VIA DIGITAL DELIVERY

September 8, 2020

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman Clayton:

The undersigned financial services firms write to strongly recommend that the Securities and Exchange Commission ("SEC") update its prior interpretive guidance and regulations to provide for the broader delivery of regulatory documents to investors through digital means. Our recommendation is supported by the long-term trends of greater investor access to the Internet and widespread adoption of communication technologies, including smartphones and tablets, as well as increased customer preference for receiving documents electronically.

Executive Summary

Current data regarding investor behavior shows that investors strongly prefer engaging with their financial services firm through the Internet and digitally enabled devices. Investors today are engaging in millions of online interactions per day on financial services web and mobile sites. These activities include transactions, communications, and regularly accessing important shareholder information such as account and confirmation statements, tax forms and other regulatory documents. The vast majority of investors use digital communications and delivery as a safe and secure way of handling their financial business.

The SEC was a pioneer in supporting electronic delivery of regulatory documents by registrants when it issued interpretive guidance over twenty years ago.[1] More recently, the Commission has advanced the shift to digital delivery on several more limited occasions by permitting a "notice and access" regime for certain regulatory documents.[2] While these modernizations were significant, more

[1] *See Use of Electronic Media for Delivery Purposes*, Release No. 36345 (Oct. 1995); *Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information*; *Additional Examples Under the Securities Act of 1933*, Securities Exchange Act of 1934, and Investment Company Act of 1940, Release No. 37182 (May 1996); *Use of Electronic Media*, Exchange Act, Release No. 42728 (Apr. 2000).

[2] *See Optional Internet Availability of Investment Company Shareholder Reports*, Release No. 33-10506 (Jun. 2018), at https://www.sec.gov/rules/final/2018/33-10506.pdf.

must be done to promote investors' preferences for digitally accessing their regulatory documents in a safe, secure and flexible manner.

We believe that the SEC's current framework that focuses on paper delivery as the primary method of transmission should be replaced with an approach that establishes the first means of communication as digital, with paper as an alternative, rather than the other way around. Further, we are very encouraged by a recent statement by the Division of Investment Management Director Dalia Blass that it is "time to reconsider our approach to shareholder and client communications ... [and] consider guidance that treats physical and electronic delivery as equals rather than measuring delivery against a paper standard."[3] Accordingly, we recommend that the SEC update its digital delivery interpretations to allow regulated firms to use an investor's digital address -- such as an e-mail or smartphone telephone number -- as the primary address when delivering regulatory documents, including among others account and confirmation statements, mutual fund prospectuses and annual and semi-annual reports.[4]

This *digital delivery* approach recognizes that an electronic address can be as appropriate for communications and regulatory document delivery as a postal mailing address. An approach focused on digital delivery is well supported by data on investor behavior and can provide a better overall experience. Furthermore, the current global health crisis demonstrates that modernization is needed to address business continuity planning by financial services firms, and to serve millions of investors who are increasingly seeking to do business through digital channels. SEC modernization would also align with the actions of other federal regulators and federal programs that now permit the greater use of electronic delivery.[5]

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[3] *See* D. Blass, Director, Division of Investment Management, *Speech: PLI Investment Management Institute* (Jul. 2020) ("D. Blass Speech"), at https://www.sec.gov/news/speech/blass-speech-pli-investment-management-institute. Similar statements were made recently by Commissioner Peirce, with regard to the SEC's disclosure modernization proposals: "So perhaps now is the time, for instance, to allow electronic-only delivery for new investors and dispense with requiring funds to mail paper copies of annual reports and other disclosures on request. Many fund complexes likely would retain a paper option to meet customer demand, but is a regulatory mandate necessary? Just a thought." *See Statement on Shareholder Tailored Reports* (Aug. 2020), at https://www.sec.gov/news/public-statement/peirce-statement-tailored-shareholder-reports-080520.

[4] We recommend that this proposal apply to SEC regulatory documents that are delivered to investors through broker-dealers, retirement plan recordkeepers, investment advisors, mutual funds, transfer agents and direct issuers.

