-PORT would be excused from reporting on Form CPO-PQR.

Follow Up Operational Review and Comment

We support the Commission's desire to move ahead quickly, and therefore our members have made every effort to respond comprehensively to the request for comment within the 60-day comment period. However, given the extent and importance of the Proposals, our members are continuing to conduct a detailed operational review of the proposed new forms and disclosures, in the nature of "trial runs" for preparing the new disclosures, in order to take the measure of the new data collection and reporting infrastructure that they will be required to build, and to identify any unintended ambiguities or operational issues. We would like the opportunity to submit, after the close of the official comment period, additional specific suggestions or data responding to the Commission's request for comment, based on the outcome of that operational review.

II. Background

A. Purpose of the Proposals

As explained in the Releases, the Commission, as the primary regulator of the asset management industry, relies on information included in reports filed by funds and investment advisers for a number of purposes, including monitoring industry trends, informing policy and rulemaking, identifying risks, and assisting Commission staff in examination and enforcement efforts. Over time, as assets under management and complexity in the industry have grown, the volume and complexity of information that the Commission must analyze to carry out its regulatory duties have increased as well.

In the face of these industry changes, as well as advances in technology, the Commission recognizes the need to improve the type and format of information that funds and advisers provide both the Commission and investors. The Proposals include a set of reporting and disclosure reforms designed to take advantage of the benefits of advanced technology and to modernize the industry's reporting regime in order to help the Commission, investors, and other market participants better assess different fund products and to assist the Commission in carrying out its regulatory mission. The Proposals emphasize the need for a more standardized and uniform reporting regime that will provide the Commission and other users of these reports with comparability of information among different funds and advisers.

B. Financial Stability Oversight Council Notice and Request for Comment

In December 2014, the Financial Stability Oversight Council ("**FSOC**" or the "**Council**") issued a notice requesting public comment on aspects of the asset management industry, as part of its ongoing evaluation of industry-wide products and activities associated with the asset management industry (the "**FSOC Notice**" or the "**Notice**").[5] FSOC was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**") to identify risks to the financial stability of the U.S., promote market discipline, and respond to emerging threats to the stability of the U.S. financial system. In seeking to fulfill its mandate, FSOC continually monitors the financial marketplace to identify potential risks to U.S. financial stability.

In the Notice, FSOC asked whether asset management products and activities may pose potential risks to the U.S. financial system in the areas of liquidity and redemptions, leverage, operational functions, and resolutions, or in other areas. The FSOC Notice included requests for comment on additional data or information that would be helpful to regulators and market participants. The Notice stated that FSOC is interested in obtaining information on potential risks to the U.S. financial system that may arise from the asset management activities of entities or investment vehicles, including funds and separately managed accounts.

In the Notice, FSOC expressly recognized that the Commission was in the process of undertaking several initiatives that would apply to funds and investment advisers that the Commission regulates, which may address some of the risks described in the Notice.[6] While the Notice stated that the Commission's initiatives were not specifically focused on financial stability, FSOC intended to consider the impact those initiatives might have in reducing any risks to U.S. financial stability associated with the asset management industry. In particular, the Notice stated that FSOC's analytical process will "depend importantly on the existence and availability of high-quality data and information which are essential to the ability of the Council to carry out its statutory purposes." FSOC noted that information is available in varying degrees about different asset management products and activities, and that "[a] core component of the Council's review is an evaluation of the extent to which sufficient data are available to monitor and assess potential risks in the asset management industry and whether there are areas where additional data and information would be helpful to FSOC, as well as to market participants."[7]

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5 Notice Seeking Comment on Asset Management Products and Activities, Docket No. FSOC-2014-0001 (Dec. 18, 2014), 79 Fed. Reg. 77488 (Dec. 24, 2014).

6 In this connection, FSOC cited the Commission's Unified Agenda of Regulatory and Deregulatory Actions (Fall 2014) (initiatives relating to derivatives use by investment companies, fund liquidity management programs, transition plans for investment advisers, stress testing for large asset managers and large investment companies, and information reporting by SEC-regulated entities).

7 FSOC Notice, *supra* note 5 at 77490.

The Commission's Proposals are independent of FSOC. However, as the Releases note, several commenters responding to the FSOC Notice discussed issues concerning data that are relevant to the Proposals, including data regarding derivatives, global identifiers, and securities lending activities. Moreover, a number of industry commenters, including the AMG, urged FSOC to allow the Commission, the primary regulator in this area, to take the lead in evaluating the information that would be most useful in assessing risks posed by the industry and determining the means to collect it.[8]

In the AMG's comment in response to the FSOC Notice, which was submitted together with the Investment Advisers Association, the AMG said:

> The SEC's professional staff in the Division of Investment Management ("**IM**"), economists specializing in asset management assessment in the Division of Economic and Risk Analysis ("**DERA**"), and market experts in the Office of Compliance Inspections and Examinations ("**OCIE**"), are best positioned to evaluate whether there may be potential information gaps related to the industry and to propose to the Commission appropriately tailored responses to emerging areas of focus. Although the SEC's regulatory regimes for investment funds and their managers are robust, it is reasonable to consider whether they can be improved in any way. Of the agencies represented on the Council, the SEC is the logical choice to conduct those evaluations and the agency best positioned to fashion and implement any enhancement for most of the industry.[9]

We believe that this statement is borne out by the Proposals, which amply demonstrate both the capability and will of the Commission and its staff to ensure the collection of information about the asset management industry necessary to identify potential risks related to the financial stability of the U.S., promote market discipline, and respond to emerging threats to the stability of the U.S. financial system.

III. Proposed Form N-PORT

A. Summary of Form N-PORT Proposal

1. Description of Proposed Form N-PORT

The Commission is proposing a new reporting form, Form N-PORT, which would be filed with the Commission on a monthly basis, within 30 days of the end of the month, by all registered management investment companies and exchange-traded funds ("**ETFs**"), other than money market funds and small business investment companies ("**SBICs**"). The reports on Form N-PORT would include a fund's complete portfolio holdings in a structured data format. Additionally, Form N-PORT would include enhanced information concerning fund portfolio holdings that is not currently provided on Form N-Q and Form N-CSR, but that, the Commission

8 Comment Letter of SIFMA AMG and Investment Adviser Association (Mar. 25, 2015) ("**SIFMA AMG/IAA FSOC Letter**").

9 SIFMA AMG/IAA FSOC Letter, *supra* note 8 at 2.

believes, would facilitate risk analyses and other Commission oversight. For example, Form N-PORT would require reporting of additional information relating to derivative investments. It would also include certain risk metric calculations designed to measure a fund's exposure and sensitivity to changing market conditions, such as changes in asset prices, interest rates, or credit spreads.

2. Purpose of Form N-PORT

Form N-PORT is the cornerstone of the Commission's initiative to collect from the asset management industry additional, enhanced information designed to improve its regulatory oversight. The Commission believes that the more timely and frequent reporting of portfolio holdings information on Form N-PORT, the substantial new additional information proposed to be required on the Form, and the reporting of this information in a structured format will help the Commission better perform its mission to protect investors by strengthening its ability to carry out the Commission's regulatory responsibilities related to the asset management industry.

The Commission further explains the regulatory oversight benefits of Form N-PORT as follows:

> The information we are proposing to collect on Form N-PORT would be important to the Commission in analyzing and understanding the various risks in a particular fund, as well as risks across specific types of funds and the fund industry as a whole. These risks can include the investment risk that the fund is undertaking as part of its investment strategy, such as interest rate risk, credit risk, volatility risk, other market risks, or risks associated with specific types of investments, such as emerging market debt or commodities. Additionally, the information is helpful to understanding liquidity risks and counterparty risks, and determining whether a fund's exposure to price movements is leveraged, either through borrowings or the use of derivatives. We believe that information we are proposing to require on Form N-PORT will assist the Commission in better understanding each of these risks in the fund industry. We believe that the ability to understand the risks that funds face will help our staff better understand and monitor risks and trends in the fund industry as a whole, facilitating our informed regulation of the fund industry.[10]

The Commission believes that the information filed on Form N-PORT will facilitate its oversight of funds and assist Commission staff in examination, enforcement, and monitoring, as well as in formulating policy and in its review of fund registration statements and disclosures.[11]

While Form N-PORT is primarily designed to assist the Commission and its staff, the Commission posits that information in Form N-PORT could also be used by investors and other potential users to help investors make more informed investment decisions.[12] The Commission states that it believes many investors, particularly institutional investors, as well as academic

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[10] Fund Proposal, *supra* note 1 at 33595.

[11] *Id.*

[12] *Id.*

researchers, financial analysts, and economic research firms, could use the information reported on Form N-PORT to evaluate fund portfolios and assess the potential for returns and risks of a particular fund, which could, in turn, benefit all fund investors.[13] The Commission further posits that to the extent the information reported on Form N-PORT could improve the ability of investors to understand and differentiate the risks of investments among funds on a comparative basis, and thus make better selections in line with their risk preferences, this could, in turn, promote capital formation.[14]

3. Public Availability of Form N-PORT

While Form N-PORT would be filed on a monthly basis, information in the forms filed for the first two months of the fund's fiscal quarter would not be made publicly available. Information in Form N-PORT filed for the third month of the fiscal quarter, which would include substantial information relating to the first two months, would, with one exception, be available to the public commencing 60 days after the end of the fund's fiscal quarter (30 days after the filing date).

4. Rescission of Form N-Q; Substitution of Portfolio Holdings Schedules in Human Readable Form as an Exhibit to Form N-PORT

In light of the proposed public availability of most of Form N-PORT on a quarterly basis, and in order to avoid duplication of reporting, the Commission has also proposed to rescind Form N-Q, which is the quarterly report of portfolio holdings currently filed by management investment companies (other than SBICs) for the first and third quarters of the fund's fiscal year. Fund reports on Form N-Q, which are in human readable form, currently combine with Form N-CSR to provide quarterly portfolio holdings information to investors and other members of the public, as well as to the Commission.

Finally, in order to continue to provide investors and the public with quarterly portfolio holdings information in a human readable form comparable to what they currently have available on Form N-Q, and in the form with which they are familiar and which they may prefer, the Commission has proposed that funds must file, as an exhibit to Form N-PORT filed for the last month of the first and third fiscal quarters, a schedule of portfolio holdings prepared in accordance with Regulation S-X, as is currently required by Form N-Q.

B. General Comments on Form N-PORT

1. General Support; Organization of Comments

We support the Commission's proposal to adopt new Form N-PORT, subject to the comments provided below. For convenience, we generally address the Commission's request for comments on Form N-PORT following the organization and caption headings in the Fund Proposal. Although the Commission has requested comments on many issues, we have focused our

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[13] Fund Proposal, *supra* note 1 at 33613.

[14] Fund Proposal, *supra* note 1 at 33659.

response on those areas where we believe our members can provide the most useful comments. We also indicate in this section our support for specific items in proposed Form N-PORT.

First, though, we address our recommendation that the Commission retain Form N-Q and provide for all information on Form N-PORT to be filed on a non-public basis.

2. Public Availability of Information and Retention of Form N-Q

Overview and Benefits of AMG/AMF Recommendation

We recommend that, in order best to serve the Commission's goals with respect to Form N-PORT, all filings on Form N-PORT should be made on a non-public basis and Form N-Q should be retained to serve, together with Form N-CSR, as the vehicle for providing quarterly portfolio holdings information to investors and the public. We believe that this approach will both maximize the utility of Form N-PORT for its primary purpose and expedite the process of finalizing the Form. The Commission will thus get better information sooner. This approach will also preserve the current method of providing quarterly portfolio information to the public, a method that the Commission has acknowledged investors may prefer to Form N-PORT and that will be substantially enhanced by improvements resulting from the Commission's proposal to amend Regulation S-X. In addition, it will avoid concerns expressed below about the potential harm to investors from public disclosure of this information.

We believe our recommendation will enable the Commission to request information more closely aligned with its primary regulatory goals, without compromising the utility of that information by attempting to tailor it for public consumption and investor decision making. Information that is most valuable to the Commission for regulatory oversight is likely to be fundamentally different – both in content and format – from information that is useful to investors in making investment decisions.[15] Framing the information items in the manner best suited to the primary goal of the Form will give the Commission the optimal tools it needs for fulfilling its mission.

Moreover, a determination not to make information on Form N-PORT publicly available is likely to substantially accelerate the process for adopting Form N-PORT. We expect commenters will

[15] The Commission recognizes this important distinction in connection with Form N-PORT both in the proposal not to make publicly available information filed for the first two months of the quarter and in the proposal not to make publicly available information with respect to miscellaneous securities filed on Part D.

> Consistent with the disclosure regime established by Regulation S-X, all such responses [on Part D] regarding miscellaneous securities would be nonpublic and would be for Commission use only, notwithstanding the fact that all other information reported for the third month of each fund's fiscal quarter on Form N-PORT would otherwise be publicly available. Keeping information related to these investments nonpublic may serve to guard against the premature release of those securities positions and thus deter front-running and other predatory trading practices, while still allowing the Commission to have a complete record of the portfolio for monitoring, analysis, and checking for compliance with Regulation S-X. The only information publicly reported for miscellaneous securities would be their aggregate value, which would be consistent with current practice as permitted by Regulation S-X.

Fund Proposal, *supra* note 1 at 33610 (footnotes omitted).

have strong and widely differing views on how information requests designed for public availability should be fashioned, and that it may well be difficult and time consuming to conduct a full evaluation of all the alternatives. We also expect that commenters will have many fewer objections to providing information in the form the Commission proposes if that information is for Commission use only and not to be made public. Thus we believe our recommendation can substantially expedite the rulemaking process.

We believe our recommendation also has the advantage of preserving a practice that the proposal itself acknowledges is beneficial to investors, which is the continued use of Form N-Q. Form N-Q has worked well, together with Form N-CSR, to provide investors and other members of the public with valuable information about funds in a manner that can be effectively used, on a fair and equal basis, by all market participants. The Commission has endorsed the efficacy of Form N-Q for this purpose by proposing to require what will essentially be the information currently required on Form N-Q as an exhibit to Form N-PORT. This component of the proposal reflects the Commission's recognition that Form N-Q has demonstrated its value as a vehicle for conveying portfolio information to investors and other members of the public.[16] Importantly, the value of Form N-Q will be further enhanced by the improved derivatives and other disclosure that will be included in fund portfolio holdings schedules as a result of the Commission's proposed amendments to Regulation S-X.

Avoidance of Potential Harm from Public Disclosure

The Commission acknowledges in the Fund Proposal some of the potential harms that can result from excessive public disclosure of information obtained by regulators, including such predatory practices as front-running, copycatting, and reverse engineering of a fund or manager's investment strategy. We believe all of these potential misuses are dangers inherent in making public much of the additional information proposed to be required on Form N-PORT.

The extensive new details about fund portfolios included in Form N-PORT will provide putative predators with a treasure trove of rich data, which they can freely mine for insight into the strategies that fund shareholders pay for and fund managers invest extensive time and resources to develop. Importantly, this will all now be in an easily manipulable structured data format, which will make reverse engineering and attempts to glean manager strategy far easier than in the past. The existence of this vast structured data set is likely to attract a new generation of free-riders, front-runners, copycatters, and other creative predators, with new skills, algorithms, and ideas for gain, at the expense of funds and their shareholders, that we have not yet thought of. These are dangers that cannot be cured by limiting the disclosure of this new wealth of information to quarterly filings, or delaying release of the information for 60 days.

Absence of Demonstrated Benefit to Investors

The potential harm from public disclosure of this information is simply not outweighed by any countervailing benefit. The Commission is convincing in demonstrating that seeking new and expanded information on Form N-PORT is necessary for its regulatory responsibilities. Likely

[16] We note that rescinding Form N-Q to avoid duplication does not in fact serve that goal, since the information in Form N-Q will still be prepared and attached as an exhibit to Form N-PORT.

benefits to investors and the public, however, are not shown. While we respect the Commission's laudable goal in seeking to improve investor decision making by providing information on which investors can make meaningful comparisons among funds, we do not believe that Form N-PORT accomplishes this goal.

As we explain in more detail below, we do not agree with the Commission's suggestion that the highly detailed, structured data in Form N-PORT will be a valuable complement to fund prospectus disclosure for investor decision making, either directly or as filtered for them by vendors and other intermediaries. In fact, with respect to a number of items, we believe public disclosure is more likely to mislead, or at the very least confuse, individual investors. We provide several examples below.

Commission Responsibility for Public Availability Determination

We understand that information provided in reports filed under the 1940 Act is generally made available to the public unless the Commission finds that public disclosure of the information is neither necessary nor appropriate in the public interest or for the protection of investors.[17] In order to make this determination, the Commission has specifically asked for comment on whether all or a portion of the information filed on Form N-PORT should be withheld from public disclosure.

We believe this finding is justified for all of the information on Form N-PORT. Portfolio holdings information that is appropriate for and helpful to investors will already be disclosed on Form N-Q and Form N-CSR, in human readable form, through the fund's portfolio holdings schedules as enhanced by the amendments to Regulation S-X that the Commission determines to adopt. And the additional data proposed to be required on Form N-PORT in structured format poses more harm than benefit to investors.

However, we also understand that in making the public availability determination for Form N-PORT, the Commission will review each item and consider the reasons for and against public availability. To assist the Commission in this evaluation, we have provided a detailed explanation for the items where we believe public disclosure poses the greatest risk in the context of our discussion of those items under the individual captions used in this Section. In addition, we provide further discussion of considerations we believe are relevant to the public availability of Form N-PORT from an overall perspective in Section III.C.4, below.

Finally, we recognize that in the process of weighing the benefits and burdens of public disclosure of information reported on Form N-PORT, the Commission may well determine that some of the proposed information does not pose a danger and in fact is likely to be meaningful for investor decision making. In that case, we suggest that the appropriate vehicle for making that additional information publicly available would be Form N-Q, and that this rulemaking could encompass amending Form N-Q to incorporate that information.[18]

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[17] Section 45(a) of the 1940 Act.

[18] The Commission has, in the past, made a determination to move information from one form to another based on the difference in public availability of information in the two forms. *See* Reporting by Investment Advisers to

Protection of Investors

In making our recommendation, we wish to emphasize that we do not believe it in any way comes at the cost of the Commission's fulfilling its mission of protecting investors. As the Commission well knows, protecting investors through Commission and staff collection and review of information, and providing investors and the public with information, are two entirely different processes, involving very different analyses. In fact, we believe the Commission can better protect investors by requesting and obtaining information tailored to its regulatory needs, on a non-public basis, than by making that information publicly available.

