Re: S7-09-20

SEC,

We are 2 recently retired 1940 Act attorneys. We support your efforts to streamline fund disclosures. Please accept our comments in the following areas:

- **Shareholder Report** – We generally support the much shorter annual report and believe it generally focuses on the right places.
    - **Presentation of Costs**.
        - This presentation is confusing. You should simply disclose the expense ratio and the cost per $10,000.
        - It is not appropriate to reflect performance in the cost presentation. Performance information has its own place in the shareholder report. Including performance information may produce odd and confusing results. For instance, two S&P 500 funds with the same fees would show drastically different figures if one ended its fiscal year on 2/29/2020 and another on 3/31/2020, and that difference is not due to costs.
        - The cost presentation should show acquired fund fees and expenses as part of the cost figure. There is no reason to include these fees in the prospectus and not in the annual report. The annual report figure need not line up with the financial highlights, it should instead be the best presentation of costs for investors. Alternatively, you could always include Acquired fund fees and expenses in the financial statements. It should be easy to audit since the calculation is formulaic.
        - If you continue to show performance, investors will be confused by showing NAV and market value performance for ETFs. Pick one.
        - There are too many footnotes and we are not sure what we are supposed to do with the information provided in the first footnote.
    - **Performance.**
        - We believe it is important to compare performance to a broad-measure of market performance. We understand that there are some concerns about the costs of this requirement. While some indices charge licensing fees, others do not. There is also an opportunity for SEC's DERA or some other entities to create an open-source index.

    - The clarifying definition of broad-based index is the right approach. However, we think you need to be clearer about what exactly works and what does not. For example, can you use a small-cap index, an emerging markets index, a junk bond index, a government bond index, etc.? We believe a majority of funds may need to change their primary index in response to this change. Should funds disclose the old and new index for the first year of any transition, or is it not necessary for this transition since it is imposed by you and not at the discretion of funds?
    - We agree with the changes to the line graph. We also believe that funds should make better efforts to make this chart readable. Often in black-and-white post-consumer content paper, it is difficult to distinguish the multiple lines in the table. Also, the Y-axis is often misleading. Funds with relatively flat performance may show a very steep curve in their performance line graph. (*e.g.*, the x-axis goes from $10,000 to $11,000; instead of from $0 to $12,000).
- **Statement Regarding Liquidity Risk Management Program.**
    - This disclosure should only be required for funds that are subject to significant liquidity risk, if at all. Most equity and bond funds do not raise material liquidity risks. Further, it would be hard to tailor such disclosures. Afterall, couldn't the same program features work for nearly all domestic equity funds?
    - Consider requiring disclosure about any liquidity events in MDFP (as originally proposed in 2018).
    - We think funds should be required to disclose their aggregate liquidity bucketing in their annual report. We believe this information is important to investors and will help them appreciate any liquidity risk. This bucketing information would be more informative that the disclosure you are asking for.
- **Frequency**
    - We think a report should only be delivered and prepared once per year so long as semi-annual financials are available online (and filed) as well as more current performance and a graphical representation of holdings is available online.
- **Posting Information Online.**

- We think you need to be clearer about how funds should post information online. You are asking for a lot of disparate pieces of information to be posted (in addition to posting requirements associated with other SEC rules) and I think it may be overwhelming for investors. Also, do you expect that most investors will just post a PDF of their N-CSR?
- Any quarterly holdings information that is posted should also include a graphical representation of holdings. Also, any listings of holdings should be in an Excel or similar format, or be a sortable list.
- For investors that elect electronic delivery, please do not allow funds to post public materials behind a password and they should describe the contents of any posted material in the email notice. We receive several emails a year about "important changes to our fund". We are prompted to log-in, need to be texted a code before we can log-in (two-factor authentication), only to find that any change (assuming we would even notice it), is quite minor (e.g., changing a portfolio manager on an index fund; or a change describing that an index fund will concentrate in the constituents of the index). Such a practice discourages investors from clicking on the link in the future.
- Please provide a simple means of posting required materials online. Particularly for small funds, investors may not even visit a fund's site and instead use their intermediaries website. So, requiring any complexity may not be appropriate. Further, complexity only benefits the likes of Broadridge that has a monopoly on hosting fund information and charges exorbitant fees to do so.
- Please consider all of the information the various SEC rules require to be posted to a website. (Rule 498, Rule 498B, Rule 30e-3, ETF Rule, Form N-1A, E-proxy, etc.). This will lead to information overload. For example, for an ETF, do funds really need to post 5 sets of holdings information (daily, and the last 4 quarter ends). It seems like overkill. Also, the regulatory documents is in addition to other information funds may want to provide that are ore tailored to the fund and its investments. (e.g., updated performance, explanations of asset types, fact sheet, commentary etc.). Currently, many funds include a page with a laundry list of funds and 5 required documents. Soon, this approach will

not be feasible as way too much information will need to be posted.