[5] *See, infra,* footnotes 25-27 (recent actions by the Department of Labor, Social Security Administration and Thrift Savings Plan); *see also* United Nations Department of Economic and Social Affairs, *Embracing digital government during the pandemic and beyond* (Apr. 2020), at https://www.un.org/development/desa/dpad/publication/un-desa-policy-brief-61-covid-19-embracing-digital-government-during-the-pandemic-and-beyond/ ("Navigating through these challenging times requires governments to adopt an open government approach and to use digital communication channels to provide reliable information on global and national COVID-19 developments. E-participation platforms can represent useful tools to engage with vulnerable groups online and to establish digital initiatives to collectively brainstorm for policy ideas to critical social and economic challenges."); IMFBlog, *Digital financial inclusion in the times of covid 19,* at https://blogs.imf.org/2020/07/01/digital-financial-inclusion-in-the-times-of-covid-19/.

In her recent speech, Director Blass asks "[w]hat standards should apply for when the contact information can be relied on?"[6] In answering her question, we believe that it is crucial that digital delivery standards incorporate appropriate investor protections. To that end, we propose "5 Digital Delivery Investor Protection Principles" that would assure investors receive appropriate notice, information and choice when it comes to digital delivery. We derived these principles from current regulations that use notice and access concepts and from our extensive experience serving clients.

The *5 Digital Delivery Investor Protection Principles* are:

- ***Advance Notice.*** Investors should be provided with a reasonable timeframe to receive notice that their regulatory documents will be delivered to them digitally. Notice of the change in process must be written clearly and in plain English, explaining the details of how digital delivery will work.

- ***Honor Investor Preferences***. Investors should have a freely accessible means in which to communicate their preferences and an ability to change their election at any time.

- ***Easy Access to Change Contact Information.*** Investors should have an opportunity to provide up-to-date contact information for the purpose of digital delivery, or the means to change their information, during the time period before their regulatory documents are moved to digital delivery, and at any time thereafter. Investors who have not provided such contact information will not be transitioned to digital delivery until digital contact information is provided.

- ***Consumer Friendly Format.*** Investors should be able to access regulatory documents in a user-friendly and timely manner at their convenience. Access should be provided in a safe and secure manner with ease of reference and retention abilities. Investors must be provided with a paper copy of a regulatory document in a reasonable timeframe, if so requested.

- ***Safeguards to Assure Delivery.*** Firms should establish safeguards to address invalid or inoperable digital contact information of investors and establish policies and procedures for the change to paper delivery if failures to digital delivery cannot be cured.

With these principles in mind, and as discussed in more detail below, we strongly recommend that the SEC reconsider its past interpretations and revise outdated rules as a logical next step in the evolution of investor communications.

[6] D. Blass Speech, *supra* note 3, at https://www.sec.gov/news/speech/blass-speech-pli-investment-management-institute.

I. The Data Shows that Investors Overwhelmingly Prefer to Communicate Digitally

According to a recent survey by the FINRA Investor Education Foundation, investor "preference for paper disclosures sent by regular mail is losing ground to electronic delivery," and "the percentage of investors who prefer paper documents has decreased considerably relative to 2015, while preference for all other methods has increased."[7] Adoption of digital communications by investors has never been higher. Digital activities include trading securities, accessing investment information and using video and chat technologies online — demonstrating strongly investors' preferences for digital communications.[8]

When investors provide their e-mail address and cell phone information, either at account opening or afterwards, they provide the firm with the means in which to communicate with them digitally. In today's environment, firms are collecting e-mail addresses and cell phone numbers from investors at account opening, and investors are expecting that the firm will use these channels to contact them. Further, many investors no longer have established telephone land lines in their homes, and now primarily rely on cell phones, e-mail and text messaging as the channel for commercial communication.[9]

Recent studies show the overwhelming movement by Americans to digital communications. The Pew Research Center, for example, reports that nine-in-ten adults use the Internet regularly, including 73% of those over 65 years of age and higher percentages for all other age groups.[10] Home broadband usage sits at 73%. Further, Pew reports that 96% of Americans own a cell phone of some kind, and 85% of those own a smartphone. Smartphones are owned by 71% or greater of Americans of all income

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[7] *See Investors in the United States–A Report of the National Financial Capability Study, FINRA Investor Education Foundation* (2019), at https://www.usfinancialcapability.org/downloads/NFCS_2018_Inv_Survey_Full_Report.pdf.