C. Response to Requests for Specific Comments on Form N-PORT

1. Who Must File Reports on Form N-PORT

We support the Commission's proposal with respect to the entities that must file reports on Form N-PORT.

2. Information Required on Form N-PORT

a. General Information and Instructions

Summary of Comment

We support the Commission's proposal with respect to (i) the requirements for providing general identifying information about funds, including a fund's Legal Entity Identifier ("**LEI**"),[19] and (ii) the general instructions and definitions. However, for clarity and consistency, we suggest a change to the terms "foreign exchange forward" and "foreign exchange swap" and an express instruction confirming the absence of a "look-through" requirement for funds that invest in other funds. We also request an instruction clarifying that information reported on Form N-PORT may be reported on either a trade date (T+0) or trade date plus one (T+1) basis, at the option of the reporting fund.

In addition, in light of the importance to the Commission's overall goals of clarity and consistency in interpreting each information item, we recommend that shortly following the close of the comment period, the Commission staff hold public workshops with respect to completion of Form N-PORT, in order to identify ambiguities that could lead to either

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Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, 76 Fed. Reg. 71128, 71145 and note 206 (Nov. 16, 2011) ("**Form PF Release**") (adding certain questions to Form PF, a non-public form, that were originally proposed to be added to Form ADV, in response to commenter concerns about public availability).

19 We agree with the Commission's statement in the Fund Proposal that requiring an LEI would facilitate the ability of the Commission to link the data reported on Form N-PORT to data reported in other SEC filings or external sources. *See* Fund Proposal, *supra* note 1 at 33597. An LEI provides the key to such linkages and ensures that funds will be unambiguously identified.

unnecessary inefficiencies or lack of comparability when the Form is adopted and implemented.[20]

Discussion

Definitions of Foreign Exchange Forward and Forward Exchange Swap

Form N-PORT would require specific information regarding "foreign exchange forwards" and "foreign exchange swaps." While the Fund Proposal does not provide a definition of these terms, they are defined in the Commodity Exchange Act (the "**CEA**"), as amended by the Dodd-Frank Act. The CEA defines "foreign exchange forward" as "a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange"[21] and "foreign exchange swap" as "a transaction that solely involves (A) an exchange of 2 different currencies on a specific date at a fixed rate that is agreed upon on the inception of the contract covering the exchange; and (B) a reverse exchange of the 2 currencies described in subparagraph (A) at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange."[22]

The CEA definitions are commonly understood to refer to "deliverable" foreign exchange forwards and swaps, as opposed to "non-deliverable" instruments ("**NDFs**"). This distinction is important under the CEA, because instruments that are within the definitions of foreign exchange forwards and foreign exchange swaps are generally exempt from the definition of "swaps," both under the CEA and Securities Exchange Act of 1934 (the "**1934 Act**"), while NDFs do not qualify for this exemption and thus remain within the swap definition. [23]

While not stated in the Releases, we believe that the Commission does not intend to incorporate the distinction between deliverable and non-deliverable foreign exchange contracts imposed by the CEA for purposes of reporting on Form N-PORT. If such a distinction were intended, deliverable foreign exchange contracts would be reported under a different item than NDFs (foreign exchange forwards and foreign exchange swaps for those that fit the CEA definition, swaps for NDFs). This does not appear to be based on any meaningful distinction for Form N-PORT reporting purposes, and would result in additional work and fragmentation. In this connection, we note that the proposed amendments to Regulation S-X use a different term,

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[20] As noted above, our members are in the process of conducting "trial runs" to make sure the definitions and instructions are clear, and to identify ambiguities that could be eliminated in the final rules. Depending on the outcome of that exercise, as well as the workshops we propose, we may wish to supplement our response with respect to specific items.

[21] Section 1a(24) of the CEA.

[22] Section 1a(25) of the CEA.

[23] Determination of Foreign Exchange Swaps and Foreign Exchange Forwards under the Commodity Exchange Act, Department of the Treasury (Nov. 16, 2012) (exempting foreign exchange swaps and foreign exchange forwards from the definition of "swap" in accordance with the CEA); Rule 3a69-2(c)(1) of the 1934 Act ("A foreign exchange forward or a foreign exchange swap shall not be considered a swap if the Secretary of the Treasury makes a determination described in section 1a(47)(E)(i) of the Commodity Exchange Act (7 U.S.C. 1a(47)(E)(i))").

foreign currency forward, which is typically used to include both deliverable foreign exchange forwards and NDFs. We request that the Commission use the same term for both Form N-PORT and Regulation S-X, and choose a term other than "foreign exchange forward," which has a precise but, we believe, inappropriate definition for Form N-PORT purposes, in another statute. This would also be consistent with the Commission's expressed goal of eliminating inefficiencies by conforming the information requirements of Form N-PORT and Regulation S-X.[24]

Confirmation of No "Look-Through" Treatment for Investments in Funds

Form N-PORT is designed to request information about direct fund holdings, as well as specified information about reference assets underlying derivatives holdings. The Form requires funds to report investments in underlying funds as such, that is, as equity investments in private funds, registered funds, or other entities, as the case may be.[25] None of the proposed information items on Form N-PORT specifically requires a fund to "look through" to the holdings of underlying funds or other entities. We recommend that the instructions include an express statement to the effect that a fund that invests all or a portion of its assets in other funds or other entities is not required to "look through" to investments or holdings of the investee entity.

Both Form PF (the form on which registered investment advisers report systemic risk and other information on private funds to the Commission and, in some cases, the CFTC) and Form CPO-PQR (the form on which commodity pool operators report to the CFTC) take this approach. For example, Instruction 8 to Form PF states that private fund advisers "are not, however, required to 'look through' a fund's investments in any other entity unless the Form specifically requests information regarding that entity or the other entity's primary purpose is to hold assets or incur leverage as part of the reporting fund's investment activities."[26] Form CPO-PQR has a similar instruction.[27]

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24 Form N-PORT as proposed already takes our suggested approach on a similar point. The instructions to Form N-PORT make clear that the term "swap" for Form N-PORT purposes includes both "swaps" and "security-based swaps," which are defined separately in the CEA and thus does not impose the CEA distinction between those categories for Form N-PORT.

25 See Item C.4, which requires the fund to select the asset and issuer type from a list of categories. The categories of asset type include, among others, equity-common, and the categories for issuer type include private fund, registered fund, and other (with a description if "other" is selected). Money market funds and other short term investment vehicles are considered a separate category of asset type.

26 This Instruction refers to Instruction 7, which states that funds investing in private funds may, for most purposes, disregard the assets of the private funds. We do not suggest this approach – disregarding underlying fund assets – for registered investee funds. With respect to the last phrase in Instruction 8 – unless the underlying entity's primary purpose is to hold assets or incur leverage as part of the reporting fund's investment activities – the Commission and the CFTC explained that this refers to situations where the reporting fund is acting as a holding company: "We have also added a new Instruction 8, which clarifies that, except as provided in Instruction 7, all investments in other funds should be included for all purposes under Form PF but that advisers are not required to "look through" the other funds to the underlying assets (unless the other fund's purpose is to act as a holding company for the private fund's investments)". *See* Form PF Release, *supra* note 18 at 71139 and note 130.

27 *See* Instruction 6 to Form CPO-PQR:

The CFTC explained the reason that a look-through would not be appropriate in the release accompanying adoption of form CPO-PQR:

> The Commission acknowledges that a fund of funds may not have access to the kind of information necessary to respond to all of the data elements in Schedules B and C with respect to the investment activities of its investee funds. Nevertheless, the Commission believes that requiring basic information about the investment in the investee funds without requiring that funds of funds complete the additional detail strikes an appropriate balance between recognizing the limitations of the information available to funds of funds and enabling the Commission to analyze and monitor the levels of interconnectedness among a CPO's funds. The Commission believes that a fund of funds should still be required to provide at a minimum the name of the investee fund(s) and the size of its investment(s) in such funds.[28]

Option of Using "T+1" Accounting

Summary of Comment

We propose that funds be permitted the option of preparing Form N-PORT on a T+1 basis to align the reporting with the manner in which funds maintain records for purposes of calculating their daily net asset value ("**NAV**").

Discussion

As proposed, General Instruction A to Form N-PORT appears to require each fund to report investment-specific information as of the end of the reporting period (T+0), including categorizing each investment consistent with U.S. GAAP.[29] In contrast, funds generally account for their day-to-day transactions on the business day following the trade date (T+1) for purposes of calculating their daily NAV, as permitted by Rule 2a-4 under the 1940 Act. Funds then convert the T+1 holdings data to trade date (T+0) holdings data for reporting on a fund's financial statements, as required by U.S. GAAP.

We believe the conversion of a fund's reporting data from T+1 to T+0 would result in only minor differences between the monthly Form N-PORT filings and the quarterly portfolio

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> Instruction 6. I advise a Pool that invests in entities that are not Pools, or are exempt. How should I treat these investments for purposes of Form CPO-PQR?
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> Except as provided in Instruction 4 [disregarding investments in certain Pools], investments in funds should be included for all purposes under this Form CPO-PQR. You are not, however, required to "look through" a Pool's investments in any other entity unless the Form CPO-PQR specifically requests information regarding that entity or the other entity's primary purpose is to hold assets or incur leverage as part of the Pool's investment activities.

[28] Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations, 17 CFR Parts 4, 145, and 147 (Feb. 8, 2012) ("**Form CPO-PQR Release**").

[29] General Instruction A to proposed Form N-PORT requires funds to report portfolio holdings as of the last business day of the month.

holdings schedules, and is unlikely to materially change the substance of the information. Conversions on a monthly basis, as would be required by Form N-PORT, would be significantly more burdensome than the quarterly conversions required under the current reporting regime on Forms N-CSR and N-Q. In addition, funds currently have 60 days to complete these conversions,[30] whereas these conversions would need to be completed within 30 days under Form N-PORT. The burdens of this time constraint would be exacerbated for funds that rely on an administrator, custodian or other service provider to complete the conversion.

As a result of the increased burdens and marginal benefit to the Commission, we recommend permitting funds the option to prepare Form N-PORT on a T+1 basis. We recommend making the use of T+1 optional so that funds that would prefer to align their Form N-PORT reporting with reporting on Forms N-Q and/or N-CSR may do so.

b. Information Regarding Assets and Liabilities

We support the Commission's proposal with respect to information regarding assets and liabilities.

c. Portfolio Level Risk Metrics

Summary of Comment

We support the Commission's proposal to require funds to provide the Commission with portfolio level risk metrics, and generally would defer to the Commission as to the information the Commission would consider useful for its regulatory purposes.[31] However, we suggest adjusting the thresholds for disclosure to achieve the Commission's goal of applying the requirement only above a *de minimis* level, and we request that the Commission clarify that funds may use their own internal methodologies and assumptions, consistent with the prescribed risk metrics.

Most importantly, we believe that this information should not be made publicly available. In prior proceedings, the Commission determined not to require funds to disclose quantitative measurements of duration in their registration statements because of the limited value of such measurements for investors and the potential for investor misunderstanding. For many of the same reasons on which the Commission based this decision, we believe that the proposed duration metrics would not be an appropriate complement to fund registration statements, and

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[30] Rule 30e-1 requires funds to distribute their financial statements to shareholders not more than 60 days after the close of each fiscal year and half-year and Rule 30b1-5 requires funds to file a schedule of portfolio holdings on Form N-Q not more than 60 days after the close of the first and third quarter of a fund's fiscal year.

[31] While our members believe that the risk-related Items in proposed Form N-PORT will help the Commission understand the use of derivatives in a fund, it is generally believed that in order to gain a more comprehensive understanding of the risk in the fund, the SEC should seek disclosure of a fund's leverage. There are a wide range of views on the most meaningful way to calculate leverage in a fund and we encourage the Commission to seek industry input on this issue as it considers any additional rulemaking regarding permitted leverage in registered funds. We look forward to working with the Commission on this issue.

that public disclosure of this information is more likely to mislead and confuse investors than to help them make better investment decisions.

Discussion

Summary of Proposal

The Commission is proposing, as Item B.3 of Form N-PORT, that if the notional value of a fund's holdings of debt instruments or derivatives that provide exposure to debt instruments or interest rates (delta adjusted for options) is 20% or more of the fund's NAV, the fund must report on Form N-PORT a portfolio level calculation of duration and spread duration across the applicable maturities in the fund's portfolio. The Commission believes it is important for its staff, investors, and other potential users to have measures that would help them analyze how portfolio values might change in response to changes in interest rates or credit spreads.

Commission Rationale

The Commission is proposing to require funds to report quantitative measurements of specified portfolio level risk metrics as part of its general goal for Form N-PORT. According to the Commission, this information will help the Commission better monitor trends in the fund industry, including investment strategies funds are pursuing, the investment risks that funds undertake, and how different funds might be affected by changes in market conditions.

The Commission states that monthly reporting of quantitative risk measures will provide the Commission with information beyond the narrative, often qualitative disclosures about investment strategies and risks in the fund's registration statement, as well as the fund's historical financial statement disclosures. The Commission believes this information will be useful to it and its staff for a number of regulatory purposes, including: (1) monitoring on a more current basis how funds are implementing their investment strategies through particular exposures; (2) more efficiently analyzing the potential effects of a market event on funds; and (3) determining whether additional guidance or policy measures are appropriate "to improve disclosures in order to help investors better understand how changes in interest rate or credit spreads might affect their investment in a fund."[32]

Additionally, the Commission believes that institutional investors, as well as entities that provide services to both institutional and individual investors, would be able to use these risk metrics to conduct their own analyses to help them better understand fund composition, investment strategy, and interest rate and credit spread risk the fund is undertaking. The Commission suggests that this "would complement the risk disclosures that are contained in the registration statement, thereby potentially helping all investors to make more informed investment choices."[33]

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32 Fund Proposal, *supra* note 1 at 33598.

33 Fund Proposal, *supra* note 1 at 33599. The Commission states that quarterly disclosure of quantitative risk measures "could be especially important for investors with respect to funds that continuously offer new shares to the public, because such funds are generally required to maintain an updated or 'evergreen' prospectus that must precede or accompany delivery of those securities." *Id*. This appears to be another reason the

Request for Comment

The Commission has posed a number of questions with respect to disclosure of portfolio level risk metrics. Among other questions, the Commission has asked: (1) whether the proposed threshold for reporting duration and spread risk metrics – the notional value of a fund's of debt investments is 20% or more of the fund's NAV (the "**20% notional value threshold**") – is appropriate and whether basing the reporting threshold on notional value rather than NAV of the relevant debt instruments is appropriate; (2) whether funds should be required to report duration and spread duration only for the maturities that represent the highest exposures in the fund, such as the top three or the top five (or another quantity); (3) whether there should be a *de minimis* amount for exposure to different currencies, under which level a fund would not have to report the duration and spread duration; and (4) how the comparability of information reported by different funds would be affected if funds used different inputs and assumptions in their methodologies.

Commission Request for Duration Measurements

We support the Commission's determination that it is appropriate to require funds that reach a certain threshold of debt exposure to report to the Commission quantitative measurements of certain risk metrics related to this exposure.

Proposed Thresholds

In response to the Commission's request for comment, we believe that the proposed 20% notional value threshold is too low. We propose instead a threshold for notional value of 30%, which we believe is better designed to provide the Commission with information about funds for which the calculations would be meaningful.[34]

As the Commission has previously acknowledged, "duration is only meaningful for bonds and portfolios of bonds and therefore cannot be used to measure the risk of equity funds and has limited applicability to balanced funds."[35] For this reason, the extent of a fund's bond exposure, together with related derivatives exposure, is critical to the analytical value of duration measures.

Commission believes that the risks metrics will function as a complement to the fund's prospectus. As explained below, we do not believe that Form N-PORT as a whole, and in particular Item B.3 requiring disclosure of quantitative duration measurements, is an appropriate means for supplementing a fund's prospectus disclosure for the purpose of improving investor decision making.

[34] There is some inconsistency in the description of the proposed threshold as between Item B.3 of Form N-PORT and the Fund Proposal. The Fund Proposal describes the threshold as a percentage of the Fund's notional amount or exposure. *See*, *e.g.*, Fund Proposal, *supra* note 1 at 33599. For example, the Fund Proposal states (emphasis added): "We are proposing to limit this requirement to funds that invest in debt instruments or derivatives that provide exposure to debt instruments or interest rates that represent **at least 20% of the fund's notional value** as of the reporting date." By contrast, Item B.3 of Form N-PORT describes the threshold formula in terms of notional value as a percentage of the fund's NAV ("the fund's notional value of debt instruments is 20% or more of the Fund's net asset value"). We are assuming that the formulation in Item B.3, not the language in the Fund Proposal, is correct.

[35] Improving Descriptions of Risk by Mutual Funds and Other Investment Companies, Investment Company Act Release No. 20974 (Mar. 29, 1995) ("**Risk Concept Release**").

Setting the threshold too low thus would result in the provision of information that is not meaningful.

The Commission states its belief that the 20% notional value threshold will provide "a *de minimis* level" to relieve the burden of calculating these measures for funds that primarily invest in assets other than debt instruments, such as equities, but might have some level of investments in debt instruments for cash management or other purposes.[36] The Commission has asked for comment on whether, given this objective, the 20% notional value threshold is the appropriate threshold for determining which funds must provide these risk metrics; whether the threshold should be lower or higher; and whether the threshold should be based directly on the NAV of the fund's debt securities and interest rate investments rather than the fund's notional exposure to debt securities or interest rates as a percentage of the fund's NAV.

Although we are suggesting a higher threshold (notional value of 30% of NAV), we believe this higher threshold is still at the low end of the spectrum for two reasons. First, this reflects the Commission's recognition that duration has limited applicability to balanced funds.[37] A balanced fund, as historically interpreted by the Commission, is a fund with at least 25% of the value of its assets allocated to bonds or similar instruments.[38] Value under this formula is different from notional amount, and for a fund with bond exposure through derivatives, is typically a much lower percentage than notional value. Notional values for derivatives, which reflect the sum of positive and negative exposures (positive and negative values are not netted against each other) are not related to NAV calculations or financial statement carrying values or limited to 100% of NAV, and tend to be far higher than carrying values as a percentage of NAV. Our suggestion of 30% is designed to provide a conservative proxy reflecting the Commission's observation about the limited usefulness of duration in balanced funds.[39] Second, also in recognition of how notional values are measured, the CFTC, in determining whether the operator of a fund is engaged in activities that require registration as a commodity pool operator, has stated that notional value exposure of 100% of NAV is *de minimis*.[40] Our suggestion of a notional value threshold of 30% of NAV therefore falls well within this parameter.

