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Fund Delivery Obligations for Section 19(a) Notices

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Section 19(a) of the Investment Company Act of 1940, as amended (1940 Act), generally requires that any dividend or distribution paid by a registered investment company (fund) that is paid from any source other than net income be "accompanied by a written statement" that discloses the sources of the distribution.[1] This written statement typically is referred to as a "19(a) notice" (19(a) Notice). Requirements for the form and content of 19(a) Notices are further specified by Rule 19a-1, which was adopted by the Securities and Exchange Commission (SEC or Commission) in February 1941, shortly after the 1940 Act became law. The purpose of these requirements is to prevent shareholders from being misled about a fund's yield if it is composed of capital gains or a return of capital.[2] While the language of Section 19(a) implies that the 19(a) Notice must be delivered to the distributing fund's shareholders (as they are the persons to whom the dividend or distribution payment is made), neither that section nor the corresponding rule is clear regarding whether a fund's delivery obligation for 19(a) Notices applies to record or beneficial shareholders.

The use of nominees and other intermediaries to hold securities predated the 1940 Act and began in response to developments in state corporate law intended to accommodate the holding and transfer of securities.[3] Although there is limited data available on the degree to which beneficial owners of a fund's shares (beneficial shareholders) hold fund shares through one or more intermediary record shareholders rather than directly, available data suggests that open-end funds (mutual funds), the largest category of funds in terms of assets, in the aggregate have far more record shareholders than beneficial shareholders. According to the Investment Company Institute (ICI), 65 percent of households that own mutual funds hold them outside of employer-sponsored retirement plans.[4] Out of these households that own mutual funds outside of an employer-sponsored retirement plan, 19 percent purchased shares directly.[5]

Funds that make distributions from sources other than net income and may have beneficial shareholders that are not record shareholders will need to determine where 19(a) Notices should be sent. For example, it would not be possible for a fund to send 19(a) Notices to all beneficial shareholders if some or all of the fund's beneficial shareholders invested in the fund through one or more intermediaries, such as banks or broker-dealers that have omnibus accounts with the fund and do not disclose the names and addresses of their customers to the fund. A fund's obligation to send 19(a) Notices when distributions are made out of sources other than net income should not be disregarded, as the SEC has brought enforcement actions against several fund managers when the primary alleged misconduct is the failure

to send 19(a) Notices (or send 19(a) Notices with all of the required information).

Although there are no definitive interpretations or guidance in the relevant legislative history of Section 19(a), available SEC and SEC Staff (Staff) interpretations and SEC enforcement actions, this article argues that 19(a) Notices should only be required to be delivered to a fund's record shareholders (that is, shareholders whose holdings of fund shares are registered directly on the books and records of the issuer) (hereinafter, record shareholders). As discussed further below, in analogous situations, the Staff has construed a fund's obligation to deliver material information to shareholders to only apply to record shareholders. This also is consistent with the requirements of the proxy rules adopted under the Securities Exchange Act of 1934, as amended (1934 Act), that apply to funds and other issuers within the SEC's jurisdiction.

Summary of Relevant Legislative History Regarding Section 19(a) and Rule 19a-1

Two different versions of Section 19(a) were proposed during Congress' consideration of the 1940 Act. The version of the 1940 Act that ultimately passed was a compromise bill that resulted from meetings between representatives of the SEC and the industry during the course of Congressional hearings.[6] The initial version of the 1940 Act that preceded these meetings was contemporaneously introduced in the House of Representatives (House) and the Senate.[7] The "original" version of Section 19(a) included additional requirements with respect to whether the dividend is permitted under state law and the fund's organizational documents. Testimony during the House and Senate hearings explained that this version of Section 19(a) was intended to address perceived inadequacies in state law with respect to the flexibility state laws provided to corporations to declare dividends out of available funds without having to disclose the character of those funds to shareholders.[8] As proposed in the Senate, this version of Section 19(a) read as follows:

> Sec. 19. (a) It shall be unlawful for any registered investment company to declare or pay any dividend, or make any distribution in the nature of a divided, wholly or partly from any source other than such company's aggregate undistributed net income from interest and dividends, unless—
>
> (1) the payment of a dividend from such other source is either expressly permitted by the charter, certificate of incorporation, or other instrument pursuant to which such company is organized or such payment, not being prohibited by such instrument, has been approved by the vote of a majority of such company's outstanding voting securities; and
> (2) the dividend check is accompanied by a written statement, in such form as the Commission may by rules and regulations prescribe, which (A) fully discloses the source or sources of such dividend, and (B) gives the recipient such reasonable opportunity to invest in securities of said company, without the payment of any sales load, such substantial portion of said dividend paid out of a source other than net income from interest and dividends, as the Commission shall prescribe by rules and regulations or order.[9]

Both the original and the "revised" version that ultimately became part of the 1940 Act shared the same ambiguity with respect to whether the 19(a) Notice should be sent to record shareholders or beneficial shareholders.