[8] *See, e.g., CNBC Trader Talk, Trading volume for electronic brokers doubled last quarter and shows no signs of letting up* (May 2020), at *https://www.cnbc.com/2020/05/13/trading-volume-for-electronic-brokers-doubled-last-quarter-and-shows-no-signs-of-letting-up.html*.

[9] National Center for Health Studies, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July–December 2016,* at https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf ("The second 6 months of 2016 was the first time that a majority of American homes had only wireless telephones.").

[10] *See* Pew Research Center, *Internet Broadband Fact Sheet* (2019), at https://www.pewresearch.org/internet/fact-sheet/internet-broadband/. In addition, a survey by the Investment Company Institute in 2015 found that 91 percent of U.S. households who own mutual funds had Internet access (up from 68 percent in 2000), and that there was widespread use among various age groups, education levels and income levels. *See* Burham, K., Bogdan, M. & Schrass, D., *Ownership of Mutual Funds, Shareholder Sentiment, and Use of the Internet*, 2015, ICI Research Perspective 21, no. 5 (Nov. 2015), at www.ici.org/pdf/per21-05.pdf.

levels, reaching over 90% for those with incomes over $50,000. Americans who own either a desktop or laptop computer sits at over 70%.[11]

While millennials are frequent users of digital technology, older generations are embracing digital life, and reports show that these generations are "heavy adopters" of technology.[12] According to a recent study, technology use among seniors is rapidly increasing as "[f]ully 81% of older Americans whose annual household income is $75,000 or more say they own smartphones." In addition, 67% of seniors, those 65 and older, use the Internet, and that number jumps to over 95% for those seniors whose annual income is $75,000 or greater. [13] As of 2019, a mere 10% of Americans "never" go online. Among those over 60 years of age, 27% claim to never use digital services – down 7% from 2018.[14] The pandemic has also led to increasing use and adoption of the Internet by Americans. According to a very recent study, 53% of adults surveyed said that the Internet was essential during the pandemic, and overall, 87% said that it is important in their lives.[15]

When it comes to how investors are communicating, there is broad adoption of e-mail as a primary means of communication, including use by over 90% of Americans ages 15 to 64 who use the Internet and over 80% for those over 65 years old.[16] Digital communications adoption can also be seen in the statistics from the firms represented in this letter. Several of the undersigned firms report that, on average, they have received e-mail addresses for over 85% of their customers. These firms also typically collect at account opening and afterwards customers' mobile telephone numbers, which allows them to send real-time alerts, including account activity and fraud warning notices. These same alerts

[11] *See* Pew Research Center, *Mobile Fact Sheet* (2019), at https://www.pewresearch.org/internet/fact-sheet/mobile/; *see also* Federal Reserve Board, *Consumers and Mobile Financial Services (Mar. 2015)*, https://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201503.pdf ("Mobile phones are in widespread use…. Seventy-one percent of mobile phones are smartphones (Internet enabled), up from 61 percent a year earlier. … The ubiquity of mobile phones is changing the way consumers access financial services.").

[12] *See* Pew Research Center, *Millennials stand out for their technology use, but older generations also embrace digital life* (2019), at https://www.pewresearch.org/fact-tank/2019/09/09/us-generations-technology-use/.

[13] *See* Pew Research Center, *Tech Adoption Climbs Among Older Adults* (2017), at https://www.pewresearch.org/internet/2017/05/17/technology-use-among-seniors/ ("Although seniors consistently have lower rates of technology adoption than the general public, this group is more digitally connected than ever. In fact, some groups of seniors–such as those who are younger, more affluent and more highly educated–report owning and using various technologies at rates similar to adults under the age of 65.").