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36 *See* Fund Proposal, *supra* note 1 at 33599.

37 *See* Risk Concept Release, *supra* note 35 ("[D]uration is only meaningful for bonds and portfolios of bonds and therefore cannot be used to measure the risk of equity funds and has limited applicability to balanced funds.")

38 Investment Company Names, Investment Company Act Release No. 24828, 66 Fed. Reg. 8509, 8513 and note 42 ("The Division takes the position that an investment company that holds itself out as 'balanced' should invest at least 25% of its assets in fixed income senior securities and should invest at least 25% of its assets in equities").

39 We note that the definition of notional value in Item B.3 aggregates "value" for debt securities and "notional amount" for derivatives and assigns them the same weight in the threshold formula, even though these two measures are quite different. We believe the Commission took this approach in order to take into account funds that seek debt exposure both directly and through derivatives without unnecessarily complicating the means of calculating the threshold (such as with a blended percentage rate based on the proportion of the two types of exposure). We support this approach, but believe that our proposal of 30% better reflects the impact of using notional amounts for debt exposure through derivatives.

40 *See* Form CPO-PQR Release, *supra* note 28.

We would also support a threshold based on carrying value, instead of notional value, in which case we would support a 25% threshold, to conform with the Commission's view that duration is of limited value for balanced funds. This threshold would still sweep in many funds that are considered balanced funds, and yet have bond exposure significantly higher than the 25% minimum level at which the Commission believes the term balanced fund is appropriate and thus the type of fund where duration is recognized as having limited value.

We also believe that the proposed duration disclosures would be most meaningful if they are limited to the top five exposures, and that there should be a *de minimis* 5% threshold for exposure to different currencies, based on value of the instruments relative to NAV. Information relating to small, non-material holdings is likely to unnecessarily complicate the calculation and increase the necessary assumptions, thereby reducing comparability both over time and among different funds. Such information will also increase the burden of making the calculations.

Recognition of Different Methodologies

As to the specific metrics proposed, we would defer to the Commission to choose the information it would find the most useful in assessing risk and otherwise fulfilling its regulatory mission. However, because even "standard" duration metrics, such as those proposed in Item B.3 of Form N-PORT, involve significant assumptions, choice of methodology, and other judgments, we request that the Commission make clear, either in the release for the final rules or in the Form itself, that funds may use any assumptions and methodologies consistent with the stated requirements. As the Commission stated in the Risk Concept Release, there are several methodologies that asset managers may choose among for calculating risk characteristics of instruments and portfolio metrics. For example, for fixed income, risk metrics may include the use of Macaulay duration, modified duration, effective modified duration or option-adjusted duration. Importantly, there is no standard, universally accepted methodology for addressing optionality in fixed income instruments, such as call features and prepayment options, and asset managers in different fund groups, or even managers within the same complex, will inevitably use different approaches.[41] Given the range of accepted methodologies commonly used, we do not recommend that the Commission attempt to specify a particular methodology (beyond the proposed requirements) or limit the assumptions that may be used.

Public Availability of Information

The Proposed Risk Metrics Would Confuse and Mislead Investors. We believe that the proposed risk metrics would not be meaningful to investors, and in fact are likely to be confusing and misleading to them, and thus should not be made publicly available. In particular, as discussed above, measures of duration are inherently subjective and involve significant assumptions, choice of methodology, and other judgments. This is the case even with respect to metrics, like those proposed for Form N-PORT, that are designed to be "standardized." Because of this inherent variability, the proposed measures will not provide investors with effective comparability among funds, which is the Commission's goal. In fact, the availability of quantitative risk metric disclosure that is perceived by the public as "standardized" is likely to

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[41] This concern was raised by the Commission in the Risk Concept Release, *supra* note 35, discussed below.

mislead investors into believing that information is far more comparable than it is, and thus distort their investment decisions. Furthermore, duration is just one measure of risk present in many portfolios that would be covered by the disclosure, and public disclosure of this measure is likely to cause undue focus on duration, to the detriment of risk measures that may be more relevant to a particular fund.

Moreover, even among debt funds for which duration is an appropriate measure for investors to consider, the proposed risk metrics will have different levels of relevance to different types of debt funds. Measurement of risk from an investor's point of view will differ among mortgage funds, bank loan funds, government funds and corporate bond funds. The proposed one basis point interest rate sensitivity will not be equally useful across the entire universe. The Commission and its staff are capable of evaluating the information with respect to specific funds and the industry in general, and thus use of the proposed metrics, despite their lack of true standardization, may nonetheless be useful to the Commission for some types of comparisons. Individual long term investors, however, even those assisted by sophisticated intermediaries, are unlikely to benefit from this "standardized" disclosure, either directly or indirectly, in making investment decisions, and indeed, as mentioned above, it is more likely that misconceptions about the degree of comparability of this information across funds will cause investor confusion and impede rational decision making.[42]

For these reasons, we believe that disclosure of this information, either quarterly or at any other frequency, would detract from, rather than complement, the risk disclosures that are contained in the registration statement, and thus hinder rather than help investors in seeking to make more informed investment choices. As a result, public disclosure of this information will impede rather than facilitate capital formation through efficient allocation of investment resources.

The Commission's History of Considering Disclosure of Quantitative Measures of Duration to Investors Supports Not Making this Information Public. The Commission's history in considering mandatory disclosure of duration and other quantitative risk metrics, which has recognized the inherent limits of duration metrics as an investor disclosure tool, supports our recommendation that funds should not be required to provide this information to the public.

In 1995, the Commission issued a concept release specifically addressing risk disclosure for investors (the "**Risk Concept Release**").[43] In this release, the Commission sought public comment on how to improve the descriptions of risk provided to investors by mutual funds and other management investment companies, as part of its continuing efforts to enhance the information that fund investors receive to assist them in making informed investment decisions. In particular, the Commission requested comment on how to increase comparability of disclosure about funds' risk levels through quantitative measures or other means.

Among other specific topics, the Commission sought comment on quantitative measures of market risk, including beta, duration, and risk-adjusted performance measures. With respect to

[42] We note that for money market funds, the Commission requires stress testing based on prescribed metrics, but does not require public disclosure of the nature proposed for Form N-PORT.

[43] *See* Risk Concept Release, *supra* note 35.

duration, which the Commission described as a measure of the price sensitivity of a bond, or bond portfolio, to interest rate changes, the Commission acknowledged, as we point out above, that there are different types of duration (noting, in particular, modified duration and Macauley duration) and requested that commenters supporting the use of duration be specific regarding the duration measure that they support.

The Risk Concept Release also noted that the use of duration has several limitations, and asked commenters to address four such limitations, in particular. First, duration is only meaningful for bonds and portfolios of bonds and therefore cannot be used to measure the risk of equity funds and has limited applicability to balanced funds. Second, duration measures interest rate risk only and not other risks to which bonds are subject, *e.g.*, credit risks and, in the case of non-dollar denominated bonds, currency risks. Third, duration is difficult to calculate precisely for bonds with prepayment options, *e.g.*, mortgage-backed securities, because the calculation requires assumptions about prepayment rates. And fourth, bond value changes resulting from interest rate changes are sometimes poorly predicted by duration. With respect to the fourth limitation, the Commission explained that duration is less useful as a measure of interest rate risk when the following conditions are not met: (1) the yield curve is flat (*i.e.*, interest rates for all maturities of bonds are the same); (2) changes in yield are small; and (3) yield shifts are parallel (*i.e.*, the Treasury yields of all maturities change by equal numbers of basis points).

Based on the comments submitted regarding the Risk Concept Release,[44] the Commission decided not to propose rules requiring disclosure to investors of quantitative measures of duration, or the other metrics addressed in the Risk Concept Release.[45] As the Commission explained in adopting other changes to the fund registration statement form designed to help investors understand fund risks, the determination not to adopt quantitative risk measures was based on "the lack of a broad consensus as to what measure of risk would best serve fund investors . . . [and] lack of general agreement on how to measure risk."[46] Commenters had, among other things, "questioned the value of quantitative risk measures, suggesting that investors have too wide a range of investment goals and ideas of what 'risk' means to be well-served by a single quantitative risk measure."[47] The Commission also noted the results of an industry survey, suggesting "that investors who use quantitative measures may not understand the measures well enough to use them for the special purpose for which they were designed."[48]

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44 Registration Form Used By Open-End Management Investment Companies, Investment Company Act Release No. 22528, 62 Fed. Reg. 10898, 10900 (Mar. 10, 1997) ("**Risk/Return Summary Proposal**").

45 Registration Form Used by Open-End Management Investment Companies, Investment Company Act Release No. 23064, 63 Fed. Reg. 13916, 13929 and note 113 (Mar. 13, 1998) ("**Risk/Return Summary Release**").

46 Risk/Return Summary Release, *supra* note 45 at 13929.

47 Risk/Return Summary Proposal, *supra* note 44 at 10911.

48 In response to the Commission's request for comments, the Investment Company Institute ("**ICI**") conducted a comprehensive survey of fund investors concerning risk disclosure, including how shareholders assess duration and the other quantitative risk measurements identified in the Risk Concept Release, *supra* note 35, and provided the Commission with a summary of the results, as well as a full report of the survey. Shareholder Assessment of Risk Disclosure Methods, Investment Company Institute (Spring 1996). Generally, the survey found that investors did not favor quantitative measures, and did not demonstrate an ability to use them

On the basis of the survey, and similar experience described in the comments to the Risk/Return Summary Proposal, commenters expressed the concern that "if the Commission mandated a risk measure, investors might rely on it as a definitive standard despite the lack of general agreement on how to measure risk."[49]

We believe that the limitations of quantitative risk measures, in particular duration, for investor decision making, and the comments that led the Commission at that time not to require duration or other quantitative risk metrics in fund registration statements or shareholder reports, now support a determination that the risk calculations proposed in Item B.3 of Form N-PORT not be made publicly available. In this connection we note that in determining the methodology for the measures of duration and spread duration that the Commission proposes for Form N-PORT, the Commission staff engaged in outreach to asset managers and service providers that provide risk management and other services to asset managers and institutional investors. However, it does not appear that the Commission or its staff reached out to individual investors to determine whether they would find such information helpful. Because the previous outreach to individual investors, described above, indicated that, on the contrary, such information would be more confusing and potentially misleading than meaningful, we recommend that the Commission not require public disclosure of this information until there is evidence substantiating its usefulness to investors.

Potential for Institutional Investor and Intermediary Use of the Proposed Risk Metrics Does Not Justify Public Disclosure. The fact that institutional investors may find this information useful, and that such usefulness may, indirectly, find its way to retail investors through vendors and other intermediaries does not justify public disclosure. The efficient market theory, which posits that all public information will ultimately benefit investors equally, does not operate in the open-end fund market, where pricing is based on NAV, not market perception. For open-end fund investors, their ability to "benefit" from this information will depend on their interaction with vendors and other intermediaries whose services and fees (the service of translating and packaging the structured data is bound to come at a cost to investors) can be expected to vary considerably. These vendors are likely to provide different types of information, with varying degrees of explanatory context, at different costs, and at different levels of quality. In fact, the availability of information that only institutional investors can obtain directly, and for which individual investors, with more limited resources, are at the mercy of commercial vendors, is more likely to disadvantage individual investors by comparison.

Form N-PORT is Not an Appropriate Means of Complementing the Registration Statement for Investor Decision Making. The Commission states that public disclosure of the proposed risk metrics "would complement the risk disclosures that are contained in the registration statement, thereby potentially helping all investors to make more informed investment choices."[50] We respectfully submit that if the Commission wishes to supplement a fund's

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effectively, and that quantitative risk measurements apparently have a strong potential to confuse or mislead investors. *See id.*

49 Risk/Return Summary Release, *supra* note 45 at 13929.

50 Fund Proposal, *supra* note 1 at 33599.

prospectus and other components of the fund's registration statement in order to assist investors in making investment decisions, Form N-PORT is not the appropriate vehicle.
Over the years, the Commission has worked with a broad range of consumer groups, fund organizations, and other market participants to develop an effective disclosure document. The registration statement is prepared based on a carefully constructed form, and within a framework of stringent – in some cases strict – liability standards. Furthermore, as described above, the Commission has in the past considered whether quantitative risk measures would be appropriate in a registration statement, and declined to require such disclosure.[51] If the Commission believes that quantitative information about risk is appropriate for investors making investment decisions, we suggest that the appropriate way to pursue that goal would be through the registration form amendment process, and would include soliciting input from investor focus groups, in a manner similar to the Risk Concept Release and subsequent initiatives designed to improve disclosure of risk to investors.[52]

d. Securities Lending

We support public disclosure of whether funds are engaging in securities lending. We therefore generally support the Commission's proposal to require funds to report on Form N-PORT the name and LEI of each securities lending counterparty and the aggregate value of all securities on loan to the counterparty.[53] We understand, however, that securities lending counterparties (*i.e.*, borrowers) are concerned about the details of their exposures being made public, including to their competitors. Disclosure of this information, even on a delayed basis, could therefore have a chilling effect on the willingness of securities lending counterparties (borrowers) to interact with registered funds and may incentivize borrowers to seek out lenders that are not required to make similar disclosures. We therefore believe that this information, other than simply disclosing that funds are engaged in securities lending, should be maintained only by the Commission and not be made public.[54]

e. Return Information

Summary of Comment

We support the Commission's proposal to require funds to provide the Commission with monthly information about fund total returns. We also support the proposal to provide the Commission with portfolio level return information attributable to derivatives. However, in the

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[51] *See* Improving Descriptions of Risk by Mutual Funds and Other Investment Companies, Investment Company Act Release No. 20974 (Mar. 29, 1995).

[52] Risk/Return Summary Release, *supra* note 45.

[53] *See* SIFMA AMG/IAA FSOC Letter, *supra* note 8, which suggested that enhanced securities lending disclosures could be beneficial to investors and counterparties ("Disclosures related to securities lending practices, if appropriately tailored, could potentially assist investors and counterparties in making informed choices about where they deploy their assets and how they engage in lending practices.").

[54] We understand that certain funds identify securities lending counterparties in the notes to their annual and semi-annual financial statements, as permitted by U.S. GAAP. This practice is not universal among funds, however, and we believe that disclosure twice a year presents a far different risk profile than monthly disclosure.

event the Commission determines to make certain data reported on Form N-PORT publicly available, we believe that only quarterly total return information (*i.e.*, total return for the quarter) should be required to be made public and that monthly total returns and all information about returns attributable to derivatives should be provided to the Commission only. If the Commission determines that information about returns attributable to specific classes of derivatives should be made public, we would recommend a number of changes in the proposal in order to avoid misleading and confusing investors.

Discussion

Summary of Proposal

The Commission proposes to require two types of monthly return information:

Total return information (by class) for each of the previous three months. The Commission is proposing to require monthly total return information for each of the three months preceding the filing date, for each class of the fund.[55] The Commission believes it would be useful for the Commission and investors to have such information in a structured format to facilitate comparisons across funds. For example, analysis of return information over time among similar funds could reveal outliers that might merit further inquiry by Commission staff. Additionally, performance that appears to be inconsistent with a fund's investment strategy or other benchmarks can form a basis for further inquiry and monitoring.

Monthly returns attributable to derivatives holdings. The Commission is also proposing to require a fund to report, for each of the three preceding months, the net realized gain (or loss) and net change in unrealized appreciation (or depreciation) attributable separately to (i) derivatives for each of the following categories: commodity contracts, credit contracts, equity contracts, foreign exchange contracts, interest rate contracts, and other derivatives contracts; and (ii) investments other than derivatives.[56] The Commission states that this item is modeled after disclosure requirements in Financial Accounting Standard Board ("**FASB**") Accounting Standards Codification ("**ASC**") 815, which governs the accounting disclosure for derivatives and hedging. This information is intended to help the Commission staff, investors, and other potential users better understand how a fund is using derivatives in accomplishing its investment strategy and the impact of derivatives on the fund's returns. In order to provide a point of comparison, the Commission is also proposing that funds report, for each of the last three months, monthly net realized gain (or loss) and net change in unrealized appreciation (or depreciation) for investments other than derivatives.

[55] Item B.5.a of Form N-PORT. Note that Form N-PORT filed for the third month of the quarter, which the Commission proposes to be made publicly available 60 days after the end of the quarter, will have monthly information for each of the three months of the quarter, including the two months that were originally filed on a non-public basis.

[56] Items B.5.c and B.5.d of Form N-PORT.

Summary of Request for Comment

With respect to monthly returns, the Commission has specifically requested comment on whether the proposed disclosure of monthly returns would be helpful to investors, and whether there are preferable alternatives for providing such information to investors. The Commission also asks whether there are potential negative consequences of reporting monthly returns, and, for example, whether the availability of this information could cause investors to emphasize short-term returns.

With respect to the proposal to require disclosure of returns attributable to derivatives, the Commission asks whether there are alternative methods that the Commission should consider for requiring funds to report the effect of derivatives on the return of the fund. In particular, the Commission asks whether requesting attribution of returns with respect to risk class (the investment underlying the derivative) is the right breakdown, as opposed to identifying categories based on type of contract (for example, swaps or futures).

Monthly total return information

We recommend that all return information, other than quarterly total return information, be provided to the Commission only, and not be made publicly available on Form N-PORT. If the Commission believes that historical monthly total return information is important for investors, for example to demonstrate volatility, we suggest including such information annually on Form N-CEN.

As funds and advisers are required to disclose in connection with all performance information, past performance is not a guarantee of future results. Moreover, investors in funds are traditionally, and appropriately, long term investors. For these reasons, and in recognition of other ways in which performance presentations can be misleading for investors, the Commission has a long tradition of scrupulously guarding the amount and type of performance information that is required to be provided to investors.[57]

We do not believe there is a persuasive rationale for requiring all funds to make monthly returns publicly available on a quarterly basis.[58] The Commission states that such disclosure does not pose front-running and free-riding issues, as would disclosure of portfolio holdings information on a monthly basis. The Commission also states that monthly returns should be provided in the filing for the third month of the quarter because otherwise "investors might potentially confuse the month's disclosed return as representing the return for the full quarter."[59] We do not believe that absence of front-running and free-riding concerns, without evidence of a positive benefit to

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57 *See, e.g.*, Advertising by Investment Companies, Investment Company Act Release No. 16245 (Feb. 2, 1988); Risk/Return Summary Release, *supra* note 45.

58 Some funds choose to make monthly returns available on their website. However, this practice varies among fund groups, and sometimes among funds within a complex, depending on the type of fund. We believe that the determination of how to present returns more frequently and in a manner different than what is currently required in fund prospectuses should be made by the fund and its manager.