A member of the investment company industry stated during the Senate hearings that the industry generally agreed with the principle of disclosing

the sources of dividends and distributions, but disagreed with other provisions included in the original version of Section 19(a) reproduced above.[10] A memorandum summary of areas of agreement indicated that the SEC and industry favored a simplified version of Section 19(a) that only made "[p]rovision… for full disclosure to shareholders as to the source of any dividend."[11] According to a commentator that attended the hearings, the final version of what became Section 19(a) was "based on the premise that, subject to limitations of state law, the question of dividend payment is a matter of internal management which should be left to the discretion of the board of [the fund,] but that stockholders should be properly advised as to the nature of the distributions which they receive."[12] It is unclear why none of Congress, later commenters, nor the SEC in its adoption of Rule 19a-1, considered how this provision would apply when a record shareholder may not be the beneficial shareholder.

SEC and Staff Interpretations and Guidance Regarding Section 19(a) and Rule 19a-1

The Staff has not issued a public interpretation of Section 19(a) that requires a fund to deliver 19(a) Notices to beneficial owners. Perhaps because of the lack of relevant legislative history noted above and the limited rulemaking and interpretative actions at the Commission level, the Staff has provided few public interpretations of this requirement. Rule 19a-1 was adopted shortly after the 1940 Act became law and has only been amended in a few instances since that time, largely to make technical amendments that are unrelated to the focus of this article.[13] The rule's provisions are limited to content requirements for 19(a) Notices and a statement of the rule's purpose.

The most relevant piece of available Staff guidance is a no-action letter from the 1970s that sought to answer the question of whether delivery to individual shareholders was required for participants in group retirement plans. The Investment Company Institute (ICI) requested interpretive relief from the Staff to facilitate the use of funds as options for tax deductible retirement and other small purchase plans, as individual notices and mailings to shareholders in this context would increase costs for funds to be able to service investors purchasing through these plans. The Staff stated in its response letter to the ICI (ICI Letter) that a fund would not need to deliver 19(a) Notices to each participant in a group pension plan that purchased shares of a fund.[14] In the Staff's view, mailing 19(a) Notices "in bulk to an employer or other designated person for distribution to participants" in those plans would be sufficient.

The ICI Letter may support the proposition that 19(a) Notices should not be required to be sent to beneficial shareholders if the group plan participants referenced in that letter were beneficial shareholders that were not record shareholders (which presumably would be the case if the group plan itself was the record shareholder). However, the ICI Letter did not indicate whether the group plan participants would be the record shareholders or the beneficial shareholders. Also, the ICI Letter did not provide any legal analysis supporting the Staff's ostensible policy position. As the ICI Letter does not provide definitive guidance on this question, and other releases and more recent Staff guidance also do not address this delivery issue,[15] other available authorities need to be considered.

SEC Enforcement Actions Alleging Section 19(a) and Rule 19a-1 Violations

The SEC has announced settlements in several enforcement actions alleging Section 19(a) and Rule 19a-1 violations as recently as 2009 with fund managers engaged to provide administrative services that required them to prepare and deliver 19(a) Notices.[16] These actions generally penalized these fund managers for failures to send 19(a) Notices at all, or without all the required information. Because the facts underlying these actions involved whether 19(a) Notices were even required in the first instance or other related violations, these actions do not provide

guidance as to what type of shareholder 19(a) Notices are required to be delivered. Some managers argued that Rule 19a-1(e)'s requirement that the sources of the dividend be "reasonably estimated" as of the close of the period in which it is paid justified not sending a 19(a) Notice if the manager's internal projections indicated that the dividend would be covered with anticipated future investment income.[17]

In some cases, the SEC stated that shareholder reports and required annual tax reporting provided to shareholders are insufficient to satisfy compliance with Section 19(a) and Rule 19a-1 even though the information contained in 19(a) Notices is also typically included in a fund's shareholder reports and in required annual tax reporting to investors, and both may be more accurate because the sources of the fund's distributions covered by 19(a) Notices that are disclosed in shareholder reports and Forms 1099 would not be based on estimates.[18] In other actions, the SEC alleged that a fund's shareholder reports did not consistently disclose that quotations of the fund's dividend included a return of capital, resulting in a Section 34(b) violation.[19]