[14] *Id.*

[15] Pew Research Center, *53% of Americans Say the Internet Has Been Essential During the COVID-19 Outbreak*, at https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/ (data as of 2020).

[16] *See* https://www.statista.com/statistics/271501/us-email-usage-reach-by-age/ (data as of 2020).

could be used to notify investors of the immediate availability of regulatory documents for review.[17] Implementation of the *5 Digital Delivery Investor Protection Principles,* as mentioned above, will ensure that investors have an opportunity to keep their contact information current and to change it as needed.

While financial services firms have seen many investors opting for digital delivery for their regulatory documents,[18] some investors continue to receive paper regulatory documents in the mail due to inertia and/or the cumbersome process of consenting to digital delivery as required under the existing regulatory interpretations.[19] These investors continue, however, to provide their financial services firms with their digital contact information and use the firms' web and mobile sites to conduct their business. With the movement to digital delivery and the reliance upon e-mail addresses (or text phone numbers) for notice of document availability, there could be a concern that these addresses are unreliable or not valid. The *5 Digital Delivery Investor Protection Principles* would address this concern as firms would establish safeguards against invalid or inoperable digital contact information and would move an investor to paper if a delivery failure cannot be cured.

Two of the undersigned firms report that less than 1% of all document delivery e-mails sent to investors are bounced back as undelivered. In addition, the process of handling bounce-backs of e-mails compares favorably to the physical mail process, which can take days or even weeks for returned or undelivered mail to be received by the firm.[20] Further, technological safeguards for e-mail delivery exist. With the potential for millions of e-mails to be sent to investors reflecting delivery of a monthly

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[17] Such alerts typically take the form of a text, SMS or e-mail message with sufficient identifying information to indicate an activity in the investor's account, with a hyperlink back to the firm's secure website in order for the customer to access the actual document or further information about the subject of the alert. Notice could also be provided through other technological means.

[18] Two of the undersigned firms report that over 70% of their customers have determined that digital delivery should be the primary means in which to access their regulatory documents. While most firms provide an *a la cart* choice of digital delivery options, the vast majority of investors desire that all of their documents be delivered digitally. In order to obtain digital delivery, presently, investors must provide a valid e-mail address to their financial services firm along with providing a consent electronically or by confirming their consent electronically under SEC guidance and the Electronic Signatures in Global and National Commerce Act ("E-Sign"). *See SEC Interpretive Releases, supra*, Note 1, and E-Sign Act, at https://www.law.cornell.edu/uscode/text/15/chapter-96.

[19] As discussed below, the SEC interpretive releases continue to require notice, access and evidence to show delivery (typically through an informed consent) to allow investors to receive digital delivery. Under SEC guidance firms may obtain an informed consent over the telephone; however, since some SEC rules continue to have an "in writing" requirement (*e.g.,* SEC Rule 10b-10), firms typically must follow E-Sign's provisions for consent, which state that it must be obtained electronically or confirmed electronically, leading to confusion among investors who believe that they have consented to digital delivery only to find that is not the case until they respond to a follow-up e-mail communication.

[20] When bounce-backs do occur, firms have procedures and processes in place to resolve the issue and ensure that the investor receives the intended information, either electronically or via paper if necessary.

account statement or annual prospectus update, Internet Service Providers work with firms and their vendors to ensure that the outbound e-mails are not treated as SPAM or bounced back due to volume within, or stress on, the overall e-mail system. We are not aware of any such process for the handling and processing of postal mail.[21]

II. The Federal Regulatory Landscape Has Changed

When the SEC first adopted its guidance for e-delivery of regulatory documents, investor adoption of digital communications was in its formative stages. The SEC's formulation of e-delivery requirements—*notice*, *access* and *evidence to show delivery*—were appropriate for the time period when the SEC first articulated those concepts and associated requirements. During that time, investor transactions and interactions via the Internet were rising but not as rapidly compared to today's widespread use of digital commerce and communications. By the year 2000, with the adoption of the E-Sign Act, it was clear that businesses and consumers were rapidly adopting use of the Internet as a significant means in which to purchase and sell goods and services, to communicate and to effectuate agreements and contracts.