59 See Fund Proposal, *supra* note 1 at 33603.

investors, is sufficient justification for requiring such detailed additional performance information. We also believe that any confusion about whether returns are for the month or the quarter can easily be dealt with by appropriate formulation of the item on the Form.

Return information attributable to specific derivative classes and non-derivative investments

We believe that mandated presentation of disaggregated elements of a fund's return attributed to each separate specified class of derivatives, and to non-derivatives holdings, for each month of every quarter, will not be meaningful to investors and should be disclosed only to the Commission. Many derivatives are much longer term instruments, which perform differently over different time periods and market cycles and do not lend themselves to short-term return evaluation. Also, derivatives are often traded in pairs or are part of a larger strategy, such as hedging a long position. Identifying only the returns attributable to the hedging (derivative) side of the transaction will result in an incomplete view of how the strategy performed. As a result, disaggregation of each element is not meaningful. Accordingly, providing this short-term granular information to investors is more likely to cause confusion and misunderstanding than improved comprehension of an investment in the fund. We believe that investors and the public are far better served by the narrative analysis of fund performance required in shareholder reports, and we would welcome the Commission's consideration of appropriate improvements to those requirements.

In addition, the detailed information about the returns attributable to different derivative classes can convey proprietary information about the fund's trading strategies. This can be used by the fund's competitors to attempt to reverse engineer and replicate the fund's and manager's "secret sauce," to the detriment of the fund and the manager. The Commission states that because only information for the third quarter will be made public, and only on a 60-day delay, this will maintain the status quo with respect to front-running and copycat issues. However, because the information required by Item B.5 of Form N-PORT is not currently required on Form N-Q, this proposed requirement for Form N-PORT would, in fact, present a far different scenario in terms of public availability of sensitive and proprietary information than is currently the status quo.[60]

Category of Exposure v. Type of Derivative

Form N-PORT requires funds to report, for each of the preceding three months, monthly net realized gain (loss) and net change in unrealized appreciation (depreciation) attributable to derivatives by risk category (*e.g.*, commodity contracts, credit contracts, equity contracts, etc.) rather than type of derivative (such as swaps, forwards, and options) for purposes of identifying specific elements of fund returns attributable to derivatives.

[60] The Commission also states that this item is modeled after disclosure requirements in FASB ASC 815, which governs the accounting disclosure for derivatives and hedging. However, even assuming that funds currently provide similar information in financial statements, the proposal for Form N-PORT would require this information to be prepared and disclosed to the public for each month, rather than a semi-annual basis, and without the narrative explanation contained in the management discussion of fund performance (MDFP) contained in shareholder reports.

As required by Regulation S-X, funds currently report realized gains (losses) and unrealized appreciation (depreciation) associated with derivatives by type of contract (*e.g.*, futures, swaps, forwards). As a result, the systems used to capture and report this information are aligned with reporting by type of contract. Requiring reporting on Form N-PORT by risk class instead of type of contract would require large-scale changes to the existing accounting and reporting systems used by many funds.[61]

We do not believe these costs would be accompanied by a material benefit. We therefore recommend that funds be permitted to report derivatives realized gain (loss) and unrealized appreciation (depreciation) by contract type, rather than risk type.

f. Flow Information

We support the Commission's proposal to require funds to separately report, for each of the preceding three months, the total NAV of: (1) shares sold (including exchanges but excluding reinvestment of dividends and distributions); (2) shares sold in connection with reinvestments of dividends and distributions; and (3) shares redeemed or repurchased (including exchanges).[62] In particular we support the Commission's proposal not to require such information on a class-by-class basis, as class-by-class information would not be relevant to the most critical purpose of such information, which is to help the Commission identify funds that might be at risk of experiencing liquidity stress due to increased redemptions. Finally, we request that the Commission confirm that for shares held in omnibus accounts, the information required would be net flows at the omnibus account level.[63]

g. Schedule of Portfolio Investments

Summary of Comment

We support the proposal to provide the Commission with information about portfolio investments and to tailor the disclosure items to the specific type of investment. However, we have suggestions for adjusting a few of the items proposed. In addition, with respect to the detailed disclosures proposed that are in addition to current requirements, we believe that disclosure of this highly specific information, although valuable to the Commission for regulatory purposes, (1) would have a harmful competitive impact on funds and advisers and (2) would not provide meaningful information to investors. The items of information for which we have suggestions and those that we believe, in particular, should not be made publicly available are addressed under the relevant captions, below.

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[61] Although under U.S. GAAP funds disclose in their shareholder reports realized gains (losses) and the net change in unrealized appreciation (depreciation) associated with derivatives by risk type, we understand that these disclosures are currently compiled manually.

[62] Item B.6 of Form N-PORT.

[63] Omnibus accounts typically transact with funds on a net basis, meaning that the omnibus account transmits to a fund only a single order representing the net purchases and sales on each day and the omnibus account (not the fund) maintains the records of individual purchases and sales.

(i). Information for All Investments

Summary of Comment

We support the Commission's proposal to require certain standard information for all investments. However, with respect to identification of country based on risk and economic exposure, in addition to country of issuer organization, if different, we propose requiring country of issuer organization only, or, in the alternative, clarification that a fund has the flexibility to use any proprietary or commercially available country classification system that is designed to identify country of risk.

Discussion

Summary of Proposal

The items required for all investments would include, among other information: name and LEI of issuer (if any); amount; currency; value; payoff profile; percentage value (compared to fund NAV); asset type; issuer type; country of investment or issuer (ISO country code that corresponds to the country of investment or issuer based on the concentrations of the risk and economic exposure of the investments, and the country where the issuer is organized, if different); whether the investment is a restricted security or an illiquid asset; and the level within the fair value hierarchy in which the investment's fair value falls (pursuant to U.S. GAAP).[64]

The Commission states that it has based these categories in part on staff review of how funds currently categorize investments on their schedule of investments, and in part on the categories of investments required by private funds under Form PF. These disclosures are intended to allow the Commission, investors, and other potential users to assess the composition of fund portfolios in terms of asset and issuer types and also to facilitate comparisons among similar types of investments.

Summary of Request for Comment

The Commission has generally requested comment on the appropriateness of the items proposed. With respect to country identification, the Commission has asked whether a fund should be required to report the "country with the greatest concentrations of risk and economic exposure of the investments" in addition to country of organization.[65] The Commission has also asked what the burden will be of reporting both elements; whether the Commission should provide specific guidance or instructions for determining the country with the greatest concentration of risks and

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[64] For asset type, the categories are: short-term investment vehicle, repurchase agreement, equity-common, equity-preferred, debt, derivative-commodity, derivative-credit, derivative-equity, derivative-foreign exchange, derivative-interest rate, structured note, loan, ABS-mortgage backed security, ABS-asset backed commercial paper, ABS-collateralized bond/debt obligation, ABS-other, commodity, real estate, and other. For issuer type, the categories are: corporate, U.S. Treasury, U.S. government agency, U.S. government-sponsored entity, municipal, non-U.S. sovereign, private fund, registered fund, and other. In each case, where the response is "other," the item calls for a description.

[65] Fund Proposal, *supra* note 1 at 33606.

economic exposure; and whether funds should have the option of reporting more than one country of economic risk, or a geographic region of economic risk.

In response to the Commission's general requests for comment on the appropriateness of these items, we believe that, in general, they strike an appropriate balance in providing the information the Commission needs, without undue and potentially confusing detail.

Country Identification

In response to the questions regarding country identification, we believe it is appropriate to require identification of the country where the issuer is organized. This is information that is readily available and objective. We agree with the Commission that knowing the country in which the issuer is organized would be important information for analyzing the effect of any events that could affect the country in which the issuer is organized, such as sanctions or monetary controls, as this could affect the ability of the fund to liquidate the investment.

By contrast, identifying "country of investment" based on concentrations of risk and economic exposure is a highly subjective and fact-based analysis. Requiring funds to make this determination each month would be a labor-intensive process that could require involvement of a range of personnel, including portfolio managers. In addition, because the determination would be subjective, different funds and managers might identify different countries for the same investment, and thus the country identifications selected would not be useful in providing comparability among funds. For this reason, we believe that, in practice, this requirement would not, as the Commission intends, assist the Commission, investors, and other potential users in understanding the country-specific risks associated with such investments.

We note that the proposed requirement to identify country by risk concentration and exposure would be new to funds, as it is not currently required by any reporting regime to which they are subject. For example, neither Form PF nor Form CPO-PQR uses this formulation, nor does current Regulation S-X or Regulation S-X as proposed to be amended (although the Commission asks whether commenters would recommend such a change).

In fact, the Commission specifically addressed the analogous requirements in Form PF in a manner that would address our concerns. The final version of Form PF was modified from the initial proposal to reflect the Commission's recognition, as communicated during that comment process, that there was no single methodology of categorizing geographical exposures employed by advisers reporting on Form PF. In response to commenter concerns, and to staff discussions with the industry that confirmed these concerns, the Commission removed some of the instructions regarding how the location of investments should be determined and ultimately required a less granular breakdown. The Commission believed that this approach would allow advisers "to rely on their internal methodologies and service provider reports in determining where to report investments. . . ."[66] For these reasons, we request that the Commission either

[66] Form PF Release, *supra* note 18 at 71148 and note 248. The revised approach adopted in the final version of Form PF – permitting managers to use their own methodology and existing classifications – is also reflected in Instruction 28 to Form PF:

limit the disclosure requirement to country of issuer organization or clarify that funds may use classifications generated by existing methodologies or available service providers, such as the Bloomberg "country of risk" classification.

(ii). Debt Securities

Summary of Comment

We support the Commission's proposal to require additional information about each debt security held by the fund. However we recommend eliminating proposed Items C.9(c) and (d) of Form N-PORT, which require a subjective legal analysis on an instrument-by-instrument basis, on which conclusions among funds may vary and thus would not provide meaningful comparable information.

Discussion

Item C.9 requests roughly a dozen specific items of information about each debt security holding, in addition to the information required for all holdings. The Commission has explained that this additional information for each debt security held by the fund is designed to provide transparency into the payment flows and convertibility into equity of such investments, which information can be used to better understand the payoff profile and credit risk of these investments.

The additional information required would include: maturity date and coupon (by category – fixed, floating, variable, or none – and annualized rate); whether the security is currently in default; whether interest payments for the security are in arrears or any coupon payments have been legally deferred by the issuer; and whether any portion of the interest is paid in kind. For convertible securities, funds would also indicate for each holding: whether the conversion is mandatory or contingent; the conversion ratio (or ratios if more than one); information about the asset into which the debt is convertible; and the delta (ratio of the change in the value of the option to the change in the value of the asset into which the debt is convertible).

We support the request for all of the proposed additional information, with the exception of Items C.9(c) (whether the security is currently in default) and (d) (whether there are any interest payments in arrears or any coupon payments have been legally deferred by the issuer), both of which items request a yes/no answer. Questions about whether a particular debt security is in

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Q. 28.1: Questions 28 and 78 require large private fund advisers to provide a geographical breakdown of the investments held by certain private funds they advise. For purposes of these Questions, how should I treat, for example, a derivative in which the underlying asset is an equity security issued by a Canadian company that the private fund enters into with a French bank?

A. 28.1: In responding to Questions 28 and 78, you have flexibility to determine how to report the geographical area of investments. You are permitted to classify such investments in a manner that is consistent with your internal methodologies and the reporting of such information to investors. *See* Instruction 15. You may want to describe these assumptions in Question 4. For instance, in the example above, you could classify the geographical breakdown of such an investment as either exposure to North America or to Europe, depending on how you classify the exposure internally and report the information to investors, and you could note this treatment in Question 4. (Posted June 29, 2012).

default or payment is legally deferred require a legal analysis, which may be subjective, of the documentation for the particular security, and different funds holding the same security may reach a different conclusion. Responding to these questions will thus be both manual and labor intensive (which we believe is not the Commission's intention for monthly reporting on Form N-PORT) and likely to produce data that are not comparable among funds (also contrary to the Commission's intent). Moreover, both the Commission and investors will have information about fund holdings in default that is material to the fund through the fund's financial statements and shareholder reports.

(iii). Repurchase and Reverse Repurchase Agreements

We support public disclosure of whether funds are engaging in repurchase and reverse repurchase agreements. We understand, however, that repurchase agreement and reverse repurchase agreement counterparties are concerned about the details of their exposures being made public, including to their competitors.[67] Disclosure of repurchase agreement and reverse repurchase agreement information, even on a delayed basis, could therefore have a chilling effect on the willingness of counterparties to interact with registered funds and may be a disincentive for these counterparties to transact with registered funds. We therefore believe that the information regarding repurchase and reverse repurchase agreements should be maintained only by the Commission and not be made public.

(iv). Derivatives

Summary of Comment

We support the Commission's proposal to require that additional information about derivatives, based on the type of derivative contract, be filed with the Commission in order to provide increased transparency and standardized disclosure about the terms and risk characteristics of fund derivatives holdings. We agree with a number of large fund organizations that commented on this subject in response to the FSOC Notice to the effect that regulators would benefit by better understanding how and why mutual funds use derivatives.[68] We have a number of specific comments, however, for improving the proposal to identify components of an underlying reference index. We also believe that the detailed derivatives information proposed to be required more frequently and in a structured format should not be made publicly available because it would not provide meaningful information to investors and involves sensitive competitive information that could harm funds and advisers.

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[67] The additional information included in proposed Item C.10 of Form N-PORT about each repurchase and reverse repurchase agreement held by the fund would include: the category that reflects the transaction from the perspective of the fund (repurchase, reverse repurchase); whether the transaction is cleared by a central counterparty; the name of the central counterparty, if any, or the name and LEI (if any) of the over-the-counter counterparty; the repurchase rate; whether the repurchase agreement is tri-party (to distinguish from bilateral transactions); maturity date; principal amount and value of collateral; and category of investments that most closely represents the collateral.

[68] *See, e.g.*, Comment Letter of Vanguard (Mar. 25, 2015).

Discussion

Summary of Proposal

For derivatives in general, Form N-PORT would require the following information: category of derivative that most closely represents the investment;[69] number of contracts; and name and LEI of counterparty (including a central clearing counterparty). Funds would also be required to provide the terms and conditions of each derivative investment that are important to understanding the payoff profile of the derivative, which varies based on the category. Separate disclosure items are required for: options and warrants (including options on a derivative); futures and forwards (other than foreign exchange forwards); foreign exchange forwards and swaps; swaps (other than foreign exchange swaps); and other derivatives.[70]

The Commission is also proposing to require disclosure regarding the reference instrument or index underlying each derivative holding. As proposed, this item would have three levels of disclosure, depending on whether the components of the index are public or non-public, and the extent of the fund's holdings related to the reference index.

- For a public reference index (where the components are publicly available on a website and updated at least quarterly), the fund would be required to identify the index and provide the index identifier, if any.

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69 The categories are: forward, future, option, swaption, swap, warrant, and other (for "other," the fund would provide a brief description).

70 For options and warrants, the required information would include: type (put or call; respond call for warrants); payoff profile (written or purchased; respond purchased for warrants); number of shares or principal amount of underlying reference instrument per contract; exercise price or rate; expiration date; unrealized appreciation or depreciation of the option or warrant; description of reference instrument or index; and delta.

For futures and forwards (other than foreign exchange forwards), the required information would include: payoff profile (long or short); a description of the reference instrument or index; expiration date; aggregate notional amount or contract value on the trade date; and unrealized appreciation or depreciation.

For foreign exchange forwards and swaps, the required information would include: amount and description of currency sold; amount and description of currency purchased; settlement date; and unrealized appreciation or depreciation. See our comment recommending a use of different terminology for these instruments at Section III.C.2.a above.

For swaps (other than foreign exchange swaps), the required information would include: a description of the swap and terms of payments necessary for a user of financial information to understand the nature and terms of payments to be paid and received (reported separately as to payments made and received) including, as applicable, a description of reference instrument, obligation or index, financing rate, floating rate, fixed rates, and payment frequency; termination or maturity date; notional amount; upfront payments or receipts; and unrealized appreciation or depreciation.

For other derivatives (not in the enumerated categories), the required information would include: a description of information sufficient for a user of financial information to understand the nature and terms of the investment, including, as applicable, among other things, currency; payment terms; payment rates; call or put features; exercise price; a description of the reference instrument or index; termination or maturity (if any); notional amount(s); unrealized appreciation or depreciation; and delta (if applicable).

- For a non-public reference index (an index where the components are not publicly available on a website and updated at least quarterly) where the notional amount of the derivative represents 1% or less of the NAV of the fund, the fund would be required to provide a narrative description of the index.
- For a non-public reference index where the notional amount of the derivative exceeds the 1% notional amount threshold, the fund would be required to identify, for each component of the reference index, the name, identifier, number of shares or notional amount or contract value as of the trade date (all of which would be reported as negative for short positions), value, and unrealized appreciation or depreciation.

Summary of Request for Comment

The Commission has requested comment with respect to a number of aspects of the proposal to require a description of the reference instrument for each type of derivative where the reference instrument is an index. The Commission also states that it believes that funds already track the derivatives characteristics proposed for inclusion on Form N-PORT, and asks, to the extent this is correct, what would be the incremental cost and burden of reporting such information to the Commission.

Reference Index

We believe that the threshold for disclosing components of a custom index should be based on the value of the relevant holdings, not notional amount (that is, the requirement to disclose the components of a custom index should be triggered when the carrying value of the derivative reflects 1% or more of the fund's NAV). We also believe that, once the threshold is crossed, only the most significant components of the index should be required to be disclosed (for example, the top five components or the components reflecting 50% of the index).

The Commission believes that it is important for the Commission, investors, and other potential users to have transparency into all exposures to assets that the fund has, regardless of whether the fund directly holds investments in those assets or chooses to create those exposures through a derivatives contract. However, we believe there should be a meaningful materiality threshold, to avoid reporting burdens and legal issues (for example licensing issues with respect to a custom index) where the information is not significant. In this connection, we note that the Commission based its 1% notional amount threshold on the Commission's experience with the summary schedule of investments, which requires funds to disclose investments for which the "value" exceeds 1% of the fund's NAV in that schedule. The proposal of 1% notional value is entirely different from the predicate requirement on which the Commission says the proposal is based. We believe the original 1% value requirement is a far better indicator of materiality and should be adopted in this connection as well.

