

September 13, 2011

Submitted online at [www.esma.europa.eu](http://www.esma.europa.eu)

Mr. Steven Maijoor, Chair  
European Securities and Markets Authority  
103 Rue de Grenelle  
75007 Paris  
France

Re: ESMA's Draft Technical Advice to the European Commission on Possible Implementing Measures of the Alternative Investment Fund Managers Directive

Dear Mr. Maijoor,

The Investment Company Institute (“ICI”)<sup>1</sup> appreciates the opportunity to comment on the European Securities and Markets Authority’s (“ESMA’s”) Consultation Paper on its draft technical advice to the European Commission (“EC”) on possible implementing measures of the Alternative Investment Fund Managers Directive (the “Paper”).<sup>2</sup> The Alternative Investment Fund Managers Directive (“AIFMD”) will have far-reaching consequences in the European Union (“EU”) and for non-EU alternative investment funds (“AIF”) and non-EU managers of alternative investment funds (“AIFM”).<sup>3</sup> It is, therefore, critical that the implementing measures are carefully drafted.<sup>4</sup> We

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<sup>1</sup> ICI is the national association of U.S. registered investment companies, including mutual funds, closed-end funds, exchange-traded funds, and unit investment trusts. ICI encourages adherence to high ethical standards, promotes public understanding, and otherwise advances the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$12.9 trillion and serve over 90 million shareholders.

<sup>2</sup> See ESMA, Consultation Paper: Draft Technical Advice to the European Commission on Possible Implementing Measures of the Alternative Investment Fund Managers Directive (July 13, 2011), *available at* <http://www.esma.europa.eu/popup2.php?id=7625>.

<sup>3</sup> The final text of the AIFMD was published in the Official Journal on July 1, 2011, and is available at <http://www.esma.europa.eu/popup2.php?id=7702>.

<sup>4</sup> ICI has followed the AIFMD since the release of the EC’s original text and, on January 14, 2011, submitted a letter to ESMA responding to the Call for Evidence on implementing measures on the AIFMD, available at <http://www.ici.org/pdf/24891.pdf> (“January 2011 Letter”).

recognize that drafting this technical advice is a daunting task, requiring the balancing of numerous competing factors and appreciate the work of ESMA (and its predecessor CESR) thus far.

In the Paper, ESMA requests comment on its draft technical advice relating to: (i) general provisions, authorization and operating conditions, (ii) depositary, and (iii) transparency requirements and leverage.<sup>5</sup> We recognize that the Paper does not specifically address third country AIFM and AIF; however, because investment companies registered under the U.S. Investment Company Act of 1940 (“U.S. RICs”) that market shares of AIF to professional investors after July 2013 will need to comply with the transparency requirements of the AIFMD, we have reviewed ESMA’s draft technical advice in this area.<sup>6</sup> We also have comments on an AIFM’s justification of its delegation structure.

### Transparency Provisions

Under Article 42 of the AIFMD, a U.S. RIC will be permitted to market its shares to professional investors in accordance with the laws of a Member State, so long as it complies with Articles 22, 23, and 24 of the AIFMD (the “Transparency Provisions”), among other requirements.<sup>7</sup> While the Institute acknowledges the benefits of greater transparency vis-à-vis investors and competent authorities, we are concerned with the scope of the requested information and the practical ability of U.S. RICs to provide certain information as contemplated by ESMA. We believe other non-EU AIFM and non-EU AIF may face similar challenges. Therefore, we encourage ESMA to formulate technical advice that allows for a pragmatic and proportionate implementation of the Transparency Provisions.

As proposed, ESMA’s draft measures are highly prescriptive and will present unique challenges for non-EU AIFM and non-EU AIF, particularly those that are already subject to their own country’s rules, such as a U.S. RIC. These managers and funds will be required to comply with the national private placement regimes in order to market their shares in a Member State. In these circumstances we believe it would be appropriate for ESMA to adopt a flexible, principles-based approach for the application of the Transparency Provisions to non-EU AIFM and non-EU AIF. For example, as explained below, we believe it would be appropriate for ESMA to allow non-EU AIFM to make certain

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<sup>5</sup> In a Consultation Paper released on August 23, 2011, ESMA proposed its draft technical advice to the EC on possible implementing measures of the AIFMD in relation to supervision and third countries (“Supervision CP”). The Institute intends to separately comment on the Supervision CP.