    - Consider how funs should post information. For instance, for the proxy voting record or holdings, can the fund use one extremely long PDF document that covers the entire fund group?

  - **Alternatives**
    - We believe that a prospectus is the more useful document for new and current investors than an annual report. The most important pieces in the annual report are costs and performance, both of which are reflected in a standardized and clear format in the prospectus. Please consider allowing the summary prospectus to satisfy the requirement to deliver an annual report with one modification; include a graphical representation of holdings in the prospectus. Also, require the summary prospectus to begin with a brief description of any material changes (similar to form ADV and the variable product updating summary prospectus).

- **Rule 498B**
  - Our favorite part of the rule is the requirement to delivery a summary of material changes. Currently, there is no such delivery requirement. A fund can make significant changes to the fund, but if it does not require a shareholder vote or implicate the names rule, there is no prospectus delivery obligation (just a filing obligation). We do note that notwithstanding that there is no delivery obligation, many funds deliver an updated summary prospectus or sticker. On an ancillary note, there should be a prospectus delivery requirement for material changes; I don't think Congress ever intended for an access equals delivery regime for significant changes to a fund.
  - Can funds comes in and out of 498B within a year? For example, can they rely on 498B when they send their annual report, but not rely on it in the middle of the year when a prospectus sticker is filed? We do not think this should be the case.
  - The separate notice requirement in 498B seems to be overkill. Please consider adding a requirement to rule 498 that any summary prospectus (or amendment thereto) also briefly describe any material changes (in lieu of a separate notice) and funds can deliver the revised summary prospectus. If a change is significant, it should be treated as a new investment decision and a prospectus

should be send. The point of 498B is that if the fund is operating per its current disclosures, there is no need to delivery a mailing.

- Rules 498, 498A, and proposed 498B are very difficult to follow. I agree with the approach, but think they can be revised for clarity (and shortened).

- **Fee Table**
  - We strongly support the streamlined fee table and believe it is long overdue.
  - We strongly oppose the change to Acquired Fund Fees and Expenses (AFFE).
    - AFFE shows the costs of outsourcing a fund’s management function and should be reflect as an all-in cost of. You should not permit a fund to hide these fees. The goal should be to increase transparency, not to obfuscate fees.
    - Any AFFE should <u>not</u> be relegated to a footnote. You are requiring funds to disclose the prospectus fees in advertising materials. By including these fees in a footnote, they will not find their way into advertising materials, fund screeners and the like. So, a footnote has the same impact as showing <u>no</u> AFFE at all. In addition, required 401K participant disclosures and your variable insurance product summary prospectus disclose fund fees as reported in the total annual operating expenses line item, and does not show any associated footnotes.
    - We understand that Business Development Companies are driving this AFFE accommodation. BDCs have asset weighted average fees 25x higher than open-end funds. Also, BDCs have 0.4% of the assets of open end funds. Yet you are changing the fee disclosure regime for $25 trillion in assets to accommodate a $140 billion dollar investment type that is high cost, high profit, and extorts small businesses). This is not right. A fund should reflect the fees they bear directly or indirectly that are easily quantifiable. There is no reason to carveout a portion of AFFE.
      - Suppose ABC Income Fund has operating expenses of 0.50%. Suppose it could choose to invest 9.5% in a BDC with a 10% expense ratio. Under today’s regime, the fund would be required to show about a 1.45% expense ratio. Under your proposed regime, the fund could still reflect 0.50%. That BDC could even be

affiliated with the fund. It is ludicrous to allow funds to hide these fees.

        - We also oppose carving out all money market funds. There is no requirement for a fund to invest in a money market fund. It can directly purchase cash equivalents. If a fund instead decides to outsource the cash management function, they should show the associated costs. We also believe the money market fund carveout may lead to funds of money market funds (in order to hide management fees). (These did exist in the 1970s.)