In addition, we believe information about non-public index components should not be made public. Requiring public disclosure of this information by funds will put them at a disadvantage with counterparties and other providers of custom baskets relative to other potential customers of these providers. This harms investors, who may lose the benefit of products and strategies that would no longer be available to them as a result of the required disclosure. In addition, information about these customized indexes, if still available to funds, is likely to permit reverse engineering and free-riding, which can dilute the benefit from these strategies that funds would otherwise receive. For this reason, managers offering these strategies may be less willing to offer them to funds that will be disclosing this information.

(v). Securities on Loan and Cash Collateral Reinvestment

We support the Commission's proposal to require, in Item C.12 of Form N-PORT, information for each fund investment indicating: (1) whether any portion of the investment is on loan, and if so, the value of the securities on loan; (2) whether any amount of the investment represents reinvestment of cash collateral, and if so, the dollar amount of such reinvestment; and (3) whether any portion of the investment represents non-cash collateral received to secure loaned securities, and if so, the value of the securities representing such non-cash collateral.[71]

h. Miscellaneous Securities

We support the Commission's proposal to permit funds to report aggregate information for miscellaneous securities.

i. Explanatory Notes

We support the Commission's proposal to give funds the option of providing explanatory notes relating to the filing, if any, in Part E of Form N-PORT. With respect to notes relating to items that we have requested not be made publicly available, we propose that the notes would similarly not be made publicly available.

j. Exhibits

Summary of Comment

If the Commission determines to rescind Form N-Q, we support the Commission's proposal, as Part F of Form N-PORT, that for reports filed for the end of the first and third quarters of the fund's fiscal year, a fund would also attach the fund's complete portfolio holdings as of the close of the period covered by the report. However, we believe these schedules should not be required until 60 days after the end of the quarter, in accordance with the current filing requirement for Form N-Q.

Discussion

Summary of Proposal

The Commission has proposed to rescind Form N-Q, which includes a schedule of portfolio holdings in human readable form, because reports on Form N-PORT for the first and third fiscal quarters of a fund's fiscal year would include its complete portfolio holdings for that fiscal quarter, presented in accordance with the schedules set forth in §§210.12-12 to 12-14 of Regulation S-X (as proposed to be amended). The Commission believes that investors might

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[71] We note that Item C.12(c) refers to investments on loan by the Registrant. We believe this is intended to say on loan by the Fund.

prefer that portfolio holdings schedules for the first and third quarters continue to be presented using the form and content specified by Regulation S-X, which investors are accustomed to viewing in reports on Form N-Q and in shareholder reports. Therefore, the Commission is proposing to require attachment of the portfolio schedules for reports on Form N-PORT for the first and third quarters.

Under the proposal, and consistent with current practice, funds would have until 60 days after the end of their second and fourth fiscal quarters to transmit reports to shareholders containing portfolio holdings schedules prepared in accordance with Regulation S-X for that reporting period. In contrast, under the proposal, funds would have 30 days after the end of their first and third fiscal quarters to file reports on Form N-PORT that would include portfolio holdings schedules prepared in accordance with Regulation S-X, although such reports would not be required to be made public until 60 days after the close of the reporting period. Accordingly, the proposal would require funds to prepare Regulation S-X compliant portfolio holdings schedules for their first and third fiscal quarters 30 days more rapidly than they do currently.

Shortened Filing Deadline for Quarterly Schedules of Portfolio Holdings

We believe that the Commission should not shorten the deadline for filing portfolio holdings schedules. The Commission is proposing this schedule, prepared in human readable form and in accordance with Regulation S-X, as an addition to Form N-PORT that can be expected to be the preferred vehicle for communicating portfolio holdings information to investors, and a continuation of current practice. In light of that purpose, we do not believe it makes sense to accelerate the filing date, which would truncate the period for ensuring the same quality of information is provided to investors. With respect to the latter point, the shortened time period will also coincide with substantially increased filing obligations under Form N-PORT. Accordingly, we recommend retaining the 60 day filing period for these schedules.

k. General Request for Comments Regarding the Information on Form N-PORT

Compliance Date

Summary of Comment

We propose that the compliance date for all funds be changed to the later of (a) 24 months following adoption of the final rule and (b) 6 months following publication of the final XML data structure for Form N-PORT.

Discussion

The infrastructure needed to support the additional detailed reporting required by Form N-PORT does not exist today for many funds, even those in large fund complexes. Some funds will need to build new systems, while others will need to modify existing systems to assemble, calculate, and format the information required by Form N-PORT. Most funds expect that additional staff will need to be hired as well. In addition, funds will need to coordinate with their service providers that maintain certain of the required information, such as custodians, to create the necessary reporting infrastructure. A fund’s ability to comply with the Proposals may therefore be dependent on the speed with which these service providers will modify their systems in a manner that allows funds to comply with the new or modified reporting requirements. Importantly, all of these changes are not occurring in a vacuum and will be competing for resources as funds, advisers and service providers attempt to keep pace with the myriad of other regulatory changes currently underway, such as the continuing migration of the over-the-counter derivatives markets to central clearing and exchange trading.

The Commission observes that some of the new information called for by Form N-PORT is already retained by funds. However, even where funds have this information, it is not kept in the form and aggregated in the manner Form N-PORT contemplates. Accordingly, the fact that the information exists currently within an organization will not obviate the need for an extensive systems build-out to develop a collection and integration infrastructure.

Based on experience with the relatively recent implementation of Form PF, we believe that distribution of the final XML data structure for Form N-PORT is as important to the implementation process as having an adequate compliance period following adoption of a final rule. There are a number of operational and technical steps that firms cannot begin to undertake to comply with the new reporting requirements until the final XML data structure is available. Using non-final versions of the data structure that may ultimately change can lead to an unnecessary drain on internal resources and ultimately increased implementation costs. We therefore believe that any compliance date regarding Form N-PORT should be triggered, in part, on distribution of a final XML data structure.

Given the foregoing, we do not believe that 18 months will be sufficient time for firms to modify their systems, coordinate with service providers and hire the additional staff that will be necessary to come into compliance with the new reporting rules. We therefore propose that the compliance date for all funds be changed to the later of: (a) 24 months following adoption of the final rule; and (b) 6 months following publication of the final XML data structure for Form N-PORT.

Substituted Compliance

Summary of Comment

We also propose that if Form N-PORT is adopted, the Commission and the CFTC should agree on and implement a substituted compliance regime, pursuant to which funds reporting on Form N-PORT would no longer be required to be reported on Form CPO-PQR.

Discussion

Request for Comment. In addition to the specific requests for comments in connection with the various items in Form N-PORT, the Commission requests general comment on feasible alternatives to the information that funds would be required to report on Form N-PORT that would minimize the reporting burdens on funds while maintaining the anticipated benefits of the reporting and disclosure.

Substituted Compliance. Much of the information proposed to be required on Form N-PORT is similar in purpose to information reported for funds whose advisers are registered as commodity pool operators. In order to avoid duplication, funds reporting on Form N-PORT should no longer be required to be reported on Form CPO-PQR. This approach is similar to the substituted compliance regime currently in place for Form PF, pursuant to which private funds reported on Form PF need not also be reported, for most purposes, on Form CPO-PQR.

3. Reporting of Information on Form N-PORT

Summary of Comment

We support the Commission's proposal to require funds to report information on Form N-PORT in XML. We suggest a 45 day filing deadline instead of the proposed 30 day deadline.

Discussion

We support the Commission's proposal to require the filing of monthly portfolio holdings reports with enhanced information, in a structured format. We believe the information requested will provide the Commission with extensive new information that will enable it to perform its regulatory mission. While all our members may not agree with each item requested, we believe it is appropriate to defer to the Commission in identifying appropriate information for this purpose.

The Commission has specifically requested comment on whether the proposed requirement that Form N-PORT be filed within 30 days of the close of the month will be sufficient time for funds to gather and report the information proposed to be required on the Form. We do not believe 30 days will be sufficient, and suggest a 45 day filing time period instead.

4. Public Disclosure of Information Reported on Form N-PORT

Summary of Comment

As discussed above, in the introduction to our comments on Form N-PORT, we recommend that all information on Form N-PORT be filed on a non-public basis, and that quarterly portfolio holdings information continue to be provided to the public on Form N-Q and Form N-CSR. We have also described in that section the reasons why we believe our recommendation better serves the Commission's regulatory goals in proposing Form N-PORT, and better serves investors as well.

We have also addressed our concerns about the public availability of specific items of information in connection with the discussion of each of those items. This section will discuss in more detail our overall concerns about disclosure of the proposed information to investors and address the Commission's rationale for proposing to make information in Form N-PORT public.

Discussion

In the Fund Proposal, the Commission addresses both the potential benefits and costs, including harm to funds, advisers, and investors, of requiring that information reported on Form N-PORT be made publicly available. After considering these benefits and costs, the Commission decided to propose that information filed on Form N-PORT for the first two months of the quarter should not be made publicly available. The Commission reached the same conclusion with respect to detailed holdings information about "miscellaneous securities" on Part D, which currently are only reported in the aggregate in fund financial statements. The proposal to keep information in those two categories non-public reflects, in effect, a determination that public disclosure of this information is not necessary or appropriate in the public interest.[72]

With respect to information reported on Form N-PORT for the first two months of the fund's fiscal quarter, the Commission recognized that (1) Form N-PORT is not primarily designed for disclosing information to individual investors and (2) more frequent portfolio disclosure could potentially harm fund shareholders. Regarding the harm investors could suffer, the Commission recognized that publicizing monthly portfolio information expands the opportunities for professional traders to exploit this information by engaging in predatory trading practices, such as trading ahead of funds, often called "front-running." Similarly, the Commission acknowledged and was sensitive to concerns that more frequent portfolio disclosure may facilitate the ability of outside investors to "free ride" on a mutual fund's investment research, by allowing those investors to reverse engineer and "copycat" the fund's investment strategies and obtain for free the benefits of fund research and investment strategies that are paid for by fund shareholders.[73] Both front-running and copycatting can reduce the returns of shareholders who invest in actively managed funds.

With respect to information reported on Part D of Form N-PORT, which is proposed to be kept non-public for all Form N-PORT filings, the Commission acknowledged that even information filed only for the third month and publicized on a 60 day delay, can, if sufficiently detailed, create the same risks the Commission sought to guard against by keeping the filings for the first two months confidential. The Commission stated that "[k]eeping information related to these investments nonpublic may serve to guard against the premature release of those securities positions and thus deter front-running and other predatory trading practices, while still allowing the Commission to have a complete record of the portfolio for monitoring, analysis, and checking for compliance with Regulation S-X."[74] This statement also recognizes that collecting information for regulatory purposes on a non-public basis can serve investors better, by averting potential harm, without compromising the Commission's ability to fulfill its responsibilities.

Nonetheless, with respect to all other information filed on Form N-PORT for the third month of the fiscal quarter, the Commission drew the opposite conclusion, and proposed that the information should be made publicly available. The Commission's rationale for this proposal is twofold: First, while recognizing that "Form N-PORT is not primarily designed for disclosing information to individual investors," requiring and making public the additional information proposed "could benefit all fund investors," in part through analysis of the information by third parties to assess the potential for returns and risks of a particular fund.[75] The Commission

72 The Commission has the authority to make this determination with respect to information filed pursuant to the 1940 Act or related rules under Section 45(a) of the 1940 Act.

73 In this connection, the Commission cites "The Potential Effects of More Frequent Portfolio Disclosure on Mutual Fund Performance," 7 Investment Company Institute Perspective No. 3 (June 2001), *available at* http://www.ici.org/pdf/per07-03.pdf.

74 Fund Proposal, *supra* note 1 at 33610.

75 Fund Proposal, *supra* note 1 at 33613.

concludes that this information could, therefore, directly or indirectly assist investors in making more informed investment decisions. Second, the Commission states that public availability of this information would "maintain the status quo of public disclosure of quarterly information based upon each fund's fiscal quarters, rather than calendar quarters, to ensure that public disclosure of information filed on Form N-PORT would be the same as the portfolio disclosures reported on a semi-annual fiscal year basis on Form N-CSR."[76]

In light of the potential harm identified in this section and above, we believe that the two-fold rationale described in the preceding paragraph does not fully justify a determination to make public virtually all information filed on Form N-PORT for the last month of the quarter. The benefits to investors identified by the Commission are largely indirect and, in some cases, hypothetical.[77] Moreover, we believe that making this information public would not, as the Commission suggests, maintain the status quo. On the contrary, while information on Form N-Q is public, none of the items we address specifically above is required to be disclosed on Form N-Q, nor are they similar either in nature or extent to the type of information currently disclosed on Form N-Q. Accordingly, the proposal would, in this respect, represent a departure from the status quo.

As explained above in our discussion of the proposal to require public disclosure of portfolio level risk metric calculations, we do not believe it is appropriate to use Form N-PORT as a means of supplementing – or to use the Commission's word, complementing – information in the fund's prospectus and registration statement. Those documents, which are specifically designed for investor decision making, are written in plain English, according to forms developed by the Commission through years of work with consumer and other groups specifically for the purpose of improving the ability of investors to make better decisions. As described above in connection with the proposed risk metrics disclosure, the Commission has, in the past decided against requiring disclosure of some of the information proposed for Form N-PORT, specifically because it would be more likely to confuse investors than to help them make sounder decisions. Fund registration statements are also prepared in a much more controlled environment and subject to the liability structure of the securities laws.

Importantly, one of the reasons that the Commission gives in support of public disclosure is that Form N-PORT will enable individual investors and their intermediaries to make comparisons among funds. This, it is hoped, would encourage and assist capital formation.[78] For the reasons explained above, we believe much of the information provided on Form N-PORT will be subjective and thus will not provide the basis for meaningful comparisons. Accordingly, investors and intermediaries will either not be able to make comparisons, or, believing that the information is more standardized than it is, will rely on comparisons that are not appropriate.

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[76] Fund Proposal, *supra* note 1 at 33614.

[77] Throughout the Releases, the Commission frequently refers to investor benefits as a consequence that "could" flow from the proposed disclosure. *See, e.g.,* Fund Proposal, *supra* note 1 at 33595 ("In addition to assisting the Commission in its regulatory functions, we believe that investors and other potential users could benefit from the periodic public disclosure of the information reported on Form N-PORT").

[78] Fund Proposal, *supra* note 1 at 33659.

The better analogy for the type of information proposed for Form N-PORT would be Form PF and Form CPO-PQR. These are systemic risk, post-financial crisis data collection forms, and they request information that is far more similar to the new information proposed for Form N-PORT than any other current disclosure form. Significantly, these forms are not public documents, reflecting a judgment by Congress and the Commission that the type of information regulators need for assessing risk is entirely different from information that is appropriate for public disclosure, either for investors in the hope that they might be able to use it make better investment decisions, or, indeed for any non-regulatory purpose.[79]

Finally, in light of the importance of maintaining the confidentiality of information the Commission determines should not be made publicly available, we would also urge the Commission to take all necessary security steps to safeguard the information against data breaches, and to engage with the industry on appropriate measures.

D. Rescission of Form N-Q and Amendments to Certification Requirements of Form N-CSR

1. Rescission of Form N-Q

Summary of Comment

We recommend that the Commission retain Form N-Q, together with Form N-CSR, as the vehicle for providing investors and the public with quarterly fund portfolio holdings information.

Discussion

Summary of Proposal

In conjunction with the proposal to adopt new Form N-PORT, the Commission proposes to rescind Form N-Q, the report on which management investment companies other than SBICs are currently required to report their complete portfolio holdings as of the end of their first and third fiscal quarters.

Commission Rationale

As is proposed for Form N-PORT filed for the third month of the fiscal quarter, information on Form N-Q is publicly available 60 days after the end of the quarter. The data reported on proposed Form N-PORT for the third month of the quarter would include the portfolio holdings information contained in reports on Form N-Q and, accordingly, would render reports on Form N-Q unnecessarily duplicative. The Commission believes that it is appropriate to rescind Form N-Q rather than require funds to report similar information to the Commission on two separate forms.

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79 Forms PF and CPO-PQR were adopted under statutes that provide special confidentiality provisions that do not apply to Form N-PORT. Nonetheless, the Commission has the statutory authority under Section 45(a) of the 1940 Act to determine that information on Form N-PORT should not be made publicly available, if public disclosure is not appropriate or in the public interest.

However, because information on Form N-PORT is in a structured, non-human readable format, and otherwise not presented in the manner with which investors and other members of the public are familiar, the Commission is proposing to require that, for reports on Form N-PORT for the first and third quarters of a fund's fiscal year, the fund would attach its complete portfolio holdings for that fiscal quarter, presented in accordance with the schedules set forth in Regulation S-X. The Commission believes that individual investors and other potential users might prefer that such information continue to be presented using the form and content specified by Regulation S-X, which investors are accustomed to viewing in reports on Form N-Q and in shareholder reports.

Retention of Form N-Q as the Appropriate Vehicle for Providing the Public with First and Third Quarter Portfolio Holdings Information

We agree with the Commission that investors and other members of the public are better served by quarterly portfolio holdings reports on Form N-Q than on Form N-PORT. Accordingly, we recommend that the Commission retain Form N-Q as the vehicle for providing interim quarterly portfolio holdings information for investors and other members of the public, in connection with requiring Form N-PORT to be filed on a non-public basis. We note that since much of the information currently required on Form N-Q would be required as an exhibit to Form N-PORT, rescission of Form N-Q would not significantly eliminate duplication of information and filing requirements.

We recognize that there may be some elements of information proposed for Form N-PORT that are not currently provided on Form N-Q, where public disclosure of the information would not raise the threat of predatory practices and other harm, and where there is a solid basis for concluding that the information is likely to benefit investors and other members of the public. We believe that comments received in connection with the Fund Proposal may well suggest a consensus on such information. In that case, it may be appropriate, in the final rules, to augment Form N-Q by adding these items to the Form. If the Commission does so, we believe this information will far better serve investors as an enhancement of Form N-Q than it would in Form N-PORT.

2. Amendments to Certification Requirements of Form N-CSR

If the Commission determines to rescind Form N-Q, we support the proposal to require a six month "look back" in the officer certification requirement in Form N-CSR relating to disclosure controls and procedures and internal control over financial reporting. This certification would cover the certification for the first and third quarters previously required in Form N-Q.

In addition, we fully support the Commission's decision not to require certification of the portfolio schedules attached to Form N-PORT. We believe that requiring certification of monthly filings would increase, perhaps significantly, the time and cost of preparing and validating such portfolio schedules. We further believe that any negative effects on the accuracy of the data reported by not requiring certifications will be minimal and would not justify the increased burden on reporting funds.