By 2007, the SEC further recognized the importance and relevance of digital communications and adopted amendments to the proxy rules to permit issuers and market intermediaries to post proxy materials online and provide notice to shareholders of their ability to access these materials.[22] In June 2018, in recognition of the power and efficiency of digital communications, the SEC helpfully adopted new Rule 30e-3 which permits mutual fund annual and semiannual shareholder reports to be delivered digitally, by default, subject to a transition period and investor protections.[23] Further, because of SEC and FINRA electronic filing and recordkeeping requirements, financial institutions for many years have digitized their shareholder documents, making the transformation to a digital delivery approach reasonable and cost effective for the entire industry. These cumulative actions represent an evolution in improving investor communications through a delivery mechanism that is more immediate, efficient, cost effective and potentially safer than paper communications sent through the postal mail.[24]

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[21] *See, e.g., USPS.com Return to Sender Mail*, at *https://faq.usps.com/s/article/Return-to-Sender-Mail*.

[22] Also, around that timeframe, the SEC adopted amendments to permit the summary prospectuses and statutory prospectuses required under Section 5(b)(2) of the Securities Act of 1933 to be sent digitally to investors or posted online, for statutory prospectuses, rather than delivered by mail. *See* SEC Rules 172 and 173 (allowing final prospectuses filed in the EDGAR system to satisfy prospectus delivery requirements).

[23] *Optional Internet Availability of Investment Company Shareholder Reports*, SEC Release No. 33-10506 (Jun. 2018), at https://www.sec.gov/rules/final/2018/33-10506.pdf.

[24] Also during this time, the IRS adopted e-delivery guidelines, but rather than creating its own standards such as the SEC, it chose to adopt the framework for consumer delivery of documents under E-Sign. *See* https://www.irs.gov/government-

Other federal agencies are also actively facilitating digital delivery of financial communications to investors. These regulators recognize that digital delivery of documents is the preferred means of communication for millions of investors. Their actions also indicate that digital communications should come first, and with other forms of communication as a secondary option that investors can choose. The Social Security Administration, for example, has eliminated paper as the primary method of furnishing benefit statements and facilitates access to statements online. Currently, 45 million individuals have established online accounts on "*my* Social Security."[25] Similarly, the federal Thrift Savings Program ("TSP") in 2003 made digital delivery the *default* method for delivery of quarterly account statements for its 5.5 million TSP participants.[26] The Department of Labor recently adopted a new safe harbor to permit digital delivery of retirement participant documents and disclosures, including summary plan descriptions, summaries of material plan modifications and summary annual reports.[27] In addition to these U.S. developments, a number of international regulators have revised their regulations to allow for digital delivery of regulatory documents by financial firms to their investors.[28]

Finally, the Coronavirus pandemic and recent issues with the U.S. Postal Service have further called into question reliance on paper delivery as the default method for regulatory documents. As the SEC is aware, the work of print vendors and suppliers relied upon by the financial services industry has been hindered by the pandemic crisis and related federal, state and local orders and ordinances. With these developments, investors are reconsidering how best to receive information and documents at home

entities/federal-state-local-governments/requirements-for-furnishing-form-1099-g-electronically.

[25] *See Create your personal my Social Security account today,* at https://www.ssa.gov/myaccount.

[26] *See Frequently Asked Questions,* at https://www.tsp.gov/faq.

[27] *See Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA,* 85 FR 31884 (July 2020), p.9, at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/erisa/new-electronic-disclosure-rule (In adopting the final rule, the Department of Labor noted that it "believes the framework of this final rule strikes an appropriate balance between competing policy goals–on the one hand taking advantage of the innovations and reduced costs that may be achieved through enhanced use of electronic communication, and on the other hand ensuring suitable safeguards for participants and beneficiaries who may be less ready to move to electronic communication (or who simply prefer paper)." *Id.,* at p.9 (emphasis added)).