<sup>6</sup> For purposes of our analysis, we consider a U.S. RIC to be internally managed; it is, therefore, both the AIF and the AIFM for purposes of the AIFMD. *See* Recital 20 of the AIFMD.

<sup>7</sup> In addition, appropriate cooperation arrangements must be in place between the competent authorities of the Member State and the third country. This issue is covered in the Supervision CP.

information available in other documents or in other ways. Just as the AIFMD recognizes the acceptability of non-EU accounting standards, we believe ESMA should be flexible in its consideration of the application of the Transparency Provisions in the context of non-EU AIFM and non-EU AIF.<sup>8</sup>

In particular, we stress the importance of proportionality in the consideration of how the technical advice on the Transparency Provisions applies to non-EU AIFM managing non-EU AIF where there are references and obligations deriving from operational sections of the AIFMD, with which non-EU AIFM managing non-EU AIF privately placing shares in accordance with Article 42 of the AIFMD technically were not intended to comply. Rather, at a minimum, the non-EU AIFM must comply with the Transparency Provisions and the relevant national private placement regime to market in a Member State. Requiring non-EU AIFM to comply with requirements identical to those of an EU-AIFM that holds an EU-wide passport is inconsistent with the language and intent of Article 42.

Further, as ESMA is aware, regulators throughout the globe are similarly developing reporting requirements for alternative investment funds and their managers.<sup>9</sup> Many investment managers advise funds in multiple jurisdictions and will potentially be subject to the reporting requirements of various jurisdictions. We therefore request that ESMA and other European regulatory bodies continue to coordinate with other regulators, including in the U.S., on reporting requirements for alternative investment funds to avoid unnecessary, duplicative or excessive reporting. Gathering information and completing forms that are different (even if similar) requires significant time, operational coordination and resources. Conformity of reporting requirements among jurisdictions would benefit regulators in their task of overseeing global systemic risk and would also substantially ease the burdens placed on asset managers.

#### *Annual Report and Disclosure to Investors*

In the Paper, ESMA proposes certain content and format requirements for the annual report required by Article 22 of the AIFMD and the investor disclosure in Article 23 of the AIFMD. We have

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<sup>8</sup> Such flexibility is supported by Recital 69 of the AIFMD, which provides that “non-EU AIFM should be subject at least to rules *similar* to those applicable to EU AIFMs managing EU AIFs with respect to the disclosure to investors (emphasis added),” and further states that the contemplated cooperation arrangements for purposes of systemic risk oversight “should not be used as a barrier to impede third country funds from being marketed in a Member State.”

<sup>9</sup> In particular, the U.S. Securities and Exchange Commission (“SEC”) will require private fund advisers to provide certain information about the private funds they manage to regulators on Form PF. *See*, Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, available at <http://www.sec.gov/rules/proposed/2011/ia-3145.pdf>.

closely reviewed how ESMA's proposed technical advice regarding these Articles would impact a U.S. RIC, which is already subject to extensive and detailed disclosure requirements under U.S. law.

As a general comment, we are pleased that the General Principles for the Annual Report (Box 102) reiterate that, in the case of a third country AIF, the accounting information contained in the annual report shall be prepared in accordance with the accounting standards of the third country where the AIF is established and with the accounting rules laid down in the AIF rules or instruments of incorporation.