Analogous Situations Where the Shareholder Delivery Obligation Applies to Record Shareholders

In certain analogous situations, a fund's obligation to deliver material information to shareholders only applies to record shareholders. For example, a fund's delivery obligations with respect to shareholder reports under Rule 30e-1 under the 1940 Act only applies, per the text of the rule, to "stockholders of record," and this has been interpreted to not apply to beneficial shareholders that are not record shareholders. For funds that have received exemptive relief from Section 19(b) and Rule 19b-1 under the 1940 Act to distribute additional capital gain dividends more often than would otherwise be permitted, a typical condition of such relief modifies the fund's obligations to deliver 19(a) Notices in ways that suggest that delivery to beneficial shareholders that are not record shareholders is ordinarily not required. Finally, the historical development of the allocation of issuer and intermediary responsibilities pursuant to the proxy rules under the 1934 Act supports the view that delivery of 19(a) Notices should only be required for record shareholders. These arguments are discussed further below.

Treatment of Shareholder Report Delivery Obligations

Section 30(e) and Rule 30e-1 under the 1940 Act require funds to deliver annual and semi-annual reports to shareholders. In this context, which is analogous to a fund's obligation to deliver 19(a) Notices because both rules relate to a fund's obligation to provide material information to shareholders, Rule 30e-1(a) provides that a fund is obligated to send shareholder reports "to each stockholder of record."[20] This language was interpreted to only apply to record shareholders in a no-action letter requested by the United Food and Commercial Workers International Union (United Food Letter).[21] The requestor in the United Food Letter, acting on behalf of a retirement plan that established a single account with multiple funds in the name of the plan (Plan), asked whether these funds had an obligation to mail reports and information to the Plan or its participants individually. The Plan represented that: (1) none of the Plan's underlying funds had the names and addresses of the Plan's participants; (2) these funds were not contractually obligated to distribute filings directly to Plan participants; and (3) these funds historically had mailed reports and filings to the Plan's management.

The Staff replied that the Plan was the record shareholder in this situation, and therefore concluded that the funds in which the Plan invested were only obligated to send shareholder reports to the Plan itself.[22] While Rule 30e-1's reference to "stockholder of record" likely supported the Staff's conclusion in applying the delivery requirement to the Plan in this particular factual situation, the United Food Letter nonetheless further substantiates the view that 19(a) Notices need only be sent

to record shareholders because a fund's obligation to deliver disclosures to shareholders (whether in the form of a shareholder report or a 19(a) Notice) arguably should be interpreted and applied consistently.

Exemptive Relief Modifications to a Fund's 19(a) Notice Delivery Obligations

Many closed-end funds have received exemptive relief from the SEC to distribute capital gains more frequently than is otherwise permitted by Section 19(b) and Rule 19b-1 under the 1940 Act.[23] Section 19(b) and Rule 19b-1 generally prohibit any fund from making long-term capital gains distributions more than once each year, subject to limited exceptions specified in Rule 19b-1. Relief from Section 19(b) and Rule 19b-1 may be requested to enable a fund to distribute capital gains as often as monthly on its common shares.[24]

This relief typically imposes a condition that modifies a fund's 19(a) Notice delivery obligations to beneficial owners.[25] Specifically, the SEC has required as a condition to reliance on this type of exemptive relief that, in situations where an intermediary holds the fund's shares as nominee or otherwise on behalf of a beneficial owner, the fund will: (1) request that the intermediary forward 19(a) Notices to all beneficial owners holding shares of the fund through such intermediary; (2) provide copies of the 19(a) Notice to the intermediary upon request to facilitate delivery to each beneficial owner of the fund's stock; and (3) pay the intermediary upon request for reasonable expenses of sending 19(a) Notices.[26]

Importantly, this condition does not impose an obligation on the fund to deliver 19(a) Notices to beneficial owners. The condition only requires the fund to "request" that the intermediary do so, and provides rights to the intermediary to ask for the fund's support in return for fulfilling the fund's request. Also, because this type of exemptive relief only provides exemptions from Section 19(b) and Rule 19b-1, this condition can be interpreted as supplemental to a fund's existing obligations under Section 19(a) and Rule 19a-1.

