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**By Internet Delivery**

Mr. Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, D.C. 20549-1090

**Re: File No. S7-08-15 – Rule Proposal on Investment Company Reporting  
Modernization, Investment Company Act Release No. 31610 (May 20, 2015)**

Dear Mr. Fields:

This letter is in response to the Commission's solicitation of comments on its rule proposal relating to Investment Company Reporting Modernization. I am a professor of law who has written and taught in the area of investment management regulation for a number of years. I also serve as an independent trustee for a small ETF trust that offers a series of funds. My comments reflect my personal views and not those of my academic institution nor the ETF trust on whose board I serve.

I write first to express my strong agreement with an important methodological approach that underlies this rulemaking. In this rule proposal, the Commission correctly emphasizes, with greater clarity than in other investment company and investment adviser rule releases, the potential public policy importance of disclosure not only when it is directed solely to investors for their immediate use, but also when it indirectly benefits investors. Investors are frequently the beneficiaries of disclosure requirements fashioned to help other potential users of disclosure gather, disseminate and analyze fund information. The potential users include data aggregators, information intermediaries, academic researchers, and market professionals who regularly filter and distill information for investors,

I have previously advocated that the Commission adopt a more expansive view of its disclosure rulemaking mandate and more specifically a view that considers layered forms of disclosure (and disclosure documents) that meet the needs of different constituent end-users of disclosure. "[M]ore comprehensive disclosure documents should be freed of the constraint that the subject matter be comprehensible to average investors. Instead, the SEC should explore whether disclosure of more technical financial information about investment portfolios (relating to, for example, risk) should be mandated where such information could be analyzed by

professionals in ways that might aid average investors.” Joseph A. Franco, *A Consumer Protection Approach to Mutual Fund Disclosure and the Limits of Simplification*, 15 Stan. J. L. Bus. & Fin. 1, 60 (2009).

Such disclosure is unquestionably in the public interest and comes within the purview of the Commission’s unusually broad, and in some respects nearly plenary, rulemaking authority under Sections 30 and 38 of the Investment Company Act and its capacious recordkeeping authority under Section 31. Moreover, Congress underscored that these various grants of rulemaking authority should be viewed in light of the statute’s overriding interpretive principle, found in Section 1(b) of the Investment Company Act, which requires that provisions be interpreted to “to mitigate and, so far as is feasible, to eliminate the conditions enumerated [in the Investment Company Act’s legislative findings] which adversely affect the national public interest and the interest of investors.”

The disclosure mandated in this proposal finds significant justification in considerations of public policy. The rule proposal’s various disclosure and reporting requirements, especially those requirements relating to portfolio disclosure, risk metrics and fund use of derivatives, serve the public interest and/or the protection of investors. The information is of obvious relevance to information intermediaries and market professionals in assessing individual fund performance or in comparing the performance of funds. Each fund is the lowest cost provider of portfolio information about itself and there is little social value in having information intermediaries or market professionals expend resources in trying to construct less precise approximations of the same information about different funds. Mandated disclosure improves the accountability and integrity of such information and makes it difficult for funds or portfolio managers to provide post hoc rationalizations for fund performance to third parties. Finally, such disclosure improves the ability of information intermediaries to make meaningful comparisons of performance among funds.

Another important implication follows from the Commission’s recognition that the utility of mandated fund disclosure is not limited to its immediate usefulness to average investors, but to its net usefulness after considering how other potential users of the disclosure may use the information to assist investors make informed investment decisions. The Commission should make nuanced assessments of how different constituencies might use the information in evaluating comments to this rule proposal. In this regard, the fact that average investors may not express strong views on this matter, or that funds self-interestedly disclaim the significance of such information to average investors, is beside the point. A critical consideration for the Commission should be: is the information potentially relevant to regulators, information intermediaries, academic researchers or market professionals, all of whose activities benefit investors and the public interest?

I have three brief substantive comments. First, I agree with the proposal that funds disclose their portfolios monthly, with every third month available to the public 60 days after the end of each fund’s fiscal quarter. I believe, however, the rulemaking proposal could be improved by making all portfolio filings publicly available either as soon as 180 days after filing, or no later than 360 days after filing. The extended disclosure delays will all but eliminate any risk of injurious forms of reverse engineering or front-running of fund portfolio strategies. While such disclosure may not be directly useful to average investors, such information will be useful to information intermediaries and market professionals who are better suited in evaluating

the consistency of advisers in executing their portfolio strategies or detecting instances of window dressing. Indeed, the eventual release of all portfolio filings would enable markets to police managerial deviations from publicly stated investment objectives and styles, and enhance the ability of information intermediaries to prepare more precise attribution analyses of funds' performance. Inconsistent investment management behavior need not give rise to violations of statutory or rule-based requirements, but exposure of such conduct by information intermediaries may provide a form of therapeutic market discipline. Moreover, the mere potential of sunlight on such practices may serve as a powerful deterrent to such forms of otherwise non-transparent behavior.

Second, requiring the use of more sophisticated forms of risk metrics in describing certain investment portfolios is a welcome development. The Commission explored the use of more sophisticated risk metrics in 1995, but then abandoned these efforts in 1998 in adopting new amendments to Form N1-A. In doing so, the Commission mistakenly reasoned that such disclosure would be relevant only to a limited audience of sophisticated professionals and therefore would not be helpful to average investors. *See Franco, Consumer Protection Approach to Mutual Fund Disclosure, supra* at 73 & nn. 230-234. Such disclosure, however, can be helpful to average investors if sophisticated information intermediaries use such information to make recommendations that influence the behavior of average investors.

Third, I fully support the proposal's requirement that funds disclose the name of their chief compliance officers (even though many funds already do so) and the person compensating the fund's CCO. I believe this basic requirement should also be supplemented by a requirement to name of the investment adviser's chief compliance officer as well. The purpose of this requirement goes beyond the staff's need to contact such individuals. It is important for the Commission to begin to monitor compliance personnel structures used by funds to inform examination protocols. When the Commission originally adopted compliance rules for investment companies and investment advisers in 2003, it expressed a desire to allow funds and firms to experiment with different compliance personnel structures. This experimentation has now progressed more than ten years and it is important for the Commission to begin gathering basic information systematically that would allow it to make more discerning judgments about the interplay between fund and adviser compliance arrangements.

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I express no views on whether electronic access to shareholder reports (or equivalent forms of disclosure) is an appropriate default in lieu of physical delivery. I am happy to respond to any questions or requests for clarification and can be reached by e-mail at [jfranco@suffolk.edu](mailto:jfranco@suffolk.edu) or by telephone at 617-573-8152.

Very truly yours,

s/ Joseph A. Franco

Joseph A. Franco  
Professor of Law