More specifically, we note that ESMA's proposals are quite detailed and, as a consequence, the proposals for the annual report and the investor disclosure would require a U.S. RIC to disclose information that is either (i) not currently included in a U.S. RIC's annual report, but is provided in another document provided to or available to investors, such as the U.S. RIC's prospectus or statement of additional information or (ii) not currently required to be provided or made available to a U.S. RIC's investors. As we have previously described to ESMA,<sup>10</sup> U.S. RICs are subject to extensive disclosure requirements under the Investment Company Act of 1940 ("1940 Act") and the Securities Act of 1933, which specify, among other things, the content of a U.S. RIC's registration statement (which includes the prospectus and statement of additional information ("SAI")), annual report and semi-annual report to shareholders and portfolio holdings disclosure.<sup>11</sup> Complying with certain proposals could prove difficult and challenging for U.S. RICs. For example, U.S. RICs will need to evaluate the ability to provide the specified information, in the required format, to investors (or a subset of investors) under U.S. law, as well as any legal consequences of doing so. U.S. RICs will also need to consider the impact that this will have on the processes in place at the fund complex with respect to

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<sup>10</sup> See January 2011 Letter, which describes the core principles of the 1940 Act, including its transparency provisions.

<sup>11</sup> As a general matter, the following information, among other information, generally must be included in a U.S. RIC's annual and semi-annual report to shareholders: (i) actual and hypothetical expenses, (ii) a balance sheet, (iii) the amounts and values of portfolio securities (the fund may include a summary portfolio schedule, provided that a complete schedule is filed on Form N-CSR), (iv) a statement of operations, (v) a statement of changes in net assets, (vi) per share data, (vii) information about fund directors, (viii) information about matters submitted to a shareholder vote, (ix) material factors and conclusions that formed the basis for the board's approval of the fund's investment advisory contract, and (x) management's discussion of fund performance (annual report only). Included as Appendix A is a summary of the reporting requirements to which U.S. RICs are subject.

document production, compliance and legal review, and fund accounting,<sup>12</sup> particularly if these requirements would apply only to certain U.S. RICs in a fund complex.

In order to accommodate U.S. RICs and other non-EU AIF that may have similar challenges, we request that ESMA provide non-EU AIF and Member States with flexibility in complying with the AIFMD requirements. For example, we believe that it would be appropriate and consistent with the policies of the AIFMD to permit, in circumstances when local law provides implementation challenges, the disclosure of items specified in Article 22 (Annual Report) and 23 (Disclosure to Investors) to be met by making the requested information available in other ways *e.g.*, either as part of other documents prepared for the AIF, as a supplement to the annual report, or in another reasonable manner.<sup>13</sup> We believe the language of the AIFMD supports this approach and further that, so long as the information is provided to or made available to investors, this is consistent with the intent of the AIFMD.

To illustrate the importance of this type of flexibility, we describe below certain key disclosure items that are not currently included in a U.S. RIC's annual report and are therefore of concern.<sup>14</sup>

Reporting of Materials Changes (Box 103): Article 22(2)(d) of the AIFMD requires that an AIF's annual report contain any material changes in the information listed in Article 23 (Disclosure to Investors) during the financial year covered by the report. The Paper proposes that, where such information has already been provided to investors, a summary may be provided instead. A U.S. RIC's annual report does not normally contain disclosure of the fund's "material changes" during the prior year. This information is likewise not specifically described in a U.S. RIC's registration statement. Rather, because a U.S. RIC is continuously offered, its registration statement (which includes the prospectus and SAI) is continuously updated as material changes occur through the use of amendments or other methods (*i.e.*, "stickers"), which are all filed with the SEC. Specifically, a U.S. RIC may revise the disclosure in its prospectus throughout the year. In addition, a U.S. RIC's registration statement is comprehensively updated annually.

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<sup>12</sup> Although U.S. RICs will be able to utilize U.S. accounting rules for their financial statements, processes for U.S. RIC accounting and other functions are designed to ensure the production of documents required under U.S. law and conform to U.S. requirements for timing.

<sup>13</sup> We note that Article 22, paragraph 1, provides those AIF that are required to make public an annual report in accordance with Directive 2004/109/EC with the flexibility to provide additional information either separately or as an additional part of the annual financial report.

<sup>14</sup> The items we describe in this letter are not an exhaustive list of the potential issues raised by the Transparency Provisions for U.S. RICs.