[28] The European Union allows funds to post shareholder reports to their website with paper available upon request. *See Undertakings for Collective Investment in Transferable Securities Directive 2009/65/EC,* Article 75. In Canada, funds may send a negative consent letter for digital delivery to shareholders on an annual basis. *See* Ontario Securities Commission, *Investment Fund Continuous Disclosure,* National Instrument 81-106, Section 5.2. In Australia, funds may make shareholder reports available on a website, so long as in the first year of doing so they notify shareholders, explain how to access the website, and provide the option to request a mailed copy of the report. *See* Australian Corporations Act S1017DA, and reg. 7.9.75BA.

given postal mail delays and concerns about safety.[29]

III. The SEC Should Modernize Its Interpretations to Meet Investor Preferences

We strongly recommend that the SEC move forward with updating its past interpretive guidance to allow for the digital delivery of documents by financial services firms regulated by the SEC to their investors as long as the investors have provided an e-mail or other digitally enabled address (such as a smartphone telephone number) to the firm. The regulatory process would include the *5 Digital Delivery Investor Protection Principles* described in this letter to allow for appropriate protections of investors who either do not have electronic contact information or who do not wish to receive regulatory documents digitally.

A. Proposal for Modernization

We envision that regulated entities would be permitted to accept the provision of a digital address by an investor as the address of record for purposes of delivery of regulatory documents. For new investors, the firm would make it clear that the provision of such an address will result in digital delivery, while adhering to the *5 Digital Delivery Investor Protection Principles*. For investors who are already customers of the firm, they would receive a notice of a change to electronic delivery if they have provided digital contact information. For these existing customers, the firm would again follow the *Investor Protection Principles* by providing adequate notice and the ability for the customer to change his or her election or update digital contact information.

This change can be specifically accomplished by revising the SEC's past interpretive guidance to explain that the affirmative receipt of digital contact information from an investor, coupled with a notice by the firm to the investor explaining the digital delivery process, is sufficient to establish that regulatory documents will be delivered digitally to the investor, unless the investor changes his or her election. This process, which includes *notice* and *access*, should be sufficient to satisfy the *evidence to show delivery* requirement of the past interpretive guidance. While this would substitute for the specific informed consent requirement of 20 years ago, investors would always have the option of changing their election at any time. Accordingly, this approach would permit the firm and investor to use a digital address, with safeguards in place, as an address of record for communication purposes.[30]

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[29] *See, e.g.,* T. Frankel, *Postal problems could continue despite suspension of policies blamed for mail delays,* Wash. Post (Aug. 2020), at https://www.washingtonpost.com/business/2020/08/19/postal-problems-could-continue-despite-suspension-policies-blamed-mail-delays/ ("And this year, 27 percent of tracked mail was considered late, compared with 23 percent over the same period in 2019. But delivery woes were worse in the first part of 2020 — just as the pandemic hit — than during the summer, when compared with the same periods last year."); NPR, *How To Open Mail During The Pandemic* (Apr. 2020), at https://www.npr.org/2020/04/02/826187808/how-to-open-mail-during-the-pandemic.

[30] Currently, in the paper driven process investors are not told affirmatively how their documents will be delivered to them. Under this interpretive process, investors would be provided with information on how documents will be delivered to them

Along with this digital delivery approach, we recommend that the SEC examine its rules to eliminate any "in writing" requirements in the regulatory text. This should be a relatively straightforward exercise, as it involves revising wording in the text of rules from "in writing" to such words as "furnishing" or "providing." The reason for this recommendation is to eliminate any confusion that the SEC's rules and interpretations apply to the delivery of regulatory documents instead of being regulated under the E-Sign Act.[31] These rule revisions will allow firms to follow our recommended and more flexible interpretive guidance for all SEC regulatory documents.[32]

Finally, it is important to emphasize that our digital delivery proposal is grounded upon the *5 Digital Delivery Investor Protection Principles* described above. To that end, we also recommend that the SEC work closely with FINRA, the Municipal Securities Rulemaking Board, the Internal Revenue Service and the Department of Labor to evaluate and harmonize those agencies' rules with this proposed recommendation.[33] A patchwork of digital delivery regulations does not serve a valid purpose and will only preclude investors from enjoying an easy-to-understand system for receiving their documents digitally.

