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Opinion

E-Delivery Is Coming. Directors Should Prepare

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This spring the Securities and Exchange Commission [adopted](#) Rule 30e-3, which gives funds the option of posting shareholder reports online instead of delivering them via snail mail.

Though this new notice-and-access rule represents potential cost [savings](#) to investment companies, it also creates some oversight challenges for fund directors and compliance officers.

The E-Delivery Rule

Rule 30e-3, which the SEC adopted in June, says funds can satisfy their obligations to deliver shareholder reports to investors by posting them online, as long as the funds meet certain conditions. Compliance, however, is optional. Funds can continue sending paper or electronic copies of shareholder reports as they do under existing rules if they choose.

Currently, funds must send paper copies of reports to all shareholders who did not opt in for electronic delivery. The SEC intended the new rule to modernize how funds deliver shareholder reports by making electronic delivery the default. Investors who want paper versions must opt out of e-delivery.

There's one catch to the new rule: the long transition period. Funds cannot rely on the rule until Jan. 1, 2021. And even then, funds must take compliance steps as early as this January.

What Directors Should Know

As part of their general oversight responsibilities, board members should be aware of the following compliance and operational features in the rule and how it may affect the funds they oversee:

- *Conditions.* Funds relying on this exemption must publish shareholder reports on their websites. They must send investors short-form paper notices indicating that the reports are available online and give shareholders the right to elect to receive free paper copies. Investors must be allowed to opt out and receive paper versions instead, at any time.
- *Early adopters must provide investors with a two-year advance notice.* Funds that want to rely on the rule before Jan. 1, 2022, must provide shareholders with the required notice and begin tracking their preferences for two years before beginning e-delivery by default. These early adopters must prominently disclose their intentions on the cover page of their prospectuses as early as Jan. 1, 2019.
- *Broker-dealers.* Similarly, broker-dealers generally should track investor elections for paper copies of shareholder reports after sending the initial notification that a fund intends to rely on the rule. If intermediaries don't, funds may not be able to rely on the exemption on time.
- *Website maintenance.* The rule does not specify which entity must maintain the website containing the required material. Funds can comply with the rule if a financial intermediary or other fund service provider hosts the website.
- *Reliance on rule after Jan. 1, 2022.* All funds can rely on the exemption beginning Jan. 1, 2022, even if they did not disclose the required information beginning this Jan. 1.
- *Newly organized funds.* Special transition rules apply to funds organized after Jan. 1 but before Jan. 1, 2021, provided they give the notice to shareholders starting with their first public offering.

Questions Fund Directors Should Consider Asking

Fund directors should exercise general care and reasonable diligence in overseeing reliance on the rule. Boards could consider asking a number of questions, including:

- Does the fund intend to rely on the new rule to deliver shareholder reports electronically? If yes, beginning in 2021, 2022 or some other date?
- How much will the fund save in printing costs if it decides to rely on the rule? How much of the potential savings would be offset by other costs involved in complying with the rule?
- What policies and procedures will the fund establish to ensure that it complies with all disclosure and tracking requirements?
- Does the firm that hosts the fund's website containing shareholder reports have sufficient infrastructure and ability to customize the website?
- What system changes will the fund's service providers have to make to track investor preferences?
- How will funds ensure that financial intermediaries, such as broker-dealers that maintain omnibus accounts with the fund, have adequate procedures to track investor preferences? Will financial intermediaries provide access to fund shareholder reports on their websites?

Even though funds won't be able to begin relying on the rule for more than two years, it's not too early for directors to begin their oversight now. If a fund fails to comply with the specific requirements of the extended transition rules, it may have to wait an additional year to rely on the e-delivery rule.

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