IV. Proposed Amendments to Regulation S-X

A. Summary of Proposed Amendments to Regulation S-X

As part of the Commission's larger effort to modernize the manner in which funds report holdings information to investors, the Fund Proposal includes amendments to Regulation S-X, which is the set of rules that prescribe the form and content of financial statements required in registration statements and shareholder reports. Many of the proposed amendments to Regulation S-X, particularly the amendments to the disclosures concerning derivative contracts, are similar to the proposed requirements concerning disclosures of derivatives that would be required on reports on proposed Form N-PORT. The proposed amendments to Regulation S-X would, among other things, require similar disclosures in a fund's financial statements included in its shareholder reports and, as applicable, website disclosures, in order to provide investors, particularly individual investors, with clear and consistent disclosures across funds concerning fund investments in derivatives in a human-readable format, as opposed to the structured format of proposed Form N-PORT.

B. Response to Request for Comments on Amendments to Regulation S-X

Summary

We support the Commission's goals in proposing the amendments to Regulation S-X, which are designed to assist comparability among funds and to increase transparency for investors regarding a fund's use of derivatives. We believe that most of the proposed amendments, in particular the proposals to require standardized schedules and to reorganize fund financial statements to more prominently disclose derivative holdings, are well designed to achieve the Commission's goals.

With respect to certain of the proposed new informational requirements for Regulation S-X that parallel items proposed for Form N-PORT, and that we believe are appropriate for Commission regulatory purposes but present the potential for harm and would not benefit investors, we oppose amending Regulation S-X to require this information in fund financial statements, which are public documents. The reasons for our objection to requiring these items of information in fund financial statements under Regulation S-X are the same as those we present for not making them public on Form N-PORT. These are set out in Section III of this letter, and we do not restate them here. This information includes components of non-public reference indexes (unless the thresholds for disclosing the components, both in general and with respect to each component, are substantially raised, as we suggest in Section III.C.2.c). In addition, we urge the Commission to limit the information required by Regulation S-X regarding swaps and other derivative instruments to standardized information, and thus to avoid requiring information that is subjective or proprietary and which would not provide meaningful information to investors. Requiring disclosure of such sensitive competitive information could harm funds and advisers.

In addition, we have suggestions on specific elements of the proposed amendments to Regulation S-X that are independent of the public availability concerns, but that we believe will improve the usability of fund financial statements for investors and other members of the public.

Discussion

We support the Commission's goal of enhancing fund financial statements in order to provide investors, particularly individual investors, with clear and consistent disclosures across funds concerning fund investments in derivatives in a human-readable format. We believe that investors will generally benefit from the proposed changes to fund financial amendments that provide for: (1) more standardized disclosures regarding fund holdings in derivatives, in separate schedules broken out by type of derivative contract; (2) prominent placement of schedules disclosing investments in derivatives, instead of placement of this information in financial statement footnotes; (3) updated disclosure and better organized presentation for investments other than derivatives; and (4) improvements to the rules regarding the general form and content of fund financial statements.

For the most part we believe that the amendments to Regulation S-X that the Commission proposes are well designed to accomplish its goals of providing clear and consistent disclosures that investors may use to make meaningful comparisons across funds. However, we believe that some of the proposed disclosure requirements will not serve that goal, and that Regulation S-X should not be amended to require them.

Proposed Increase in Required Categories for Schedules of Investments

We recommend that the Commission not adopt the proposed amendments that would require schedules of investments to categorize investments by both industry and country or geographic region.

The Commission is proposing a modification of the instructions to Rule 12-12 (Investments in securities of unaffiliated issuers), which would require funds to categorize investments by three categories: (i) type of investment, (ii) the related industry, and (iii) the related country or geographic region.[80] Currently funds are only required to categorize their investments by two categories: (i) type of investment and (ii) industry, country, or geographic region. In effect, the proposed modification would require all funds to categorize their investments by both industry and country or geographic region, regardless of whether both of these categories are significant for the fund, while currently funds may choose between categorization by industry, on the one hand, or by country or geographic region on the other, as appropriate based on the nature and concentration of the fund's holdings. The Commission justifies the change by stating the proposed modification will provide more transparency into the industry and the country or geographic region of a fund's investments in securities. The Commission has requested comment on this proposed modification, asking whether the new requirement should be adopted, and what the costs and benefits of such a requirement would be.

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[80] *See* proposed Instruction 2 to Rule 12-12. The Commission is proposing corresponding modifications to the instructions to Rules 12-12A (Investments – Securities sold short), 12-12B (Summary schedule of investments in securities of unaffiliated issuers), 12-13D (Investments other than those presented in rules 12-12, 12-12A, 12B, 12-13, 12-13A, 12-13B, and 12-13C), and 12-14 (Investments in and advances to affiliates).

We urge the Commission not to adopt this modification and to retain the current presentation categories. We believe that the current presentation is more meaningful for investors. Under the current rule, a fund's schedule of investments categorizes investments by either industry or country/geographic region, whichever is most relevant for the particular fund. Combining this with categorization by type of investment provides a clear presentation with which readers of financial statements are familiar. An international fund with both debt and equity investments, for example, will present groups of the fund's investments by type (debt or equity), subdivided by country (or geographic region). Under the proposed change, the same international fund would also have to categorize its investments by industry, regardless of whether industry is a meaningful category for that particular fund based on the concentration of its investments. As a result, the proposal would require a presentation that may not add valuable information, yet would lengthen and complicate the portfolio holdings presentation. This will not help investors and other readers of financial statements to understand the fund's portfolio holdings and risk, and will impose unnecessary burdens on the funds preparing them.

Transparency alone should not be an end in itself; transparency should be evaluated as a means of providing meaningful information. The Commission does not explain how transparency in this case will be useful for investors. The Commission further states that "disclosure of both the industry and the country or geographic region would be particularly beneficial for investors in global and international funds, where currently funds are only required to categorize their schedule by industry, country, or geographic region, as it would provide additional transparency into the investments owned by the fund."[81] But again, the benefit of transparency into industry categorization for an international fund is not explained.

As an alternative to the Commission's proposed change, we propose that funds be permitted to continue to follow U.S. GAAP in reporting material concentrations of credit risk in financial instruments. Under U.S. GAAP, funds disclose concentrations of credit risk, which can arise through exposure to financial instruments subject to credit risk with firms that are involved in a similar activity, or have characteristics such that changes in economic conditions may prevent the firms from performing according to the terms of the contracts.[82] We believe the current presentation permitted by U.S. GAAP represents a more targeted approach to disclosing material concentrations of risk than requiring all funds to report using three categorization levels, regardless of whether the third categorization level reflects a material level of concentration or risk for a fund.

Accordingly, we believe that the current reporting requirements in Regulation S-X, coupled with the concentration risk reporting required by U.S. GAAP, give funds the flexibility to choose the most meaningful categorization and result in clear and well organized presentation with which investors are familiar, and therefore should be retained. The proposal would result in added length and complexity, with no demonstrated added value for investors.

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81 Fund Proposal, *supra* note 1 at 33621.

82 *See* FASB ASC 825-10-50, paragraphs 20-21.

Identification of Country or Geographic Region

Where financial statements require identification of the related country or geographic region for an investment, funds should be permitted to use their internal methodologies, which may include use of a service provider that supplies country or geographic classification, for determining "related country or geographic region."

For certain types of investments, Regulation S-X and U.S. GAAP refer to identification of the related country or geographic region. However, the proposals for Regulation S-X do not indicate how this determination should be made. We believe that, as we proposed for the identification of country on Form N-PORT, country and geographic identification for Regulation S-X should be based on the fund's internal methodology, which may include use of a service provider.

The Commission asks whether, to the extent that proposed Form N-PORT as adopted will instruct filers to report the country code that corresponds to the country of investment or issuer based on the concentrations of the risk and economic exposure of the investments, or, if different, the country where the issuer is organized, those same instructions should be integrated into Regulation S-X to standardize how funds report that information in their financial statements and in Form N-PORT.[83] For the reasons set forth in Section III, we do not believe the subjective concentration and risk exposure methodology proposed for Form N-PORT should be used in either context.

Securities Lending Information

Summary of Comment

We support public disclosure of whether funds are engaging in securities lending. We do not support, however, requiring the disclosure of specific non-public information about funds' securities lending activities. We recommend that the Commission seek such information in a confidential form.

Discussion

Proposed Section 6-03(m) of Regulation S-X would require, in a note to the fund's financial statements, extensive new disclosure with respect to a fund's securities lending activities and cash collateral. Specifically, the Commission proposes to require disclosure of (1) the gross income from securities lending, including income from cash collateral reinvestment; (2) the dollar amount of all fees and/or compensation paid by the registrant for securities lending activities and related services, including borrower rebates and cash collateral management services; (3) the net income from securities lending activities; (4) the terms governing the compensation of the securities lending agent, including any revenue sharing split, with the related percentage split between the registrant and the securities lending agent, and/or any fee-for-service, and a description of services included; (5) the details of any other fees paid directly or indirectly, including any fees paid directly by the registrant for cash collateral management

[83] Fund Proposal, *supra* note 1 at 33620.

and any management fee deducted from a pooled investment vehicle in which cash collateral is invested; and (6) the monthly average of the value of portfolio securities on loan. The Commission believes that these proposed disclosures would allow investors to better understand the income generated from, as well as the expenses associated with, securities lending activities.

This information may be useful to the Commission as part of its regulatory mission and oversight. However, we do not believe it will provide meaningful information to investors. On the contrary, disclosure of confidential details about the financial arrangements of fund securities lending activities could have an adverse competitive impact on these activities, both for funds individually and for securities lending by funds more generally. Accordingly, while we respect the Commission's interest in obtaining such information, we propose doing so in a confidential format.

Compliance Date

We propose that the compliance date for the amendments to Regulation S-X be the same as for Form N-PORT, inasmuch as the information required overlaps substantially. We believe it would be inefficient for funds to create the infrastructure for the information collection and analysis required for compliance with the amendments to Regulation S-X independently of building their Form N-PORT compliance infrastructure, and that the eight month compliance date proposed by the Commission for the amendments to Regulation S-X amendments does not provide a realistic time frame within which funds could make the necessary modifications.

V. Proposed Form N-CEN

Summary of Comment

We support the Commission's proposal to adopt new Form N-CEN to replace current Form N-SAR.

We support all of the information the Commission proposed to require on Form N-CEN, with the following comments on a few specific items, described below.

Discussion

Removal of Item 23a (Net Asset Value Error Correction)

Summary of Comment

We recommend that Item 23a be omitted from Form N-CEN because we do not believe this is an appropriate reporting item for a census form.

Discussion

The Commission proposes to request, in Item 23 of Form N-CEN, information about NAV corrections. Specifically, Item 23a requests the following:

> During the reporting period, did the Registrant make any payments to shareholders or reprocess shareholder accounts as a result of an error in calculating the Registrant's net asset value (or net asset value per share)? [Y/N][84]

This is a new reporting item, which is not required by current Form N-SAR. The Commission states that this question will assist the staff in monitoring valuation of fund assets and the calculation of the fund's NAV.

The Commission requested comment on whether this item should be included. We do not believe this is an appropriate reporting item for a census form, which is what Form N-CEN is intended to be. Rather this item appears to be designed to elicit information that the Commission could easily obtain in the context of its examination program, and would be likely to engender frivolous and time consuming inquiries and claims from potential litigants. Accordingly, we recommend that Item 23a be omitted from Form N-CEN.

Clarification of meaning of "Default" in Item 30 (Securities Lending)

Summary of Comment

We believe that annual reporting on Form N-CEN of any defaults by securities lending borrowing is more appropriate than monthly reporting of such information on Form N-PORT. In addition, we request that the Commission clarify the term "default" to mean situations where the fund liquidated collateral pledged in connection with the securities lending arrangement.

Discussion

Item 30 of Form N-CEN requests information about a fund's securities lending activities. Item 30(b) requests the following:

> Did the Fund lend any of its securities during the reporting period? [Y/N]
>
> > i. If yes, has any borrower of fund securities defaulted during the reporting period? [Y/N][85]

In the Fund Proposal, the Commission describes this item on Form N-CEN as asking "whether any borrower of securities had defaulted on its obligations to the management company to return loaned securities or return them on time in connection with a security on loan during that period."[86] The Commission explains that it proposes to request this information in order to "illuminate the commonality of borrower default."[87] In addition, the Commission proposes to

[84] Fund Proposal, *supra* note 1 at 33703.

[85] Fund Proposal, *supra* note 1 at 33704.

[86] Fund Proposal, *supra* note 1 at 33640-41.

[87] Fund Proposal, *supra* note 1 at 33640.

request disclosure on Form N-CEN of whether a securities lending agent or any other entity indemnifies the fund against borrower default on loans administered by the agent, and certain identifying information about the entity providing indemnification if not the securities lending agent. Together, these reporting requirements are designed to yield data that would allow the Commission, investors, and other potential users to assess the counterparty risks associated with borrower default in the securities lending market and the extent to which those risks are mitigated by—or concentrated in—third parties that provide indemnification against default.

The Commission requests comment on whether, as proposed, management companies should provide this information annually on Form N-CEN, or whether instead this information should be reported monthly on Form N-PORT.

We believe that annual reporting on Form N-CEN is more appropriate than monthly reporting on Form N-PORT. This information is more in the nature of "census" type information that the Commission seeks for overall industry monitoring, rather than for specific information about funds.

In addition, we suggest clarifying the meaning of the term "default" for purposes of this question, in light of the purpose of the request. The term "default" in the securities lending context can have a broad range of meanings, and many events that would not fall within the Commission's purpose can, as a technical matter, be defaults under the relevant loan agreement between the agent and the borrower. For example, as currently proposed, Item 30(b) could be interpreted to require reporting of technical defaults, such as delivery failures resulting from operational or processing issues. An overly broad definition of default would require labor intensive monitoring and analysis under the relevant agreement, and would likely result in "false positives," that is, "yes" answers that may not reflect the situation the Commission is trying to identify. Lack of clarity in the definition is also likely to result in inconsistent answers. Both of these results would negate the usefulness of the reported information for the intended purpose, which is to "illuminate the commonality of borrower default."[88]

Accordingly, we request that the Commission clarify the term "default" to mean situations where the fund liquidated collateral pledged in connection with the securities lending arrangement. We believe this definition of default will more accurately reflect an event of default that could have a material impact on the fund (as contrasted with a technical default) and, therefore, present a truer assessment of counterparty risks associated with borrower default in the securities lending market. We believe our recommended clarification will provide the information the Commission is seeking to obtain without imposing unnecessary burdens.

Item 59 (Authorized Participants)

Summary of Comment

We recommend eliminating Item 59 from proposed Form N-CEN because requiring disclosure of individual authorized participants and their transactions with a fund may have the unintended

[88] Fund Proposal, *supra* note 1 at 33640.

consequence of causing certain authorized participants to stop transacting directly with funds and instead route orders through banks acting as authorized participants.

Discussion

Item 59 of proposed Form N-CEN is a new item that would require an ETF, for the first time, to report the name of each of its authorized participants (even if the authorized participant did not purchase or redeem any ETF shares during the reporting period), the SEC file number, CRD number and LEI (if any) of the authorized participant, the dollar value of the ETF's shares that the authorized participant purchased from the ETF during the reporting period, and the dollar value of the ETF's shares that the authorized participant redeemed during the reporting period. The Commission states in the Fund Proposal that "collection of this additional information may allow the Commission staff to monitor how ETF purchase and redemption activity is distributed across authorized participants and, for example, the extent to which a particular ETF—or ETFs as a group—may be reliant on one or more particular authorized participants."[89]

We expect that certain authorized participants would view the detailed information about their trading activity with a particular ETF as proprietary and will view disclosure of such information as a penalty. For these authorized participants, we would further expect that at least some will discontinue trading directly with ETFs, and will instead route their trades through one of the large banks that serve as authorized participants. The net effect of this shift in direct dealing with an ETF would be potentially greater trading cost and worse trading quality for end investors. Requiring this disclosure may also narrow the group of authorized participants willing to deal directly with ETFs, thereby helping to create the problem of ETFs being reliant on one or more authorized participants that it aims to monitor through this new Item.

For the foregoing reasons, we recommend deleting Item 59 of proposed Form N-CEN. As a less ideal alternative, we recommend deleting sub-parts (e) and (f) of Item 59, which report the specific dollar value of fund shares purchased and redeemed by each authorized participant. We believe that this specific purchase and redemption activity would be deemed the most sensitive by authorized participants.

VI. Proposed Amendments to Form ADV and Advisers Act Rules

We support the Commission's stated goal of enhancing its risk assessment and risk monitoring capability by collecting information regarding advisers' separately managed accounts. We agree with the Commission's statement that the separately managed account data requested by the amendments to Form ADV will allow for better monitoring of this segment of the investment advisory industry.[90] We further agree that annual reporting of separately managed account

[89] Fund Proposal, *supra* note 1 at 33646.

[90] The AMG, which has been at the forefront of collecting data on separately managed accounts, agrees that separately managed account data is important to help regulators gain insights into these accounts. *See* Letter from Timothy Cameron to Secretariat of the Financial Stability Board, Re: "Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions"; "Asset Management and Financial Stability" Study by the Office of Financial Research (Apr. 4, 2014), available at http://www.sifma.org/comment-letters/2014/sifma-amg-submits-comments-to-the-fsb-and-sec-in-response-to-ofr-study-and-in-regards-to-separate-accounts/.

information strikes the right balance of providing useful information to the Commission while recognizing the cost and burdens that this new reporting requirement will place on advisers. Public disclosure of certain separately managed account information, however, raises concerns that the information could be used to identify particular clients and their investment profile. In addition to these confidentiality concerns, we believe that certain definitions and other aspects of the Advisers Act Proposal should be clarified to prevent inconsistent responses or confusion among advisers. Below are our specific comments.

1. Information Regarding Separately Managed Accounts.

a. Confidentiality of Separately Managed Account Information Required by Section 5.K.(2) of Schedule D

Summary of Comment

The new disclosure proposed in Schedule D, Section 5.K.(2), should provide a *de minimis* number of accounts in any one asset range, below which an adviser would not be required to report the detailed derivative exposure and borrowing data required by this Section. We further believe that Section 5.K.(2) should require the number of accounts to be rounded to the nearest five (5) accounts to further mask the client information required by this Section.

In addition, we believe that the $10 billion, $150 million and $10 million thresholds for reporting under Section 5.K.(2) on Schedule D strike an appropriate balance between the Commission's desire for information about separately managed accounts and the burdens of preparing and disclosing such information, particularly for smaller advisers.