Content and Format of the Report on Activities for the Financial Year (Box 105): Box 105, paragraph 2, proposes that the annual report include a description of the principal risks and investments or economic uncertainties that the AIF may face. For a U.S. RIC, the description of principal risks and investments is contained in the prospectus, with additional risks described in the SAI. This information is not required or typically included in the annual report. Further, although a U.S. RIC's annual report may discuss the economic factors that impacted the U.S. RIC's performance over the past year, U.S. RICs, as a general matter, do not speculate on economic uncertainties that the U.S. RIC may face. Including such information may implicate U.S. securities laws regarding forward-looking statements and raises concerns under U.S. law about the potential liability associated with such statements.

Content and Format of Remuneration Disclosure (Box 106): Box 106 proposes that certain remuneration disclosure be provided for each AIF, including: (i) total amount of remuneration for the financial year, (ii) aggregated amounts broken down by senior management and other staff whose professional activities have a material impact on the risk profile of the AIF, (iii) information on remuneration policies and procedures, and (iv) measures it adopts to avoid or manage conflicts of interest. A U.S. RIC's annual report contains information in the financial statements regarding aggregate remuneration paid to a U.S. RIC's directors. Information on amounts paid to individual directors and certain officers of the fund is available in the SAI.<sup>15</sup> In addition, the SAI contains disclosure about the U.S. RIC's investment adviser, including the structure of, and the method used to determine, the compensation of each portfolio manager. The SAI also describes the material conflicts that may arise in connection with the management of the U.S. RIC's investments, on the one hand, and the investments of other accounts managed by the portfolio manager, on the other hand.<sup>16</sup>

Periodic Disclosure to Investors (Box 107): Box 107 proposes two options for an AIFM to disclose the current risk profile of an AIF in the annual report of the AIF. A U.S. RIC provides

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<sup>15</sup> Disclosure is required for each of the three highest paid officers or any affiliated person of the U.S. RIC who received aggregate compensation from the U.S. RIC for the most recently completed fiscal year exceeding \$60,000. The SAI must also describe briefly the material provisions of any pension, retirement, or other plan or any arrangement under which these persons are or may be compensated for services provided, including amounts paid, if any, to them under these arrangements during the most recently completed fiscal year.

<sup>16</sup> In particular, a U.S. RIC must disclose, for each type of compensation (*e.g.*, salary, bonus, deferred compensation, retirement plans and arrangements), the criteria on which that type of compensation is based, for example, whether compensation is fixed, whether (and, if so, how) compensation is based on fund pre- or after-tax performance over a certain time period, and whether (and, if so, how) compensation is based on the value of assets held in the fund's portfolio.

extensive disclosure regarding its principal risks in its prospectus and SAI. This information is not, however, typically included in the annual report. Further, to the extent the requirements apply to third country AIF, U.S. RICs do not disclose information about “risk limits” or “stress tests” in a manner that appears to be contemplated by the Paper.<sup>17</sup>

In addition, paragraphs 2 and 6 of Box 107 contemplate certain disclosure “as required by the AIF rules or instruments of incorporation, prospectus and offering documents *and*, at a minimum, in the annual report of the AIF (emphasis added).” To provide AIF additional flexibility to comply with this requirement, we request that ESMA not require this disclosure in multiple places and instead revise this text to read “*or*, at a minimum, in the annual report of the AIF.” If an AIF has disclosed the information in another document available to investors, requiring disclosure of the same information in the annual report is unnecessary.

Regular Disclosure to Investors (Box 108): Box 108 proposes provisions for the periodic disclosure of leverage employed by an AIFM on behalf of the AIF. Specifically, it proposes disclosure, at a minimum annually, of the total amount of leverage employed by the AIFM, on behalf of the AIF, in accordance with the Gross Method of calculating exposure and either the Commitment Method or the Advanced Method of calculation (each as defined in the AIFMD). This disclosure must also include the maximum leverage levels to which the AIF is subject and leverage measures or ratios.

