

# Regulatory Insights

## Regulatory Insights for Asset Managers, Mutual Funds and Retirement Firms

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### FINAL SEC RULE 30E-3 – OPTIONAL INTERNET AVAILABILITY OF INVESTMENT COMPANY SHAREHOLDER REPORTS

On June 4, 2018, the U.S. Securities and Exchange Commission (SEC) voted to pass Rule 30e-3 under the Investment Company Act, which provides fund companies with the option of making shareholder reports available over the internet. Broadridge is creating a comprehensive preference collection solution to collect shareholder preferences for full paper reports during the extended transition period starting Jan 1, 2019. This solution can be used by both, broker-dealers and funds for beneficial and direct-held shareholders, respectively. Watch this space for further details.

- For a detailed overview of the rule, please visit: <https://www.broadridge.com/resource/sec-rule-30e-3-provides-for-optional-internet-availability-of-shareholder-reports>
- On August 3, Twin River Paper Company, Consumer Action, the Paper Coalition and other entities filed suit in federal court to prevent the SEC from implementing the final rule, which becomes effective on January 1, 2019 (and notices can be used starting on January 1, 2021).
- Broadridge is hosting a webinar on Rule 30e-3: Best Practices for Notice, Access and E-Delivery will be shown on November 26, 2018. t Noon ET. To view the live webinar or the on-demand replay simply register [here](#).

### SEC: PROXY PROCESS DISCUSSIONS

- On November 15, the SEC held a roundtable to discuss the U.S. proxy process. Potential topics include: voting process (“over voting” and vote confirmation), retail shareholder participation, proxy advisor firms, blockchain, and universal proxy ballots.
- On September 13, the SEC withdrew two proxy advisor no action letters saying that the purpose was “to facilitate the discussion at the Roundtable and looks forward to receiving information and feedback from stakeholders with multiple perspectives...”
- The SEC Investor Advisory Committee’s September 13 meeting included panel discussions on the proxy process, including U.S. Proxy Voting Infrastructure. Lyell Dampier from Broadridge participated.

## SEC'S FISCAL YEAR 2018 - 2022 STRATEGIC PLAN

- On October 11, the SEC released its Strategic Plan for FY 2018 through FY 2022. The Plan provides their plan for the next 4 years, which includes a focus on investors, innovation and performance.
- The SEC is required to publish a plan in accordance with the Government Performance and Results Modernization Act of 2010, which requires federal agencies to outline their missions, planned initiatives, and strategic goals for a four-year period.
- Notably, the plan includes the SEC's focus on disclosure modernization for retail investors: "Modernize design, delivery, and content of disclosure so investors, including in particular retail investors, can access readable, useful, and timely information to make informed investment decisions."

The press release and full Strategic Plan can be found at: <https://www.sec.gov/news/press-release/2018-234>.

## SEC: NEW SEC COMMISSIONER ELAD ROISMAN

- On September 5, Elad Roisman was confirmed by the U.S. Senate to be a member of the Securities and Exchange Commission, succeeding former Commissioner Michael Piwowar (Republican). He will serve a five-year term.
- Roisman previously served as chief counsel at the U.S. Senate Banking Committee chaired by Republican Senator Mike Crapo. Before joining the Senate banking staff in 2014, Roisman served as an aide to former SEC commissioner Daniel Gallagher, with a focus on trading and markets issues. He previously worked at the New York Stock Exchange.
- Allison Lee (Democrat), who previously served as an aide to SEC Commissioner Kara Stein, as well as an enforcement attorney at the SEC, is reportedly President's Trump's nominee to replace Stein, whose term has expired.