Discussion

We believe that the detailed information required by Section 5.K.(2) of Schedule D may put advisers that have one or a very small number of separate account clients, or a small number of clients within one of the three net asset bands, at a competitive disadvantage compared to advisers with numerous separate account clients because public disclosure of derivative exposures and/or borrowings may indirectly reveal sensitive information about client accounts. We do not believe that this concern is fully mitigated, as the Advisers Act Proposal suggests, by the fact that the Section would not require disclosure of specific positions or exposures or of client names. With client consent, client names may be divulged by an adviser for a variety of reasons, such as to consultants, in connection with a request for proposal or publicly for general marketing purposes. We are concerned that market participants may be able to glean from such disclosure the identity of clients whose information is disclosed on Schedule D, Section 5.K.(2). The disclosure required by Schedule D, Section 5.K.(2) may therefore have a chilling effect on advisers with small numbers of separate accounts divulging client names, which may, in turn, negatively impact their marketing efforts and put them at a competitive disadvantage. In addition, clients may be less willing to grant advisers permission to disclose their names, which may also competitively disadvantage advisory firms with small numbers of separately managed accounts.

To address the foregoing confidentiality concern, we propose that the number of accounts in column 1 of the chart required by Section 5.K.(2) in Schedule D be rounded to the nearest five

(5) accounts (*e.g.*, an adviser with eight accounts would report 10 accounts in column 1 and an adviser with 12 accounts would also report 10 accounts). We further propose that if an adviser manages fewer than five (5) accounts in any of the three net asset bands provided in Section 5.K.(2), then the adviser may omit the information that would otherwise be required by this Section for that particular NAV range. We believe this combination of rounding the actual number of client accounts plus adding a *de minimis* threshold will prevent market participants from deducing sensitive client information about specific clients and, therefore, will not unfairly disadvantage advisers with few separate account clients or few separate account clients in one or more net asset bands.

If the Commission is not amenable to the foregoing means of addressing the confidentiality concerns, an alternative would be to modify the NAV breakpoints in Section 5.K.(2) to $10 - 250 million, $250 - 500 million and above $500 million. In our members' experience, accounts with a value of $1 billion or greater are much less common than accounts below this threshold and, therefore, more likely to result in a single account being isolated in this NAV band. A lower top threshold of $500 million would increase the likelihood of aggregation of accounts in that bucket and reduce the possibility of exposing the attributes of a single or few accounts. We do not believe, however, that adjusting the NAV breakpoints is as effective at addressing the confidentiality concerns as the *de minimis* and rounding proposals in the preceding paragraph and are proposing it only as an alternative or to be used in conjunction with our proposal in the preceding paragraph.

We also believe that proposing a $150 million floor for reporting under Section 5.K.(2) of Schedule D in order to be consistent with the floor of $150 million for reporting similar derivative and borrowing information on Form PF is appropriate. We further believe that aligning the $10 billion threshold in Section 5.K.(2) with the statutory threshold in the Dodd-Frank Act for large investment advisers and large funds is appropriate.[91] We do not believe that any potential benefits for the risk assessment and monitoring function of the Commission staff likely to result from a reporting requirement below this threshold would outweigh the burdens on what will likely be primarily smaller advisers.

b. Treatment of Sub-Advisory Relationships in Item 5.K.

Summary of Comment

Proposed Items 5.K.(1), 5.K.(2), 5.K.(3) and 5.K.(4) of Part 1A and the related questions on Schedule D should not require reporting of separately managed account clients of an adviser that acts only as a manager of managers and where investment decisions are made by one or more discretionary sub-advisers to such separately managed accounts. Similarly, an adviser that is part of a group of affiliated advisers and that shares management responsibility for separately managed account clients with other affiliated managers should have discretion to choose which of the affiliated advisers will report the information in response to Items 5.K.(1), 5.K.(2), 5.K.(3)

[91] *See* Section 165(i)(2)(A) of the Dodd-Frank Act (noting that financial companies, other than nonbank financial companies supervised by the Board of Governors and bank holding companies, that have total consolidated assets of more than $10 billion and are regulated by a primary Federal financial regulatory agency shall conduct annual stress tests).

and 5.K.(4) of Part 1A and the related questions on Schedule D rather than multiple affiliated managers reporting the same information.

Discussion

Proposed Item 5.K.(1) of Part 1A of Form ADV asks whether an adviser has regulatory assets under management ("**RAUM**") attributable to separately managed account clients.[92] If an adviser answers "yes," then it must disclose in Section 5.K.(1) the RAUM attributable to such separately managed account clients, broken down into 10 separate categories. Proposed Items 5.K.(2) and 5.K.(3) of Part 1A of Form ADV ask whether the adviser engages in borrowing transactions and derivative transactions, respectively, on behalf of any separately managed account clients. If so, Section 5.K.(2) of Schedule D requires disclosure of the aggregate borrowings and gross notional value of derivatives by an adviser's separate account clients. Proposed Item 5.K.(4) of Part 1A of Form ADV asks whether any custodian holds 10% or more of RAUM attributable to separately managed accounts and, if so, directs the adviser to complete Section 5.K.(3) of Schedule D, which requires information about such custodians.

The Advisers Act Proposal states that the Commission is proposing to collect information about borrowings and gross notional value of derivatives because it believes it is important for the Commission to better understand the use of derivatives and borrowings by advisers in separately managed accounts. The Advisers Act Proposal states further that the proposed amendments that require mid-year and end-of-year data points are intended to assist the Commission's staff in identifying the use of borrowings and derivative exposures in large separately managed accounts as part of the Commission staff's risk assessment and monitoring programs, and to allow Commission staff to identify and monitor trends in borrowings and derivatives transactions in separately managed accounts. The Advisers Act Proposal states that the custodian information required by Item 5.K.(4) and Section 5.K.(3) of Schedule D would allow the Commission's examination staff to identify advisers whose clients use the same custodian in the event, for example, a concern is raised about a particular custodian.

The detailed disclosures required by Sections 5.K.(1), 5.K.(2) and 5.K.(3) of Schedule D are triggered, in part, by an adviser having RAUM attributable to separately managed account clients. The definition of RAUM, which has not changed in the Advisers Act Proposal, includes accounts for which the adviser provides "continuous and regular supervisory or management services."[93] The definition of continuous and regular supervisory or management services, which also has not changed in the Advisers Act Proposal, may include an adviser with non-discretionary authority over placing trades for the account but that has discretionary authority to hire, fire and allocate assets among managers (a "**manager of managers**").[94] The definition of continuous and regular supervisory or management services also includes an adviser that has discretionary authority over an account and provides ongoing supervisory or management

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[92] Separately managed account clients include any client other than those listed in Item 5.D.(2)(d)-(f).

[93] *See* Instruction to Item 5.b.(3) of Part 1A of Form ADV.

[94] *Id.*

services with respect to the account (for purposes of this section, a "**discretionary adviser**").[95] A discretionary adviser includes a sub-adviser appointed by an unaffiliated manager of managers to manage all or a portion of a separately managed account. A discretionary adviser may also include two or more affiliated advisers that each have discretion to manage a separately managed account client. One such scenario is where a primary adviser with discretion over an account (the "**primary adviser**") delegates to an affiliated adviser the day-to-day investment responsibility for a separately managed account client (the "**affiliated sub-adviser**") but the primary adviser retains discretionary authority over the account.

As a result of the broad definitions of RAUM and continuous and regular supervisory or management services, both a manager of managers and an unaffiliated discretionary adviser, as well as a primary adviser and an affiliated sub-adviser, may be required to report the same information under proposed Items 5.K.(1), 5.K.(2), 5.K.(3) and 5.K.(4) of Part 1A and in the related questions on Schedule D for the same account. We believe that duplicative reporting by two advisers of the information required by these Items for the same separately managed accounts will lead to an unnecessary overstatement of this information and will not further the Commission's goal of understanding the use of derivatives and borrowing by advisers in separately managed accounts.

For unaffiliated manager-of-managers arrangements (where the manager of managers chooses the sub-adviser but not investments), it is the discretionary adviser that implements the investment strategy giving rise to the RAUM categories, borrowings and derivative usage of the separately managed account. We therefore believe that having only the discretionary adviser and not the manager of managers disclose this information better aligns with the Commission's objectives in gathering this information. In addition, the detailed portfolio information required by Sections 5.K.(1), 5.K.(2) and 5.K.(3) of Schedule D may not be readily available to a manager of managers that is providing only manager selection services and broad oversight and not involved in the day-to-day management of a separately managed account. In some instances, new systems or procedures, which may involve manual data input, would be required to transmit the detailed account information necessary for a manager of managers to complete these new Sections of Schedule D.

For affiliated advisers, we believe that the affiliates should be authorized to determine for themselves whether the primary adviser or affiliated sub-adviser should report the information required by Items 5.K.(1), 5.K.(2), 5.K.(3) and 5.K.(4) of Part 1A. Allowing advisers to choose for themselves which adviser in the affiliated group will report the information will provide the necessary flexibility for advisers to deal with different affiliation arrangements without compromising the reporting of the information that the Commission is seeking.

In light of the foregoing, we propose that two instructions be added to proposed Item 5.K of Part 1A. The first would permit a manager of managers to exclude from the computation of RAUM and, therefore, from reporting in Sections 5.K.(1)-(3) of Schedule D, separately managed account clients for which discretionary authority to provide ongoing management has been delegated to one or more advisers. The second would permit affiliated advisers to choose which of the

95 *See* Instruction to Item 5.b.(3) of Part 1A of Form ADV.

primary adviser or affiliated sub-advisers would include in Items 5.K.(1), 5.K.(2), 5.K.(3) and 5.K.(4) the RAUM of separately managed account clients for which both act as discretionary managers and, therefore, which adviser would include such separately managed account clients in its responses to Sections 5.K.(1), 5.K.(2) and 5.K.(3) of Schedule D.

c. Investment Strategies Used in Separately Managed Accounts

Summary of Comment

Form ADV should not require additional information about specific investment strategies used in separately managed accounts, as opposed to or in addition to the asset types of separate account clients, as proposed.

Discussion

Separate account strategies are often customized for individual clients based on the client's particular risk and return considerations and sometimes other considerations such as socially responsible investment screens. In addition, there is no universal standard used to describe investment strategies and advisers may use different names to describe similar investment strategies for separately managed accounts. Separately managed account investment strategies are therefore more difficult to classify and combine than pooled vehicles reported on Form PF. This would be particularly true for larger advisers with a large institutional separate account business as well as smaller advisers whose client base is predominately separately managed accounts. We therefore believe that it would be difficult to compare investment strategies among separate accounts, lowering the utility of the information as a risk management tool. We also believe that disclosure of individual strategies of separately managed accounts would greatly increase the burden on advisers over the current proposal.

Additionally, Section 210(c) of the Advisers Act prohibits the Commission from requiring an adviser to disclose the identity, investments, or affairs of any client of the adviser. For the reasons stated in the preceding paragraph, there is a strong possibility that a requirement to describe investment strategies of separately managed accounts would result in advisers having to disclose the customized strategies of a single or small group of clients. We believe such disclosure would not be consistent with Section 210(c), which seeks to maintain the confidentiality of client-specific information.

d. Interpretation of the Term "Derivatives"

Summary of Comment

We recommend that Form ADV provide an instruction on how to interpret the term "derivatives" to ensure consistency of reporting among advisers.

Discussion

Proposed Item 5.K.(3) of Part 1A requires an adviser that engages in "derivative transactions" on behalf of its separately managed accounts to complete Schedule D, Section 5.K.(2). The definition of "derivative transactions" is therefore central to determining whether an adviser is required to complete Schedule D, Section 5.K.(2). The proposed Form ADV amendments do not define the term "derivative" or "derivative transactions." While instruments such as swaps, futures, options and forwards are commonly included in any definition of derivatives, there are other instruments whose status as a derivative is less clear. We therefore believe that a lack of guidance on the scope of the term "derivatives" could result in inconsistent reporting among advisers, which would frustrate the regulatory purpose of providing information that can be compared among advisers.

Based on the foregoing, we recommend including an instruction that guides advisers on how to interpret the term "derivatives." We believe that continuing innovation in financial instruments would make inclusion of a specific definition of "derivatives" eventually obsolete. We therefore recommend inclusion of a definition that provides flexibility to adapt to changing financial markets and financial instruments. Specifically, we recommend that advisers be permitted to interpret the term derivatives by reference to FASB ASC 815, which uses a set of characteristics to define derivatives. Use of the FASB ASC 815 definition of derivatives would result in consistent treatment of reporting on Form ADV, an adviser's financial statements and the financial statements of other pooled vehicles managed by the adviser, which would result in efficiencies and may reduce reporting costs associated with Item 5.K.(3). A common definition such as FASB ASC 815 would also largely avoid inconsistent reporting that might result from not defining the term "derivatives." The FASB ASC 815 derivative definition's use of conditions rather than a list of specific instruments will allow flexibility for adjustments, if needed, as new derivative instruments develop. We believe that this combination of flexibility and familiarity among advisers make it a workable standard for promoting consistency of reporting and harmonization with existing reporting rules.

e. Interpretation of Assets "Held" at a Custodian in Item 5.K.(4)

Summary of Comment

For some separately managed account clients, not all of the client's assets are held at a custodian. Rather than having to calculate the portion of each separately managed account client's assets that are held at a custodian, we recommend that for purposes of Item 5.K.(4) of Part 1A, assets included in an adviser's calculation of RAUM of its separately managed account clients but not "held" at the custodian of such clients be permitted to be considered "held" at the custodian for purposes of calculating the 10% threshold in Item 5.K.(4).

Discussion

Unlike funds registered under the 1940 Act, separately managed accounts are not all required to maintain their assets at custodians. For example, bespoke derivative instruments and their related margin and collateral as well as loan assignments and participations may not be technically "held" by the custodian of a separately managed account. Proposed Item 5.K.(4) of Part 1A, on its face, requires inclusion of only assets held at the custodian of a separately managed account client for purposes of determining whether such assets equal or exceed 10% of an adviser's RAUM attributable to separately managed account clients. Under a literal reading, advisers would be required to deduct from the 10% calculation assets held away from the custodian for a separately managed account but that are otherwise under the management of the adviser and included in the RAUM of the account. We do not believe this was the Commission's intent, given the statement in the Advisers Act Proposal that Item 5.K.(4) was intended to identify any custodians that account for at least 10% of separately managed account RAUM. Such a calculation would therefore be unnecessarily burdensome. We therefore request clarification in the adopting release or an instruction to Form ADV that for purposes of the 10% calculation in Item 5.K.(4) of Part 1A, assets included in an adviser's calculation of RAUM of its separately managed account clients but not necessarily "held" at the custodian of such clients may be considered "held" at the custodian.

f. Clarification of the Term "Non-U.S. Clients" in Item 5.F.(3)

Summary of Comment

We recommend clarifying that the reference in new Item 5.F.(3) of Part 1A to "non-U.S. clients" is intended to mean any client who is not a "United States person," as defined in Rule 203(m)-1 under the Advisers Act.

Discussion

Proposed new Item 5.F.(3) would require advisers to disclose the approximate amount of their total RAUM attributable to non-U.S. clients. The proposed Form ADV does not include a definition of the term "non-U.S. clients" or an instruction on how to construe this term. The discussion in the Advisers Act Proposal, however, states that this new disclosure item is intended to complement the requirement in Item 5.C.(2) of the current Form ADV that each adviser report the percentage of its clients that are non-U.S. persons. The term "United States person" is defined in current Form ADV by reference to Rule 203(m)-1 under the Advisers Act.[96] Based on the Commission's statement in the Advisers Act Proposal that both Item 5.C.(2) and proposed new Item 5.F.(3) of Part 1A are intended to be complementary, we believe that the Commission intended the definition of "non-U.S. clients" in Item 5.F.(3) and the reference in Item 5.C.(2) to clients who are "non-United States persons" to have the same meaning. Assuming a parallel interpretation of these two Items was intended, we recommend that the reference in proposed Item 5.F.(3) to "non-U.S. clients" be rephrased to read "clients who are non-United States persons."

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[96] Rule 203(m)-1 defines "United States person" as follows:

> United States person means any person that is a U.S. person as defined in § 230.902(k) of this chapter, except that any discretionary account or similar account that is held for the benefit of a United States person by a dealer or other professional fiduciary is a United States person if the dealer or professional fiduciary is a related person of the investment adviser relying on this section and is not organized, incorporated, or (if an individual) resident in the United States.

g. Identification of a Custodian's Office in Section 5.K.(3) of Schedule D

Summary of Comment

We recommend deleting from proposed Section 5.K.(3) of Schedule D the requirement to identify the location of the custodian's office responsible for custody of the assets of an adviser's separately managed account.

Discussion

Proposed Section 5.K.(3) of Schedule D would require certain information about the custodians for separately managed accounts that hold 10% or more of an adviser's separately managed account client RAUM. In particular, Section 5.K.(3)(c) would require the location (city, state and country) of each such custodian's office(s) responsible for custody of the assets. The majority of custodial records for security positions held by an adviser's separately managed accounts are kept electronically. The location of a particular custodian's office responsible for custody of such assets is therefore not particularly meaningful as it represents only one of several possible offices through which information about the custodial records of a separately managed account can be accessed. Further, many advisers do not maintain this physical location information as a matter of course and would need to obtain the information from individual separately managed account clients. This is in contrast to physical address information of custodians to private funds, which advisers often possess through their involvement in establishing the private fund and its contractual relationships with service providers such as custodians.

The Advisers Act Proposal states that the custodian information required by new Section 5.K.(3) would allow the Commission's examination staff to identify advisers whose clients use the same custodian in the event, for example, a concern is raised about a particular custodian. We believe that the identity of a custodian, rather than the location of the custodian's office, would be of primary benefit in achieving this stated goal. Given the electronic nature of custodial records and multiple potential access points, we believe that the burden of having to obtain the location of custodian offices outweighs the stated benefit to the Commission and recommend deleting proposed Section 5.K.(3)(c).

h. Parallel Managed Account Definition

The proposed definition of "parallel managed account" is: "With respect to any registered investment company or business development company, a parallel managed account is any managed account or other pool of assets that you advise and that pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as the identified investment company or business development company that you advise."[97] We suggest adjusting the definition to make clear that the term "registered investment company" refers to the series of an investment company organized as a series company.

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[97] Advisers Act Proposal, *supra* note 1 at 38084.

i. Updating of Social Media Information

Form ADV, as proposed to be amended, requires information about the adviser's platforms for social media websites, which is requested in Item 1.I of Form ADV. The instructions to Form ADV require that, in addition to annual updating, advisers must amend Form ADV, and the corresponding schedules, to reflect changes in the information reported in response to Item 1.

