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January 15, 2021

Ms. Vanessa Countryman
Secretary
US Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File No. S7-09-20
SEC Proposal on 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 No. IC-33963 (August 5, 2020)

Dear Ms. Countryman:

Stradley Ronon appreciates the opportunity to comment on the Securities and Exchange Commission's (the "Commission") Proposal on 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 (the "Proposal") under the Investment Company Act of 1940, as amended ("Investment Company Act").[1] Our firm represents many registered funds, fund directors, and asset management firms that advise and sponsor funds. We are writing to provide our views on select aspects of the Proposal because the Proposal would directly apply to our clients.

We have focused our comments on the four main topics discussed below.

[1] SEC Release Nos. 33-10814; 34-89478; IC-33963 (August 5, 2020), *available at* https://www.sec.gov/rules/proposed/2020/33-10814.pdf. We use the term "fund" to refer to mutual funds and exchange-traded funds or ETFs.

The Summary of "Material Changes" Should Be Removed from the Proposal or Modified

The Commission proposes a new section to annual shareholder reports that would describe "material changes to the fund" since the beginning of the reporting period, or that the fund plans to make during the upcoming annual prospectus update. We recommend removing such summary of "material changes" or, alternatively, making modifications to the summary of "material changes" requirement in the Proposal as described below. We recommend that the summary of material changes requirement be removed from any final rule. We do not believe that a summary of material changes will be useful to investors, as it is difficult to understand such changes without fuller context. The benefit of the summary prospectus is that the information of primary importance to shareholders is synthesized into one document with context provided. It would be difficult to highlight changes to the summary prospectus in a different document where the shareholder would not have the benefit of the entire summary prospectus. We believe that prospectus supplements effectively convey changes that occur throughout a fund's fiscal year.

As an alternative to removing this summary of material change concept in its entirety, we suggest that you instead require a legend in shareholder reports indicating that "Changes that occurred during the most recent [fiscal year] can be found here: [link to prospectus website, which would have all supplements]." This way, shareholders could view the changes that occurred during a particular period all at once, as expressed via prospectus supplements, while at the same time viewing the summary prospectus so that shareholders can understand what changed in the context of the entire document.

If the Commission does move forward with the summary of "material changes" concept, we suggest adopting modifications to the requirement as proposed. First, we urge the Commission to remove the "materiality" concept from the list of changes, as what is "material" is often subjective, could differ among shareholders, and could lead to future litigation if a shareholder determines that an item he or she deemed to be material was not enumerated in the list of material changes. Further, the prescribed qualifier to describe "material" changes does not give funds guidance as to what changes should be included and could be interpreted in a variety of ways: material to the risk profile; material to shareholder fees; material to the share class features; material to what the fund held (even if no change in the strategy); material changes to an adviser entity, etc. We believe that if the Proposal were adopted as proposed, funds would be inclined to be over-inclusive in their list of changes that occurred during the fiscal year in their annual report, with cross-references to the actual changes in the prospectus, so as to avoid the risks associated with possibly failing to disclose a change that could have been considered material by some shareholders or claims that changes were inadequately summarized. This approach would thwart the Commission's goal of streamlined disclosure for shareholders.

In addition, we also urge the Commission to remove the requirement to discuss planned future changes in the proposed summary of material changes. We think the forward-looking nature of these changes could lead to selective disclosure issues as one set of shareholders (those who held the fund at the end of the fiscal year) would receive notice of the proposed changes but another set of shareholders (those who bought the fund after the close of the fiscal year but before the next annual update) would not receive notice of the changes. We also generally do not believe that the

proposed forward-looking information would be helpful to investors as it could change prior to effectiveness, which would only result in greater investor confusion.

The Mailing of Material Changes Requirement in Rule 498B Should Be Modified

As a condition of reliance on proposed Rule 498B, funds would be required to provide notice to all shareholders within three business days of certain material fund changes. The requirement to mail notifications within three business days of a fund change presents concerns for funds, which often rely on financial intermediaries and other vendors to fulfill their shareholder mailings. Adopting a rule that would be difficult for funds to comply with, not due to their own volition but due to reliance on third-party service providers, puts funds in a precarious position. Funds could be deemed to have not complied with Rule 498B, and therefore not satisfied their prospectus delivery obligations, merely because their third-party vendor failed to deliver a supplement in the requisite time period. Given these obstacles, it seems unnecessary to build into the Rule this strict three-day requirement. If the three-day requirement is maintained, we would likely advise our fund clients of the liability risk associated with failing to comply with the three-day requirement and resultant non-compliance with Rule 498B and believe that, due to the uncertainty and reliance on third-party vendors, many of our clients would determine to not rely on Rule 498B in light of such liability concerns. We would suggest changing the three-day requirement to "as soon as reasonably practicable" or a similar principles-based period.