Exemptive relief granted by the SEC only has the force of law with respect to the parties to the application. However, the imposition of this condition repeatedly in this type of exemptive order nonetheless further supports the view that a fund ordinarily does not have a delivery obligation for 19(a) Notices with respect to its beneficial shareholders that are not record shareholders.

Allocation of Responsibilities Between Issuers and Intermediaries under the Proxy Rules

Reading Section 19(a) and Rule 19a-1 to require 19(a) Notices to be delivered by a fund to beneficial shareholders that are not record shareholders would conflict with the existing allocation of responsibilities between issuers and record shareholders under Rules 14a-13, 14b-1, and 14b-2 under the 1934 Act. Rule 14a-13 generally requires a registrant,[27] at least 20 business days before an annual shareholder meeting (or a reasonably practicable shorter amount of time before a special shareholder meeting), to ask record shareholders that are not beneficial shareholders and are known to the registrant how many copies of proxies and other soliciting material are needed to provide copies to beneficial shareholders, and to indicate whether the registrant intends to distribute its shareholder report to beneficial shareholders for which it has contact information.

Any broker-dealer that is a record shareholder generally is required under Rule 14b-1 to respond to registrants making inquiries under Rule 14a-13 and forward proxy materials, information statements and annual reports to beneficial owners that the broker-dealer receives from issuers whose securities the broker-dealer holds on behalf of its customers. These broker-dealers are only obligated to provide registrants with the names, addresses, and position information of its customers that are beneficial owners upon request so long as they have not objected to this disclosure.[28] Rule 14b-2, which applies to banks and other entities that exercise fiduciary powers, was adopted in 1986 as a result of the

Shareholder Communications Act of 1985 to apply obligations similar to those imposed by Rule 14b-1 on broker-dealers to banks and other entities that exercise fiduciary powers and hold shares as record shareholders.[29] Although Rule 14a-13 permits registrants to send annual reports directly to record shareholders, this is not required by the rule itself and would be possible only if beneficial shareholders holding shares through intermediaries did not object to their names and addresses being provided by such intermediaries to the issuers of the securities that they beneficially hold.

The structure of these proxy rules in effect today was shaped by an SEC study that considered whether nonbeneficial ownership of a 1934 Act-registered issuer's shares was consistent with the purposes of the 1934 Act and whether changes should be made to facilitate communications between beneficial owners and issuers.[30] Prior to the adoption of rules and rule amendments to implement the recommendations of the 1976 SEC Report, the practice of registrants with respect to reports required under the 1934 Act was to deliver them only to shareholders of record.[31] In 1976, the SEC transmitted its final draft of this study to Congress. The 1976 SEC Report noted that the use of nominee names by institutions to register securities began in the 1930s as a way to avoid burdensome transfer requirements implemented by issuers protecting themselves from civil liability for unauthorized transfers if shares were held by a fiduciary.[32] The 1976 SEC Report recommended that the record shareholder system be retained with modifications that are currently reflected in Rule 14b-1 and Rule 14a-13. Rule 14b-1 was adopted and Rule 14a-13 under the 1934 Act was revised in 1977 to implement these recommendations.

When faced with a potential disconnect created by the consequences of prior developments in state corporate law and the nature of dispersed share ownership through intermediaries for 1934 Act-registered issuers, the SEC chose to mandate cooperation between issuers and intermediaries rather than require or incentivize issuers to communicate directly with beneficial shareholders that are not record shareholders. Interpreting Section 19(a) and Rule 19a-1 to require 19(a) Notices to be sent to beneficial shareholders that are not record shareholders would be inconsistent with the way the Commission has elected to structure relations between shareholders and issuers, including how shareholder reports are to be delivered to beneficial owners under the proxy rules. Although there are no analogous requirements to Rules 14a-13, 14b-1 and 14b-2 under the 1934 Act to rules adopted under the 1940 Act, this is an area that could benefit from public interpretation or guidance by the Staff, or proposed amendments to Rule 19a-1 by the SEC. The lack of any such interpretation, guidance or amendments, however, should not create any implication that 19(a) Notices are required to be delivered to beneficial shareholders that are not record shareholders.

Conclusion

Although there are no definitive interpretations or guidance in relevant legislative history of Section 19(a), available SEC and Staff interpretations and SEC enforcement actions, and consistency with funds' other obligations to deliver materials to shareholders, support the proposition that 19(a) Notices should only be required to delivered to a fund's record shareholders. This would also align with the practical reality of the prevalence of record shareholders holding fund shares, and the uncertainty of beneficial shareholder agreement to disclosure of complete identifying information.