B. <u>The Benefits of Modernization</u>

Allowing regulated firms to adopt this digital delivery approach would provide many benefits to investors and the industry. Investors have real-time access to documents when they are posted to a firm's website, and sensitive investor documents are accessible at any time behind the log-in portion of the website. Investors could receive immediate notifications through an e-mail with a hyperlink for direct access when documents are posted.

Digital access also allows investors to reference regulatory documents through multiple devices (*e.g.*, desktop computers, laptops, tablets or smartphones) and to provide document access to trusted advisors (*e.g.*, accountants, investment professionals or lawyers) by allowing secure access to interested

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and that they can make an election.

[31] The E-Sign Act states that "if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing," then specific requirements, which are different from the SEC's, must be met to deliver it digitally. *See* 15 USC S.7001, at https://www.law.cornell.edu/uscode/text/15/chapter-96.

[32] This discrepancy has created confusion today with investors, as many have attempted to consent either over the phone or through a paper account application for e-delivery and have been frustrated when they need to take an additional step to confirm their consent electronically, as the e-delivery consent contains SEC documents covered under E-Sign because of an "in writing" reference in the respective rule. This discrepancy in the SEC's rules has long existed and is one that we believe the SEC should rectify as soon as possible to allow for its rules and regulations to control the delivery of these documents electronically.

[33] FINRA and MSRB rules require regulatory documents be delivered to investors and specifically follow the SEC's past interpretive guidance in this area.

or third parties. Investors who may be traveling (on-the-go) or employed away from their home address (*e.g.*, military personnel or remote or traveling workers), can easily obtain notice and access to their documents. The benefits of digital delivery are clearly demonstrated when contingencies and emergencies occur, such as the current situation with the suspension of international mail service in some countries during the pandemic.[34]

A digital delivery approach dovetails directly with the SEC's very recent proposal for modernizing the disclosure framework for open-end management investment companies and exchange traded funds. Those rules propose "concise and visually engaging shareholder reports that would highlight information that is particularly important for retail investors to assess and monitor their fund investments."[35] In proposing streamlined disclosures, Chairman Clayton stated, "[b]y encouraging fund disclosures that use modern communication techniques to emphasize clearly and concisely the information investors find most useful, today's proposal should facilitate better-informed decision making."[36] As the SEC recognizes, this goal can be fulfilled by allowing firms to develop digital communications that have interactive and user-friendly features and that provide ongoing digital access to investors. Layered disclosures can be well accomplished through the use of hyperlinks and other digital techniques (*e.g.*, pop-ups, mouse-overs, new browser windows, etc.), which cannot be accomplished through static physical documents. In addition, digital delivery is environmentally friendly, as it would reduce the use of paper and related printing and mailing resources.[37]

Special consideration should be given to the benefits of digital access for individuals with disabilities, including those individuals who may be vision or hearing impaired. Accessibility information and technology provided through firms' websites[38] and through plug-in software and devices used by investors can greatly assist with the accessing and reading of regulatory documents.

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[34] In response, the SEC provided temporary relief allowing for digital delivery and limited Internet posting of notices of document availability. *See Staff Statement Regarding Temporary International Mail Service Suspensions to Certain Jurisdictions Related to the COVID-19 Pandemic*, at https://www.sec.gov/tm/temporary-international-mail-service-suspension.

[35] *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. 33-10814 (Aug. 2020), at https://www.sec.gov/rules/proposed/2020/33-10814.pdf.

[36] Press Release, *SEC Proposes to Improve the Retail Investor Experience through Modernized Fund Shareholder Reports and Disclosures* (Aug. 2020), at https://www.sec.gov/news/press-release/2020-172.

[37] *See, e.g., Optional Internet Availability of Investment Company Shareholder Reports*, Release No. 33-10506 (Jun. 2018), at p.25 (discussing environmental benefits), at https://www.sec.gov/rules/final/2018/33-10506.pdf.