## DALIA BLASS TESTIMONY ON "OVERSIGHT OF THE SEC'S DIVISION OF INVESTMENT MANAGEMENT"

- On September 26, Dalia Blass, Director, Division of Investment Management ("IM") provided testimony before the United States House of Representatives Committee on Financial Services, Subcommittee on Capital Markets, Securities, and Investment. Her testimony included:
  - Regulation Best Interest – Blass summarized the four rule proposals (new standards of conduct for broker-dealers (Regulation Best Interest), a relationship disclosure document for broker-dealers and investment advisors (Form CRS),

clarifications of the fiduciary standards for investments advisors and restrictions on the use of the title "adviser" or "advisor" by broker-dealers and other related items) and said they are now considering next steps: "The Commission has received many letters with thoughtful and varying perspectives. The Office of the Investor Advocate is also in the process of performing investor testing on aspects of the rulemaking package, and I anticipate that the results of that testing will be made available in the comment file. SEC staff are carefully reviewing this information and will continue to consider public comments as we develop a recommendation for the Commission on next steps."

- Modernizing Fund Disclosures – Blass provided an overview of new rule 30e-3, their releases on ways to improve and modernize mutual fund disclosures and on the current framework for fees that intermediaries charge funds to deliver disclosure documents including fund shareholder reports:
  - Rule 30e-3 – The new rule provides a new optional 'notice and access' method for delivery shareholder reports to investors, beginning on January 1, 2021. The two-year transition period starting on January 1, 2019 includes the use of "prominent disclosures in prospectuses and other shareholder documents that will notify investors of the upcoming change in delivery method, ensuring investors will have multiple opportunities to receive these reports in the form that they prefer."
  - Fund Disclosure Release – "This is an opportunity to examine, in light of advances in technology and design techniques, whether fund disclosures are working as well as they can for the more than 100 million individuals that invest in funds. The request for comment invites Main Street investors, experts, and others to inform the Division's policy recommendations on these disclosures."
  - Fund Processing Fees Release – Blass noted that "the release asks for public input on the transparency of these fees and whether the fees should be overseen by FINRA."
- The comment period for both Releases ends October 31.
- Variable Annuity ("VA") Summary Prospectus - "The division is considering whether to recommend a new summary prospectus that would help investors better understand these products' costs and risks, and also produce cost savings that could be passed on to investors," A VA summary prospectus was included on the SEC's regulatory agenda for October, so it is possible that a rule proposal could be issued this fall.



Note: On October 30, the Commission issued the rule proposal with comments due on February 15. The rule proposal can be found at: <https://www.sec.gov/rules/proposed/2018/33-10569.pdf>

- Exchange-Traded Funds – Currently, ETFs require exemptions from certain provisions of the Investment Company Act of 1940 to operate, which may result in delay and cost for new sponsors. The Commission proposed a new rule to replace the process of individually-issued orders for exemptive relief. “A final rule for routine ETF relief would enable Division staff to focus more of its resources on requests for exemptions that represent the next generation of potential developments under the Act.”
- Covered Investment Fund Research Reports – “The proposed rules would harmonize the treatment of investment fund research with research on other public entities by establishing a safe harbor for a broker or dealer to publish or distribute research reports on investment funds under certain conditions...Overall, these proposed rules would promote research on mutual funds, ETFs, registered closed-end funds, business development companies (“BDCs”), and similar covered investment funds and provide investors with greater access to research to aid them in making investment decisions. The Division is reviewing comments from the public on the proposal as we move forward with providing a recommendation to the Commission for adoption.”
- Offering Modernization for Business Development Companies (“BDCs”) and Closed-end Funds – IM is working to develop rule recommendations for the Commission to consider that are consistent with congressional mandates to: (i) modernize the way BDCs and closed-end funds are offered to the market, including harmonizing registration and reporting requirements for BDCs with those for public corporate issuers, and (ii) to issue rules to allow certain registered closed-end funds to use securities offering and proxy rules similar to those available to public corporate issuers.
- Use of Derivatives by Registered Funds and BDCs - Funds use derivatives for a variety of purposes, including, for example, to seek higher returns through increased investment exposures; hedge interest rate, credit, and other risks in their investment portfolios; gain access to certain markets; and achieve greater transaction efficiency. In 2015, the Commission proposed a new exemptive rule to address the use of derivatives by registered funds and BDCs and received significant industry comments on the proposal’s regulatory approach. Based on these comments, IM “is considering a recommendation that the Commission re-propose a new rule designed to enhance and modernize the regulatory framework for registered investment companies’ use of derivatives.”
- Amendments to the Marketing Rules under the Investment Advisers Act - Registered investment advisers (“RIAs”) are subject to a rule governing marketing that has not changed significantly since its adoption in 1961. Since that time, the asset management market, technology and the types of investors that investment advisers serve has evolved. For example, in 1961, investors did not have resources like the internet to research and select investment advisers, and social media in its current form did not exist.
- Two areas that the SEC is considering changing to reflect current consumer behavior and market practices are (i) the use of testimonials, which is currently prohibited, and (ii) the rule governing payments for soliciting business on behalf of RIAs.