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of this article. Any errors or omissions contained herein are solely those of the author.

NOTES

1 Section 19(a) also applies to closed-end investment companies that have elected to be regulated as business development companies (BDCs) under applicable provisions of the 1940 Act. For simplicity, this article uses the term "fund" but the legal analysis and arguments generally apply equally to BDCs.

2 *See* Rule 19a-1(g) (which provides that the rule's purpose "is to afford security holders adequate disclosure of the sources from which dividend payments are made") and *In the matter of Gabelli Funds, LLC,* SEC Rel. No. IC-28580 (Jan. 12, 2009) (Gabelli Action) at III, paragraph 4 ("The purpose of Section 19(a) and Rule 19a-1 is to afford shareholders adequate disclosure of the sources from which the payments are made so shareholders will not believe that a fund portfolio is generating investment income when, in fact, distributions are paid from other sources, such as shareholder capital or capital gains.").

3 "Final Report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other than the Name of the Beneficial Owner of Such Securities Pursuant to Section 12(m) of the Securities Exchange Act of 1934" (Dec. 3, 1976) at 1 (1976 SEC Report) (noting that nominee ownership was meant to avoid onerous requirements corporate issuers imposed on transfers involving shares held by fiduciaries in response to civil litigation).

4 ICI, 2020 Investment Company Fact Book at 146–148, available at *https://www.ici.org/pdf/2020_factbook.pdf*.

5 *Id.*

6 Alfred Jaretzki, Jr., "The Investment Company Act of 1940," 26 *Wash. U. L. Q.* 303, 335–336 (1941) (Jaretzki Article).

7 *See* Investment Company Act of 1940 and Investment Advisers Act of 1940, H.R. Rep. No. 2639, 76th Cong., 3d Sess. (June 18, 1940) at 4 (noting that the revised House bill (H.R. 10065) "is a substitute for H.R. 8935 [(the original bill introduced in the House)] and as originally introduced was identical with S. 4108 [(the revised Senate bill), which] itself was a substitute for S. 3580 [(the original Senate bill)], … as a companion bill to H.R. 8935.") and Walter P. North, "A Brief History of Federal Investment Company Legislation," 44 *Notre Dame L. Rev.* 677, 679, 681 (1969) (noting that H.R. 8935 and S. 3580, and H.R. 10065 and S. 4108, respectively, were identical bills introduced in the House and Senate beginning on March 14, 1940).

8 Hearings Before a Subcomm. of the Comm. On Banking and Currency, U.S. Senate, 76th Cong., 3rd Session, on S. 3580 (April 2, 3, 4, 5, 9, 10, 1940) (Senate Hearings) at 773–774 (Statement of Professor Dodd of Harvard Law School).

9 *Id*. at 14.

10 Hearings Before a Subcomm. of the Comm. on Interstate and Foreign Commerce, U.S. House of Representatives, 76th Cong., 3rd Session, on H.R. 10065 (June 13, 14, 1940) at 99.

11 Senate Hearings, *supra* n.8, at 1056.

12 Jaretzki Article, *supra* n.6, at 309–311.

13 *See Rules Regarding Disclosure of the Sources of Dividend Payments or Distributions Made by Registered Investment Companies*, 6 Fed. Reg. 1113 (Feb. 25, 1941) (initial adopting release); *Adoption of Rule 19b-1 Under the Investment Company Act of 1940 Limiting the Frequency of Distributions of Capital Gains by Registered Investment Companies*, SEC Rel. No. IC-6834 (Nov. 19, 1971) (redesignating the rule as Rule 19a-1); and *Technical Amendments to Rules 2a-1, 2a-2, 7d-1, 19a-1 and 30d-1 under the Investment Company Act of 1940 to Conform in the Rules References to Certain Sections of the Act as Amended by the Investment Company Amendments Act of 1970,* SEC Rel. No. IC-7703 (Mar. 5, 1973) (making technical amendments to Rule 19a-1).