We believe that annual updating of this information is sufficient, and that ongoing interim reporting requirements for changes in social media websites would not provide a benefit to investors and clients of the adviser, who will ordinarily rely on standard internet searches to find the websites, rather than Form ADV.

We also recommend clarifying that the social media platforms to be disclosed in Item 1.I should include only those websites and social media platforms that are owned, sponsored or maintained by the reporting adviser to promote its advisory business in the U.S. or with respect to its U.S. clients. A large advisory complex that includes multiple affiliated advisers may maintain a website of the parent company or a platform sponsored by another affiliate that is not designed to promote the reporting adviser's services. Similarly a non-U.S. domiciled adviser may use a social media platform for its non-U.S. resident client as part of its domestic business, perhaps in a language other than English. Requiring these sites or platforms to be disclosed in Item 1.I could be confusing to investors seeking information about the filing adviser and we believe is outside the scope of the objectives stated in the Advisers Act Proposal.

j. Reporting Precise Numbers of Clients in Item 5.D.(1) of Part 1A

The Commission proposes to amend Item 5.D.(1) to require an adviser to report the number of clients and amount of RAUM attributable to each category of clients instead of the ranges of clients and RAUM required by this item in current Form ADV. The Commission stated that replacing ranges with more precise information would, among other things, provide more accurate information about investment advisers and would significantly enhance its ability to analyze data across investment advisers because providing actual numbers of clients and RAUM will allow it to see the scale and concentration of assets by client type. In proposing this amendment, the Commission deleted the instruction that permitted advisers to check more than one box for clients that fit into more than one category of client type.

Today, advisers may report certain client types in multiple categories, as permitted by the Instruction to Item 5.D.(1). For example, insurance companies and certain investment advisers, which are sometimes structured as corporations, may be reported as clients in both the "insurance companies" and "other investment advisors" category, respectively, as well as the "corporations or other businesses not listed above" category. Given the removal of the instruction enabling advisers to report the same client in multiple categories, we request that the Commission provide guidance in the adopting release or an instruction to Item 5.D.(1) in the form that advisers should check the box that most closely reflects the asset type of the client (*e.g.,* insurance company) rather than the narrower entity type (*e.g.,* corporations or other businesses). Alternatively, the Commission could move down the category labeled "corporations or other businesses not listed above" in the table so that it appears just above the

"Other" category, which would guide filers not to include a client in the "corporations or other businesses not listed above" category if the client fits within any of the preceding categories.

2. Additional Information Regarding Investment Advisers

Summary of Comment

We recommend modifying the proposed addition to the instruction to Item 8 of Part 1A to require advisers to answer the questions in this section based on the types of participation and interest that the adviser had in such transactions during the reporting period, rather than based on such transactions that are expected to occur during the next year.

Discussion

The Advisers Act Proposal would require advisers responding to the questions in Item 8, which relate to an adviser's participation or interest in client transactions, to base their responses on the types of participation and interest that the adviser expects to engage in during the next year. If adopted, Item 8 would be the only question in Part 1A for which an adviser would be required to report forward-looking information other than Item 2.A.(9), which deals with advisers expecting to be eligible for SEC registration within 120 days. Form ADV, including current Item 8, almost exclusively requires advisers to gather, synthesize and report definitive information based on events that have occurred. We believe that requiring advisers to complete Item 8 based on activity that has not yet occurred may lead to uneven reporting among advisers. For example, advisers may have different views on what degree of certainty of an expected transaction would trigger reporting. In addition, reporting based on forward-looking information may result in "false positives" if, in fact, the transactions that were expected to occur when the adviser was completing its initial or updated Form ADV do not occur due to a change in business plans or otherwise. The potential for false positives may create the need for special documentation of these "expected" transactions in order to justify to the OCIE examination staff during an exam what transactions were contemplated and whether they did or did not occur. For the foregoing reasons, we propose modifying the instruction to Item 8 of Part 1A to require advisers to answer the questions in this section based on the types of participation and interest that the adviser had in such transactions during the reporting period, which would align the scope of this Item with the other items in Part 1A.

3. Umbrella Registration

We support the Commission's codification of the "umbrella registration" regime for multiple private fund adviser entities operating a single advisory business. We agree that making the umbrella registration regime more widely known to advisers through codification would be helpful to industry participants, particularly smaller advisers who may not otherwise be aware of the Commission's existing guidance on this registration flexibility.

4. Form ADV Compliance Date

We request that the Commission provide at least one full calendar year after the adoption of the final rules and form changes to comply with the new reporting requirements. For example, if the new rules and forms were adopted December 15, 2015, an adviser that is a calendar year filer would first need to update its Form ADV with the information required by the new form in its annual updating amendment filed on or before March 31, 2017. We further request that the mid-year data required by Sections 5.K.(1) and 5.K.(2) of Schedule D not be required until the final rules and form changes have been in place for a full 12 months from the earliest compliance date for inclusion of this information.

Many advisers will need to make systems, personnel and procedural adjustments to gather, sort and ultimately report the information required by the new reporting requirements of Form ADV. It is critical that advisers have sufficient time to make these necessary adjustments in order to produce accurate information. Based on input from our members, we believe that a full calendar year is the minimum time period that is reasonably necessary for firms to make the adjustments necessary to comply with the new reporting requirements. With respect to the mid-year data, it would be difficult for advisers to perform mid-year calculations retroactively. We therefore believe that advisers should have the benefit of having final rules and form amendments in place for the full 12 months prior to having to calculate and report this information.

VII. Proposed Electronic Delivery of Shareholder Reports

We applaud the Commission's effort to focus on reducing fund operating costs by embracing Internet availability of shareholder reports. We believe this is an appropriate next step in the evolution of electronic delivery of disclosure documents that builds on the electronic delivery framework the Commission began to embrace nearly two decades ago. We further believe that the potential cost savings to investors resulting from Internet availability of shareholder disclosure documents could be further enhanced by the Commission moving toward an implied consent framework for summary and statutory prospectuses, in addition to shareholder reports.

While we believe that funds would welcome the expanded availability of electronic delivery intended by proposed Rule 30e-3, the costs of creating the infrastructure necessary to support the proposed consent and notice requirements and the lack of coordination with relevant rules governing intermediaries will be impediments to broad adoption by funds of the electronic delivery option provided by Rule 30e-3. These concerns could lead funds to continue to rely on the Commission's existing guidance to seek to electronically transmit reports to shareholders who have not yet consented to electronic delivery instead of relying on Rule 30e-3. The following paragraphs describe our concerns and include suggestions for how to modify the proposed rule to alleviate those concerns.

Coordination with Financial Intermediaries

Summary of Comment

Rule 30e-3 and applicable rules under the 1934 Act should be revised to address the responsibility of financial intermediaries to assist funds in seeking the consent of beneficial owners to electronic delivery of shareholder reports.

Discussion

Proposed Rule 30e-3 is silent on whether and how its various requirements would be implemented for shareholders who hold fund shares through a broker or other financial intermediary. For example, proposed Rule 30e-3 does not identify whether a fund can consider all of a broker's clients to have consented to electronic delivery of the fund's shareholder reports if the fund does not receive a reply from the broker within 60 days after delivering the broker the negative consent statement pursuant to Rule 30e-3(c) (the "**Initial Statement**"). Similarly, proposed Rule 30e-3 does not identify the protocol for sending the notice required by section Rule 30e-3(d) (the "**Notice**") to brokers and other intermediaries whose customers are beneficial owners of fund shares or a broker's responsibility for sending such notice received from a fund to its customers.

In prior Commission actions involving delivery of disclosure documents, the Commission has coordinated its rules governing the delivery obligations of funds with rules governing the delivery obligations of brokers and other intermediaries. For example, in connection with the Commission's adoption of rules permitting "householding"[98] of disclosure documents, the Commission adopted or amended rules under the Securities Act of 1933 (the "**1933 Act**"), the 1934 Act and the 1940 Act to ensure coordinated implementation.[99]

We recommend that the Commission's IM staff coordinate with the staff of the Division of Trading and Markets to make the necessary amendments to Rule 30e-3 and rules under the 1934 Act that would ensure the coordinated application of proposed Rule 30e-3 among funds, brokers and other financial intermediaries.

Fund-by-Fund Reporting

Summary of Comment

Shareholder consents should be required at the customer or account level, not on a fund-by-fund basis as would be required by Rule 30e-3, as proposed.

Discussion

Current consent collection databases used for electronic delivery of disclosure and other documents generally collect information at the account level. For example, an account holder with the same name and address would be solicited to consent to electronic delivery of shareholder reports with respect to all funds held in the account of the account holder.[100] The requirement of sub-section (c) of proposed Rule 30e-3 to collect consents on a fund-by-fund

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[98] "Householding" refers to the practice of delivering one annual report, proxy statement, Notice of Internet Availability of Proxy Materials or prospectus to multiple shareholders who share the same address.

[99] *See* Delivery of Disclosure Documents to Households, Investment Company Act Release No. 24123 (Nov. 4, 1999), 64 Fed. Reg. 62540 (Nov. 16, 1999) ("**Delivery of Disclosure Documents**") (adopting Rule 154 under the 1933 Act, amending Rules 14a-3, 14c-3 and 14c-7 under the 1934 Act and amending Rules 30d-1 and 30d-2 under the 1940 Act); *See also* Use of Electronic Media for Delivery Purposes, Securities Act Release No. 7233 (Oct. 6, 1995), 60 Fed. Reg. 53458 (Oct. 13. 1995) (describing the Commission's position on electronic delivery of prospectuses, annual reports to security holders and proxy solicitation materials under the 1933 Act, the 1934 Act, and the 1940 Act).

[100] Customer consents are currently solicited by a wide variety of means such as prompts when logging into the customer's on-line account and direct mailings.

basis would require reprogramming or completely new consent collection techniques and databases. We believe the cost of implementing these changes may be a significant impediment to funds relying on Rule 30e-3 to transmit reports to shareholders who have not yet provided affirmative consent to electronic delivery over the Commission's existing electronic delivery guidance. We therefore recommend that consents be permitted at the customer or account level rather than on a fund-by-fund basis.

Required Notice

Summary of Comment

The Notice should be permitted to accompany shareholder account statements and shareholder newsletters, in addition to summary prospectuses, statutory prospectuses, statements of additional information and Notices of Internet Availability of Proxy Materials, that are delivered within 90 days preceding the dissemination of the shareholder report to which the Notice relates.

Discussion

Under the proposed 60-day time period to deliver the Notice, most funds will be unable to combine the mailing of the Notice with the annual update to their summary prospectus, statutory prospectus and statement of additional information ("SAI"), which are typically delivered between 90 and 120 days following a fund's fiscal year end. Most funds will therefore not be able to combine delivery of the Notice with delivery of the updated summary prospectus, statutory prospectus or SAI under the Rule as proposed. Further, most open-end funds will similarly be unable to combine the Notice with a Notice of Internet Availability of Proxy Materials because open-end funds do not hold annual shareholder meetings and, therefore, do not regularly distribute proxy materials. Most open-end funds will therefore be unable to avail themselves of the cost savings that would result from combining delivery of the Notice with delivery of the documents permitted by proposed Rule 30e-3(d)(4). As a result, we believe the cost of mailing the required Notice may be a significant impediment to funds relying on Rule 30e-3 to transmit reports to shareholders who have not yet provided affirmative consent to electronic delivery over the Commission's existing electronic delivery guidance.

Unlike the documents currently described in proposed Rule 30e-3(d)(4), shareholder account statements and shareholder newsletters are distributed by many funds and intermediaries on a monthly or quarterly basis. We therefore believe that combining the Notice with these documents would provide a workable framework to achieve the cost savings contemplated by proposed Rule 30e-3(d)(4). Accordingly, we propose that the Notice be permitted to accompany shareholder account statements and shareholder newsletters that are delivered within 90 days preceding the dissemination of the shareholder report to which the Notice relates. For example, a fund with a fiscal year end of June 30 that disseminates its annual report to shareholders on or about August 30 could include its Notice in shareholder account statements delivered at any point between June 1 and August 30. The Notice would inform shareholders of the date by which the annual report would be available. Notably, combining notice of the electronic availability of an annual or semi-annual report with shareholder statements or newsletters is currently permitted under the Commission's guidance on electronic delivery of disclosure documents and is a practice with which funds are already familiar.[101]

Shareholders who have consented to the receipt of shareholder reports electronically under the Commission's current electronic delivery guidance may receive notice of the availability of such shareholder reports electronically as well. We therefore further propose that sub-section (d)(2) of proposed Rule 30e-3 be revised to permit electronic delivery of the Notice to be incorporated into the same e-mail or other electronic communication as the accompanying shareholder statement or shareholder newsletter. We believe that it would be inefficient and potentially confusing to shareholders to receive multiple e-mails from a fund or an intermediary on or about the same date containing different information. The content requirements of sub-section (d)(1) of Rule 30e-3 could be incorporated into the combined e-mail or other electronic communication.

Pre-Paid Return Envelopes

Summary of Comment

Inclusion of a postage pre-paid return envelope with the Initial Statement and each subsequent Notice, as would be required by Rule 30e-3(c) and (d) as proposed, should be optional if the registrant includes a toll-free number that customers can use to object to internet delivery. The Rule should also permit shareholders to respond to the Initial Statement and Notice by means other than a toll-free number and pre-paid reply forms.

Discussion

Proposed Rule 30e-3(c)(iii) requires that the Initial Statement be accompanied by a reply form that is pre-addressed with postage provided and an explanation that the shareholder can use the pre-paid reply form at any time to notify the fund that he or she wishes to receive printed shareholder reports in the future. The Initial Statement must also include a toll-free telephone number with the same explanation. The Notice required by Rule 30e-3(d)(iv) contains the same requirements with respect to inclusion of a pre-paid reply form, toll-free telephone number and explanation as to their use as Rule 30e-3(c)(iii).

Requiring funds to include postage pre-paid reply forms with both the Initial Statement and the Notice required by Rule 30e-3 will reduce the cost savings of funds not having to mail shareholder reports. Shareholder reports are often mailed at bulk postage rates that are considerably lower than the postage rates that would apply to individual pre-paid reply forms. This cost difference reduces the potential cost savings from mailing a single page notice instead of a multi-page shareholder report. As a result, we believe that requiring inclusion of a postage pre-paid envelope may be a significant impediment to funds relying on Rule 30e-3 to transmit

[101] *See* Use of Electronic Media for Delivery Purposes, Q&A No. 46; Investment Company Release No. 21399, 60 Fed. Reg. 53458 (October 6, 1995) (stating that notification to shareholders in a statement or newsletter delivered within the preceding quarter would be considered sufficient notice under Section 30(d) of the 1940 Act and the rules thereunder to constitute delivery).

reports to shareholders who have not yet provided affirmative consent to electronic delivery over the Commission's existing electronic delivery guidance.

Notably, the Commission has determined with respect to other rules that require consent to non-standard delivery of disclosure documents that pre-paid reply forms are not required to accompany the solicitation of such consents. Specifically, Rule 14a-3 under the 1934 Act, which permits householding of shareholder reports, among other documents, may include a toll-free telephone number or a pre-addressed, postage pre-paid reply form when seeking the implied consent of shareholders to householding annual reports. Similarly, Rule 154 under the 1933 Act permits funds to choose whether to include a toll-free telephone number or a pre-addressed, postage pre-paid reply form when seeking the implied consent of customers to the householding of prospectuses.[102] In the release accompanying the adoption of Rule 14a-3 under the 1934 Act and Rule 154 under the 1933 Act, the Commission noted that issuers can arrange means other than telephone numbers and pre-paid reply forms for shareholders to provide notice of their opting out of householding, thereby providing flexibility to adapt to changing technologies and shareholder preferences.[103]

Accordingly, we propose modifying sub-sections (c)(iii) and (d)(iv) of Rule 30e-3 to permit issuers to include a toll-free telephone number or a pre-addressed, postage pre-paid reply form when providing shareholders with the Initial Statement and Notice required by these sub-sections. We also propose permitting shareholders to respond to the Initial Statement and Notice by means other than telephone numbers and pre-paid reply forms, such as online, e-mail, and facsimile.

Filing of Required Notice with the Commission

Summary of Comment

We recommend that the requirement of proposed Rule 30e-3(d)(6) to file with the Commission a form of the Notice sent to shareholders regarding electronic availability of a shareholder report be eliminated.

Rule 30e-3(d)(6) would require funds to file with the Commission a form of the Notice the fund sent to shareholders regarding electronic availability of a shareholder reports. The Notice filing would occur on a new EDGAR submission type, which would be created by the Commission. The Release states that the Commission believes the Notice filing requirement would assist the Commission in overseeing compliance with the rule.

We believe that the Commission has other, less costly means at its disposal to oversee compliance with the required Notice in proposed Rule 30e-3. Specifically, compliance with Rule 30e-3 could be achieved through the Commission's examination program for funds

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[102] *See* Rule 154 under the 1933 Act and Rules 14a3- and 14b-2 under the 1934 Act.

[103] *See* Delivery of Disclosure Documents, *supra* note 99 (stating that the notice to shareholders also may list additional methods of opting out of householding, such as sending the reply form to a facsimile telephone number or responding by email).

administered through the OCIE. These inspections could include oversight of compliance with all aspects of Rule 30e-3, including the required Notice.

We recognize that certain electronic delivery rules contain filing requirements that are similar to proposed Rule 30e-3.[104] We are unaware, however, of the Commission having identified any specific compliance concerns that have been mitigated by the filing of such forms of notice. We therefore believe that migrating away from requiring the filing of these notices to a less costly oversight system would result in greater cost savings for funds and reduce the administrative burden of complying with Rule 30e-3, which may facilitate broader adoption of Rule 30e-3 by funds. As a less ideal alternative to eliminating the filing requirement completely, we recommend requiring filing of a form of Notice the first time that a fund relies on Rule 30e-3, with subsequent filings required only to the extent that the Notice is materially changed.

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[104] For example, Rule 14a-16, which permits internet availability of proxy materials, require filing of a form of notice of internet availability. *See* Rule 14a-16(i) under the 1934 Act.

SIFMA AMG and AMF sincerely appreciate the opportunity to comment and your consideration of these views. We stand ready to provide any additional information or assistance that the Commission might find useful. Please do not hesitate to contact either Timothy Cameron at [redacted] or [redacted] or Lindsey Keljo at [redacted] or [redacted] with any questions.

Sincerely,

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