



January 4, 2021

Mrs. Vanessa A. Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements (Release Nos. 33-10814; 34-89478; IC-33963; File No. S7-09-20).

Dear Secretary Countryman:

Better Markets<sup>1</sup> appreciates the opportunity to comment on the above-captioned Proposed Rule (“Notice” or “Rule” or “Proposal”) released by the Securities and Exchange Commission (“SEC” or “Commission”) for public comment.<sup>2</sup> The Proposal has the promise to significantly empower investors to make more informed investment decisions. We support this Proposal subject to the comments we offer below. We urge the Commission to adopt the suggestions we offer in this letter—and those made by investor advocates like the Consumer Federation of America.

The Commission would do well by investors if it fully embraces investor-testing before approving the various aspects of this Proposal. We agree that the status quo—when disclosures provided by funds run into hundreds of pages and are full of legal and technical boilerplate that essentially no one reads—needs to be significantly improved. But whatever replacement comes next must be tested through rigorous investor testing. While few comment letters submitted by ostensibly real investors can serve as an input for the Commission as it contemplates new

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<sup>1</sup> Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans’ jobs, savings, retirements, and more.

<sup>2</sup> See Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements (Release Nos. 33-10814; 34-89478; IC- 33963; File No. S7-09-20) 85 Fed. Reg 70716, available at <https://www.federalregister.gov/documents/2020/11/05/2020-17449/tailored-shareholder-reports-treatment-of-annual-prospectus-updates-for-existing-investors-and>.

disclosures, relying on those letters—as the Commission seems to be doing with this Release—in lieu of robust, scientific investor testing is not prudent.

Yes, indeed, many investors would “like” or “prefer” fewer pages to read or more engaging presentations, but a truer indication for the Commission would be whether average investors indeed are making more informed **and better** investment decisions when presented by new generation of disclosures and information. The North Star for the Commission should be the outcome when disclosures empower, enable, and propel savers and investors to grow and keep more of their money to be able to provide for their financial well-being. It would be a great missed opportunity if the proposed changes fail to effectively advance this cause.

## **GENERAL COMMENTS**

The proposed Rule would significantly change the provision of information by funds—such as mutual funds and Exchange Traded Funds—to investors (both those who are existing shareholders of a fund and those considering whether to purchase shares of a fund). The Proposal—among other important changes—would require that funds create and provide more concise and visually engaging shareholder reports that highlight key information, including fund expenses, performance, and holdings.<sup>3</sup> Subject to comments below regarding testing, we support these new requirements. Investors are currently ill-served by the essentially useless annual and shareholder funds’ reports they receive either from their financial professionals or funds themselves. These reports—as has been discussed throughout the Release—run hundreds of pages long, are replete with technical and legal jargon that very few investors can comprehend and even fewer can make informed investment decisions upon. The status quo indeed cries for reforms, but these reforms must be tested and deemed effective by the criteria we set out above: the new disclosures must empower, enable, and propel investors to make more informed and better investment decisions.

The Proposal would also change how funds transmit these reports and disclosures to investors, including, importantly, by prohibiting funds to send a notice (as they are permitted to do now under Rule 30e-3) to shareholders about the **availability** (and internet URL) of shareholder reports (but not the reports themselves). Under the Proposal, funds would deliver the more concise shareholder report in full. We fully support this change and urge the Commission to retain this reform as it moves to approve the Rule (or aspects of it).

The Rule adopts a layered disclosure framework where it would require the provision of most salient information to ordinary investors to be delivered in paper (or digital format) but also require the provision of additional information that may be of interest to market professionals and some financially sophisticated shareholders, such as fund financial statements, which would be available online and delivered in paper or electronic format upon request, free of charge. We believe this is a prudent approach. We urge the Commission to require that any data made available online be tagged and machine-readable, as we think third-party providers can peruse such data to offer valuable shopping services to consumers.

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<sup>3</sup> See Release at 70807.

Additionally, the Release would grant the option to funds to—instead of delivering annual prospectus updates to existing shareholders (updates that contain little to no change and end-up either in (hopefully) recycle bins or worse collect dusts on the shelves in the homes of ordinary investors)—notify shareholders promptly of certain **material changes** to the fund, provided the prospectus is available online and delivered upon request, free of charge.<sup>4</sup> We agree with all of these reforms.