- New Valuation Guidance for Fund Boards – As part of the initiative to review and modernize fund board responsibilities, Blass said that IM is working with the Office of the Chief Accountant on the new recommendations to “reflect evolution” in both markets and reporting standards. “This initiative seeks to identify the areas where board oversight is most valuable and to assess whether changes, such as those in technology or the securities markets, warrant reconsideration of board responsibilities in certain areas,” Blass said. “This initiative also seeks to inform future policy decisions about the appropriate role of the board in fund governance.”

- Blass’s full written testimony can be found at: [www.sec.gov/news/testimony/testimony-2018-09-26-blass](http://www.sec.gov/news/testimony/testimony-2018-09-26-blass)

### **CCO REPRESENTATIONS MAY REPLACE ROUTINE QUARTERLY BOARD DETERMINATIONS ON AFFILIATE TRANSACTIONS**

- On October 12, the SEC provided no-action relief to the Independent Directors Council (the “IDC”), agreeing not to recommend enforcement action if a fund’s board of directors receives a quarterly written representation from the chief compliance officer that fund transactions under the 1940 Act complied with written procedures adopted by the board pursuant to the Exemptive Rules, instead of the board itself determining compliance with the Exemptive Rules.
- The SEC staff expressed its agreement with the IDC’s positions (stated in its incoming letter) that (i) in adopting Rule 38a-1, the SEC “expressed a view that the proper role of the board with respect to compliance matters is to oversee the fund’s compliance program without becoming involved in the day-to-day administration of the program” and (ii) the no-action assurances requested by the IDC were “consistent with the [SEC’s] approach in adopting Rule 38a-1 and would allow boards to avoid duplicating certain functions commonly performed by, or under the supervision of, the CCO.”
- The SEC’s no action letter can be found at: <https://www.sec.gov/divisions/investment/noaction/2018/independent-directors-council-101218.htm>

### **SEC: FUND RETAIL INVESTOR EXPERIENCE AND DISCLOSURE - REQUEST FOR COMMENT**

- See July edition of Regulatory Insights for a detailed overview of the release: <https://www.broadridge.com/assets/pdf/broadridge-regulatory-highlights-july-2018.pdf>
- Comments were due on October 31, 2018.

- The Request for Comment can be found at: <https://www.sec.gov/rules/other/2018/33-10503.pdf>

### **SEC: NYSE INTERIM FEES - REQUEST FOR COMMENT**

- See August 2018 edition of Regulatory Insights for a detailed overview of the release. <https://www.broadridge.com/assets/pdf/broadridge-regulatory-insights.pdf>
- Comments were due on October 31, 2018.
- The Request for Comment can be found at: <https://www.sec.gov/rules/other/2018/33-10505.pdf>