[38] One of the undersigned firm's accessibility section of its website, for example, includes information on how to optimize reading of web pages using available Internet browsers and provides tips for navigation through text and screen reader software. *See, e.g.*, https://www.fidelity.com/accessibility/overview.

Digitization of these documents can provide improved accessibility through screen and text readers and software that can render documents in different sizes and formats. There are also an increasing number of third-party software programs that can help those who may need assistance with viewing, reading or listening to documents.[39] In addition, translation software assists individuals whose native language may not be English.[40]

With the readily available means for customer authentication to access sensitive account information through smart phones, tablets/laptops, home PCs, or other digital devices of the future, digital is much more secure than relying on the vagaries of the post office and insecure physical residential mail boxes. Under the approach outlined here, for example, an investor could receive a timely e-mail or text alert on their smart phone that a monthly account statement is available, and then tap on the link within the e-mail or text to open automatically their financial services firm's website or app. The investor could then authenticate using their thumbprint to gain immediate access to the updated account information. The benefits of this approach to the investor, over traditional postal mail delivery, include faster and more timely notice, access that is private and can be controlled by the investor, and provision of information through a personalized and secure device and channel.

Finally, the SEC's Investor Advisory Committee has previously recommended that the SEC look for ways to promote digital delivery to investors. In 2017, the Committee published a recommendation that the "Commission continue to explore methods to encourage a transition to electronic delivery that respect investor preferences and that increase, rather than reduce, the likelihood that investors will see and read important disclosure documents." [41] Further, several former securities regulators recently articulated the benefits of a regulatory approach that accelerates the use of digital delivery and strongly recommend that the SEC move forward with such an initiative.[42] This approach is particularly relevant

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[39] *See* National Center on Accessible Education Materials, *Digital Reading Technologies*, at http://aem.cast.org/navigating/digital-reading-technologies.html; *Better Web Browsing: Tips for Customizing Your Computer*, at https://www.w3.org/WAI/users/browsing. *See also 10 Helpful Text-to-Speech Readers for Back to School*, at http://dyslexiahelp.umich.edu/tools/software-assistive-technology/text-to-speech-readers.

[40] At nearly 45 million, the United States' immigrant population is the largest in the world, and it is estimated that 13% do not speak English. *See Key findings about U.S. immigrants 2019*, at https://www.pewresearch.org/fact-tank/2019/06/17/key-findings-about-u-s-immigrants/.

[41] *See Recommendation of the Investor Advisory Committee Regarding Promotion of Electronic Delivery and Development of a Summary Disclosure Document for Delivery of Investment Company Shareholder Reports* (Dec. 2017), at https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-promotion-of-electronic-delivery-and-development.pdf.

[42] *See* Selman, T., *INSIGHT: Covid-19 Shows Why SEC Should Use E-Delivery for Form CRS* (June 2020), at https://news.bloomberglaw.com/securities-law/insight-covid-19-shows-why-sec-should-use-e-delivery-for-form-crs; Atkins, P., *Investment News opinion: SEC should accelerate its late leap to electronic delivery* (May 2020), at https://www.investmentnews.com/sec-should-accelerate-late-leap-electronic-delivery-192882.

with the SEC's recent adoption of *Regulation Best Interest,* since the Customer Relationship Summary (Form CRS) must, among other things, be timely provided to investors (along with other disclosures) at account opening or when recommendations are made.[43]

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For the above stated reasons, the undersigned firms believe that now is the time for the SEC to update its longstanding guidance on digital delivery to address how investors and financial services firms are communicating and doing business today. We are prepared to work with the SEC and its staff to make this a reality for the benefit of investors and the financial services industry and are prepared to discuss these recommendations at your earliest convenience.

Respectfully submitted,

Fidelity Investments

The Charles Schwab Corporation

BlackRock, Inc.

Cc: The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
Ms. Dalia Blass, Director, Division of Investment Management
Mr. Brett Redfearn, Director, Division of Trading and Markets

[43] *See* SEC Regulation Best Interest (Reg BI), at https://www.finra.org/rules-guidance/key-topics/regulation-best-interest.