Further, the Commission proposes a list of topics, material changes to which would trigger the shareholder notification requirement of proposed Rule 498B. Although we recognize that the Commission has sought to remove subjectivity from the process, the reality is that subjectivity is part of a materiality analysis. Determining what information is material and should be provided to investors is a core obligation of funds, advisers and their counsel that they take seriously and execute with great care. We do not believe that a prescriptive list of topics triggering shareholder notification would be useful to investors or provide them with more beneficial information than they would receive from a fund fulfilling its existing materiality obligations. We believe that the Commission should remove the term "material" from the mailing of material change requirement.

We also believe the Commission should refrain from interfering in the current mailing practices of funds related to prospectus supplements and should instead retain the current disclosure regime including the requirement to supplement prospectuses under Rule 497. As stated above, we believe that funds and advisers, as fiduciaries, take seriously their obligation to notify shareholders of significant changes and we think that the Commission's interference with current practices could ultimately lead to an increase in supplements mailed to shareholders, as funds would be conservative with regard to what is required to be mailed so as not to risk non-compliance with Rule 498B. The foregoing could potentially overwhelm investors with information not necessarily critical to their investment decisions and result in extra costs which may ultimately be borne by fund shareholders. Further, we believe that in light of the significant uncertainty surrounding costs associated with having to send notifications of material changes as they occur to a fund's entire shareholder base, combined with the liability concerns discussed herein, many of our fund clients would reasonably determine that the current delivery regime of sending an annual summary

prospectus update each year to existing shareholders is preferable to relying on proposed Rule 498B.

Liability Concerns Should be Better Addressed

We urge the Commission to better address the potential effect of these disclosure changes on litigation risk. In particular, we request that you clarify that any disclosure amendments resulting from the Proposal are not intended to change the "total mix of information" available to shareholders or affect how courts should assess fund disclosures for purposes of shareholder litigation, as advocated by the Investment Company Institute in its comment letter to the Proposal.[2] In addition, similar to your approach for the summary prospectus, the Commission should permit funds to incorporate information by reference into annual reports. Under the Proposal, a fund would not be permitted to incorporate information by reference into annual reports. Reliance on the Proposal without the ability to incorporate by reference may increase litigation or enforcement risk for funds on the basis that they have not properly disclosed certain risks or other factors in the annual report. As a result, funds may be reluctant to rely on the rule. Accordingly, we recommend that the Commission permit incorporation by reference in any adopted rule, consistent with the approach described in other comments.[3] We also encourage the Commission to include a statement in any adopting release that the Commission believes that a person that provides a streamlined annual shareholder report in good faith compliance with Rule 498B will be able to rely on Section 19(a) of the Securities Act of 1933, as amended. We note that the adopting release for the summary prospectus rule included language along these lines.[4]

The Commission Should Modernize How Funds Deliver Information, Including by Retaining Rule 30e-3

We agree with the recommendations of the Investment Company Institute to facilitate electronic delivery of information to shareholders.[5] For example, Rule 30e-3 generally permits funds to satisfy shareholder report transmission requirements by making these reports and other materials available online and providing a notice of availability instead of directly mailing or emailing the report to shareholders. The Commission adopted this rule in 2018 and provided for a two-year transition period. Funds may begin using Rule 30e-3 on January 1, 2021, and in our experience most of our fund clients have begun or intend to do so. The Commission has proposed that Rule 30e-3 be amended to eliminate the ability of funds registered on Form N-1A to rely on the Rule to satisfy their obligations to deliver shareholder reports. We recommend that the SEC retain Rule 30e-3 for funds registered on Form N-1A. A fund manager, as a fiduciary, should be able to

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[2] *See* https://www.sec.gov/comments/s7-09-20/s70920-8186011-227164.pdf, at Section IV.

[3] *See, e.g.,* https://www.sec.gov/comments/s7-09-20/s70920-8204356-227509.pdf.

[4] *See* https://www.sec.gov/rules/final/2009/33-8998.pdf.

[5] *See* https://www.sec.gov/comments/s7-09-20/s70920-8186011-227164.pdf, at Section II.

evaluate and determine the most effective option for transmitting disclosure documents to fund investors, evaluating cost, other transmission options and other relevant factors, such as investor preference. In addition, eliminating the rule so soon after adoption will result in fund shareholders bearing significant costs incurred to comply with the rule without enjoying the accompanying benefits.

If the Commission nonetheless amends Rule 30e-3 to exclude funds registered on Form N-1A, we request that the Commission clarify in the adopting release that this does not in any way affect the ability of insurance company separate accounts to rely on Rule 30e-3 for delivery of fund reports to contract holders under Rule 30e-2, and that they may continue to do so.

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Thank you for considering our comments. If you have any questions, please contact David W. Grim at dgrim@stradley.com or 202-507-5164; Jana Cresswell at jcresswell@stradley.com or 215-564- 8048; or Mena Larmour at mlarmour@stradley.com or 215-564-8014.

Very truly yours,

/s/Stradley Ronon Stevens & Young, LLP

Stradley Ronon Stevens & Young, LLP