    - Transaction costs

        - We do not believe you need to show transaction costs. Securities lending is a net benefit to a fund and not a cost that needs to be disclosed.

        - When dealing with affiliates, funds should be required to operate on arms-length terms or better. As long as this requirement is in place, the cost figure need not be disclosed.

- **Principal Risks:**

    - We agree with your approach to rein in the length of principal risks.

    - We are not sure what the 10% assets at risk standard means. Does it refer to a fund's assets or exposure to a given type of investment; or does it refer to a position that can cause a 10% loss? I believe it should be the former (if a fund invests 10% in high yield bonds, it should disclose high yield bond-related risks).

    - In our experience, the Commission staff is often the source of excessive disclosure. They always ask for more and more disclosure without any appreciation for the layered approach to disclosure and without deference to the fund in making its determinations. Please make sure sensibility prevails in the review of disclosure filings.

    - We believe the Commission should also adopt a risk rating. A balanced fund is less risk than an equity fund and yet discloses twice as many risks. This may confuse investors as to the level of risk associated with an investment in a fund.

- **Advertising Rules:**

    - We generally support the requirement to show gross fees in marketing materials. Oddly, the variable products summary prospectuses only require disclosure of net expenses for the underlying funds (and no requirement to deliver a prospectus). For consistency and sensibility's sake, please revise forms N-4 and N-6 to show the gross expenses for the underlying funds for the same policy reasons that it belongs in advertising materials.

  - The requirement that fees not be misleading is a little puzzling. We realize zero fee funds may have "hidden fees", but so can a 50 BPs fund, so would nearly all funds need this clarifying disclosure?

- **Clarifications:**
  - Please clarify what material that is posted online is a rule 482 prospectus and which is supplemental sales literature. This is not clear from SEC rules or associated positions. Does a prospectus on the same landing page make something supplemental sales literature? Does a link to the prospectus in the marketing piece render it supplemental sales literature? What are the precise parameters. These are your rules, please help funds get it right.
  - Please update your guidance on electronic delivery. Please make it easier to opt into electronic delivery, such as by making it the default for investors who purchase shares through electronic means.

- **Other suggestions:**
  - While permitting interactive features to be overlayed on top of regulatory materials is sensible, we are not sure any funds will take you up on this offer. There is little desire to add functionality to regulatory documents. If funds want content-rich tools, they will use them on non-regulatory portions of their websites. Also, many investors never go to a fund's website. Instead they review fund materials through their brokerage website.
  - Tag proxy voting records (on N-PX) and the results of the funds own shareholder votes.
  - Tag the expense ratio in the financial highlights on form N-CEN.
  - Please make it easier for people to use all the tagged data you are collecting. There are no public providers making this information available and the private sources are prohibitively expensive.
  - Consider limiting the number of classes that can be shown in an annual report. Some funds have many classes, many of which are not available to most investors. Permit funds to break out annual reports by classes.
  - Jesus Christ this release is long. It is funny how you can be so verbose in a release telling funds to keep it brief.

- Also, please cut down on all these rulemakings; there are too many coming too fast. Let's give things a chance to shakeout. This is what drove us to retire. It is also peculiar that you are proposing these changes as rule 30e-3 is about to roll-out. It seems that a Commission under the same Chairman shouldn't be changing directions so drastically, so quickly.
- Please enact similar reforms for other funds and the annual reports of corporate issuers.
- Please make EDGAR a more useful tool for investors. Please allow funds to post PDFs of regulatory documents instead of requiring the torturous process of EDGARizing filings that just look ugly.
- We believe the Commission should take additional steps to permit a crypto-based '40 Act ETF. The SEC should facilitate innovation and permit a safe environment for funds to invest in cryptocurrencies. The current approach to new products seems to require that the SEC/staff turn away issuers 3 times before considering a new product.
- Consider renaming the required SEC forms for easy of use. For example:
    - Summary Prospectus → Fund Summary
    - Prospectus → Prospectus
    - SAI → [get rid of this, merge key portions into prospectus or N-CSR; select location based on the appropriate level of liability.]
    - Annual Report → Year in Review
    - N-CSR → Fund Dossier

Thank you.

Mary and Tom