Furthermore, and importantly, the proposed Rule would amend prospectus disclosure regarding fees and expenses and principal risks, including risks related to fund liquidity. We agree with and support these changes. We continue to believe<sup>5</sup> that the Commission’s 2018 decision to rescind a unanimously approved, pro-investor, pro-transparency, and pro-stability rule based on the unconvincing reasoning that the information related to funds’ liquidity risks is useless for investors—information that had **not** yet been produced and inserted into circulation—was bad public policy. The information—as required by the unanimously approved Rule 22e-4—would have both directly and indirectly empowered investors and helped them make more informed investment decisions about the composition and liquidity of mutual funds. Investors could have easily understood the liquidity profile of an investment company by studying the distribution among the four liquidity rankings or “buckets.” Investors would have been further empowered to make more informed investment decisions through the work of third-party analysts: the information disclosed through the rule would have provided raw material for third-party independent analysts and other FinTech firms to evaluate, compare, and distill for the benefit of retail and institutional investors. Perhaps this Release would mitigate the effects of the anti-transparency decisions made by the Commission in 2018.

Finally, “to improve fee and expense information that is available to investors more generally,”<sup>6</sup> the Commission is proposing to amend the investment company advertising rules to require that investors receive more transparent and consistent fee and expense information. These amendments to advertising rules should help investors make more informed investment decisions by more easily comparing costs and performance among various funds. We urge the Commission to further limit promotional and marketing materials in the shareholder reports and annual (and updated) reports. These self-serving claims from members of the board of the investment company (*i.e.*, “President’s letter”) or other promotional materials add to the length of these disclosures and aim to dilute and obscure material information important to investors.

## COMMENTS

Given Lack of Robust Investor-Testing, The Proposal Does Not Convincingly Show Whether The Average Retail Investor Would be Able or Inclined to Read, Comprehend, Absorb, Ask Questions About, or Make Informed Investment Decisions When Using The New Disclosures.

As noted above, in our view, any new disclosure rules finalized by the SEC must ensure that the resultant disclosures are indeed maximally investor-friendly and would help investors

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<sup>4</sup> See Release at 70750.

<sup>5</sup> See our comment letter re Investment Company Liquidity Disclosure (Release No. IC-33046; File No. S7-04-18), available at <https://www.sec.gov/comments/s7-04-18/s70418-3663853-162422.pdf>.

<sup>6</sup> See Release at 70807.

make more informed and better investment decisions. While we, too, are inclined to believe the various new requirements can indeed achieve the intended policy goals, we cannot be sure that they would in fact do so. To bolster the confidence of the investing public, the Commission should consider taking the following steps:

- (1) distill the most investor-friendly suggestions solicited through this comment process and then create as many alternative versions of the sample disclosures as practicable, including graphical and computer and smartphone-friendly versions;
- (2) conduct a robust, objective, and irreproachable investor-testing of these samples; and
- (3) share the results, data, and methodologies before approval of any particular content, format, presentation-style requirements.

Following this sequence of policymaking steps would the investing public (and the regulated industry) have confidence that the new summary or other disclosures would truly help investors make more informed decisions as it relates to investment products offered by investment companies.

In the hundreds of pages of the Proposal, the Commission falls short of convincingly showing that the average retail investor would actually use the information contained in the new disclosures to make more informed and better decisions with respect to his or her investment choices and financial well-being. As the Commission knows well, there are many investor and consumer studies, surveys, and other analyses showing that average retail investors often lack the basic knowledge necessary to understand complicated financial and investment matters, and that financial professionals enjoy informational asymmetry vis-à-vis the investor. Given this backdrop, the onus is on the Commission to prove that any new disclosures would effectively empower, enable, and propel investors to make more informed decisions that are in the best interest of the investors and their families and financial well-being.

In our view, the Proposal lacks the necessary empirical data and investor-testing that would have provided confidence to the investing public and those required to produce the disclosures that these new requirements would benefit investors and our financial markets. It is in the interest of investors—and the Commission—to empirically verify and validate the reasonableness of the assumptions that underlie the Proposal, such as those related to style, length, format, word-choice, etc. We urge the Commission to, after receiving comments on this Proposal, distill the most investor-friendly suggestions into as many sample versions of disclosures as practicable, including versions in computer, web-friendly, graphical, and info-graphical formats, and conduct robust and irreproachable investor-testing of the resulting options.

## **CONCLUSION**

We hope these comments are helpful. We support the Commission's efforts to empower investors to make more informed decisions as it relates to investing in mutual funds and other investment companies' products. This empowerment starts with requiring that funds produce and provide investor-friendly disclosures to investors. This Proposal—subject to further testing and

validation—has the potential to significantly improve investors’ experience and knowledge of investment products, and how their hard-earned money performs for the long term.

As should be with nearly all SEC endeavors: the focus of improving funds’ disclosures should be the average investor, and **not** reduce costs for funds’ sponsors (that in any case will likely not pass on to shareholders), or provide for regulatory relief to the funds or its boards of directors, or the intermediaries that sell these products to investors, and not those who produce or facilitate the distribution of disclosures. We believe the Commission does have the average investor in mind in designing this Proposal. We urge the Commission to further test and validate the newly proposed disclosures, and approve them only after such testing and validation.

Sincerely,

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