14 Investment Company Institute, SEC No-Action Letter (pub. avail. May 1, 1975).

15 *See Payment of Dividends*, SEC Rel. No. IC-71 (Feb. 21, 1941) (Staff responses to interpretive questions

on how to calculate the sources of dividend payments for purposes of compliance with Section 19(a) and Rule 19a-1); Kemper Option Income Fund, Inc., SEC No-Action Letter (pub. avail. Oct. 24, 1985) (Staff declined to issue no-action relief where fund proposed to distribute monthly dividends including sources other than net income but only deliver 19(a) Notices on a quarterly basis); Investment Company Institute, SEC No-Action Letter (pub. avail. July 22, 1996) (Staff endorsed alternative methods of providing 19(a) Notices where shareholders automatically reinvest dividends or receive distributions by check); and IM Guidance Update 2013-11 (Nov. 2013) (guidance permitting electronic delivery of 19(a) Notices in compliance with prior SEC interpretative guidance on electronic delivery generally).

16 *See, e.g., In the matter of Delaware Service Company, Inc.,* SEC Rel. No. IC-27473 (Aug. 31, 2006) (DSC Action); *In the matter of Putnum Investment Management, LLC,* SEC Rel. No. IC-28003 (Sept. 28, 2007); *In the matter of Salomon Brothers Asset Management Inc.*, SEC Rel. No. IC-28004 (Sept. 28, 2007); *In the matter of Smith Barney Fund Management LLC*, SEC Rel. No. IC-28005 (Sept. 28, 2007) (Smith Barney Action); and Gabelli Action, *supra* n.2.

17 *See* DSC Action, *supra* n.16.

18 *See, e.g.,* Gabelli Action, *supra* n.2, at n. 7 (noting that, although the funds during the relevant period "provided shareholders with Internal Revenue Service Forms 1099-DIV that identified the source of the shareholders' distributions" and the funds' "annual reports… identified the source of distributions made…[, these] notices did not comply with Section 19(a) and Rule 19a-1 because they were not made contemporaneously with each distribution.").

19 *See* Smith Barney Action, *supra* n.16, at ¶ 12 (noting that the management discussion of fund performance section of a fund's annual report simply disclosed an annual dividend amount "without indicating that the figure included returns of shareholder capital").

20 This language appeared in Rule 30e-1 (which then designated as Rule 30d-1) as it was initially adopted. Although Section 30(e) of the 1940 Act (then Section 30(d)) does not include this language, the adopting release did not explain why the rule was drafted to include the "stockholder of record" language. *See Annual Reports; Filing of Copies of Reports to Stockholders; Reports to Stockholders of Management Companies; Reports to Shareholders of Unit Investment Trusts,* SEC Release (Jan. 2, 1941), 6 Fed. Reg. 74, 75 (Jan. 4, 1941); Pub. L. No. 768, 54 Stat. 789, 836 (Aug. 22, 1940). Section 30(d) was later redesignated as Section 30(e) in 1996 but the language of paragraph (e) was not substantively changed. Pub. L. 104-290, 110 Stat. 3430 (Oct. 11, 1996).

21 United Food and Commercial Workers Int'l Union, SEC No-Action Letter (pub. avail. Oct. 23, 1985).

22 The Staff also noted in the United Food Letter that had the Plan opened accounts with each fund in its participant's names, the fund would have been obligated to treat those accounts as the fund's record shareholders. *Id.*

23 *See*, *e.g.*, *Vertical Capital Income Fund and Oakline Advisors, LLC*, SEC Rel. Nos. IC-33505 (notice) (June 12, 2019) and IC-33548 (July 9, 2019) (order), File No. 812-15000 and the underlying application (Vertical Capital Application), available at *https://www.sec.gov/Archives/edgar/data/1517767/000158064219002643/vertical40appa.htm*.

24 *Id.*

25 *Id*. (item 4 of the application's conditions in Section VI of the application).

26 *Id.*

27 For purposes of Rules 14a-13, 14b-1 and 14b-2 under the 1934 Act, the term "registrant" includes funds.

28 Rule 14b-1(b)(i).

29 *Facilitating Shareholder Communications*, SEC Rel. No. 34-23847 (Nov. 25, 1986).

30 *See Requirements for Dissemination of Proxy Information to Beneficial Owners By Issuers and Intermediary Broker-Dealers*, SEC Rel. No. 34-13719

(July 5, 1977) and Final Report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other than the Name of the Beneficial Owner of Such Securities Pursuant to Section 12(m) of the Securities Exchange Act of 1934 (Dec. 3, 1976). *See also* Loss, Seligman and Paredes, Securities Regulation, 6.C.6 (6th Ed. 2018) at § 14(b) (Securities Held in Street Name or Nominee Name).

31 1976 SEC Report, *supra* n.3 at 34.

32 *Id*. at 1.