### **TRUMP EXECUTIVE ORDER ON RETIREMENT REGULATIONS**

- On August 31, President Trump’s executive order directed the Department of Labor (“DOL”) and the U.S. Treasury to look into retirement regulations and guidance with a goal to: (i) expand the use of Multiple Employer Plans (“MEPs”), (ii) improve plan disclosures, including use of electronic delivery, and (iii) review whether to increase the age requirement for minimum required distributions from retirement plans.
- The DOL and Treasury have 180 days to consider rule-making to clarify and expand the circumstances under which United States employers, especially small and mid-sized businesses, may sponsor or adopt a MEP as a workplace retirement option for their employees, subject to appropriate safeguards (On October 22, the DOL issued a rule proposal to expand the use of MEPs).
- The DOL and Treasury have one year to review regulations and guidance to simplify and improve disclosures while reducing employer costs. This includes the “potential broader use of electronic delivery...” (This directive appears consistent with elements of House bill HR 4610 “Receiving Electronic Statements to Improve Retiree Earnings (RETIRE) Act” that would change the delivery defaults from paper to e-delivery for communications to retirement plan participants.)
- Treasury has 180 days to examine the life expectancy and distribution period tables in the regulations on required minimum distributions from retirement plans and determine whether they should be updated to reflect current mortality data and whether such updates should be made annually or on another periodic basis.
- The executive order can be found at: <https://www.whitehouse.gov/presidential-actions/executive-order-strengthening-retirement-security-america/>

## H.R. 2319 – BILL TO RESCIND SEC MONEY MARKET FUND RULE

- House bill HR 2319 would rescind certain requirements in the SEC's [2014] money market fund rule. If voted into law, it would allow any money market fund to use a stable NAV, rather than floating its value, if its board of directors approves the decision.
- In addition, funds would not be required to charge a liquidity fee for investor withdrawals. However, the bill would bar money market funds from receiving direct federal assistance such as:
  - Insurance or guarantees from the Federal Deposit Insurance Corporation.
  - Treasury Department transactions.
  - Advances from a Federal Reserve credit facility or discount window, unless the program was established in "unusual or exigent circumstances."
- Underwriters and dealers couldn't sell money market fund securities unless they disclose the prohibition on federal aid.
- The bill can be found at: <https://www.congress.gov/bill/115th-congress/house-bill/2319/text>

## CALIFORNIA CONSUMER PRIVACY ACT

- On June 27, the California Consumer Privacy Act (CCPA) was signed into law. The CCPA creates many new consumer privacy rights, similar in some respects to the European Union's General Data Protection Regulation (GDPR). This will cause many companies doing business in California to reassess their collection and use of personal information and modify their business processes to accommodate the new rights. Organizations subject to the CCPA must comply by January 1,

2020. A summary and full text of the law can be found at: [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB375](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB375)

## PROPOSED REGULATION BEST INTEREST/FORM CRS

- The comment period closed on August 7. However, the SEC conducted a 7th investor roundtable in Baltimore on September 20. Despite industry and consumer group pushback, Chairman Jay Clayton remains committed to moving forward with a rule that provides retail investors' choice (both brokerage and advisory relationships), with a clear duty of care (e.g., fiduciary and/or best interest) that is consistent with investors' expectations. A shorter and simpler Form CRS ("Client Relationship Summary") would be consistent with industry comments. In Baltimore Clayton said he won't set a deadline for the agency to complete its work on investment advice reform: "I have no specific date set yet... It's not this month, probably not next month. We have work to do." However, the SEC's fall 2018 regulatory agenda set a target date of September 2019 to finalize its proposed package of investment advice rulemaking.
- On September 12, a letter signed by 35 Democratic lawmakers asked the SEC to revise and strengthen its rule proposal by requiring broker dealers to comply with the same fiduciary standard that investments advisors have today. The letter can be found at: [https://democrats-financialservices.house.gov/uploadedfiles/cmw\\_-\\_reg\\_bi\\_to\\_sec\\_-\\_9.12.2018.pdf](https://democrats-financialservices.house.gov/uploadedfiles/cmw_-_reg_bi_to_sec_-_9.12.2018.pdf)
- Comment letters, meetings with SEC officials and the transcripts of the roundtable can be found at: <https://www.sec.gov/comments/s7-07-18/s70718.htm#meetings>

This is not intended as legal advice. We recommend you contact your legal counsel for a complete understanding of the information contained in this publication.

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