Disclosing leverage in this manner raises serious concerns because U.S. RICs do not currently calculate and disclose leverage in accordance with the methods specified in the Paper, and U.S. law approaches leverage differently. In particular, the 1940 Act does not specify a method for calculating leverage or require disclosure of the total amount of leverage employed by the U.S. RIC.<sup>18</sup> The SEC is, however, currently reviewing the use of derivatives and leverage by U.S. RICs and evaluating whether changes should be made to the regulatory framework.<sup>19</sup> Further,

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<sup>17</sup> Option 2 under *Risk profile of the AIF* in Box 107 proposes disclosure of “the results of any relevant stress tests” and disclosure regarding “exceeding risk limits set by the AIFM.” The text of the AIFMD itself, however, does not specifically require a third country fund to comply with provisions other than the Transparency Provisions, *e.g.*, Articles 15 and 16 requiring stress testing. Further, Box 109, on Format and Content of Reporting to Competent Authorities, proposes disclosure of “the results of periodic stress tests...to the extent that the AIFM are subject to the requirements.”

<sup>18</sup> We note that the financial statements of a U.S. RIC do, however, list all open derivatives contracts, providing for each contract the fair value, notional amount, reference asset/underlying asset, number of contracts, expiration and counterparty.

<sup>19</sup> *See*, Use of Derivatives by Investment Companies under the Investment Company Act of 1940, Release No. IC-28776 (August 31, 2011), available at <http://www.sec.gov/rules/concept/2011/ic-29776.pdf>.

as explained in the SEC's concept release, jurisdictions around the globe approach the use of derivatives and measurement of leverage in funds differently.<sup>20</sup> Given the current status of U.S. law, we have serious reservations regarding the inclusion of a leverage number calculated in accordance with the methods specified in the Paper in the documents of a U.S. RIC. Investors in U.S. RICs, which are primarily U.S. retail investors, may be confused or misled by such information, particularly if it is provided only for certain U.S. RICs and not others. For example, investors may conclude that disclosure of the leverage number for a particular U.S. RIC indicates that it is more risky or somehow different than a similar U.S. RIC for which such information is not provided.

#### Reporting to Competent Authorities

The Institute also has concerns with ESMA's technical advice on the provisions regarding reporting to competent authorities ("CA report"). First, we believe that ESMA should reconsider the frequency and timing of the CA report. In the Paper, ESMA proposes that an AIFM be required to report with respect to each AIF on a quarterly basis. We believe that this frequency of reporting is unnecessary and unduly burdensome for many types of entities. U.S. RICs, in particular, already engage in similar reporting, including quarterly disclosure of portfolio holdings. Rather, we believe it would be appropriate for ESMA to propose annual reporting for AIF, and quarterly reporting only for a subset of AIF, such as those that use "leverage on a substantial basis" or upon request of the competent authority.<sup>21</sup>

In addition, we believe that the one month time lag for providing the specified disclosure to competent authorities may raise significant challenges for certain AIF. For example, the CA report will include disclosure of the main types of instruments in which the AIF is trading. Under the 1940 Act, U.S. RICs provide quarterly public disclosure of their complete portfolio holdings 60 days after the end of the reporting period. The reports in which the portfolio holdings are included must include a certification of the principal executive and principal financial officer of the U.S. RIC.<sup>22</sup> Requiring U.S.

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<sup>20</sup> *Id.* at 31-37.

<sup>21</sup> For example, proposed Form PF in the United States contemplates annual reports for private fund advisers other than large private fund advisers, which will be required to report quarterly.

<sup>22</sup> The certification in Form N-CSR (which contains the annual and semi-annual report) requires a certifying officer to state, based on the officer's knowledge, that the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition, results of operations, changes in net assets, and cash flows (if the financial statements are required to include a statement of cash flows) of the registrant as of, and for, the periods presented



RICs to provide this information in a more expedited manner would significantly impact the policies and procedures maintained by the U.S. RIC to ensure compliance with its obligations under U.S. law. We therefore request that ESMA either (i) extend the reporting lag to 60 days for all AIF, or (ii) extend the reporting lag to 60 days, but require a shorter lag for certain AIF, such as those that use “leverage on a substantial basis.”

The introduction to the pro-forma template (p. 422 of the Paper) provides that “The data comprising sections 2, 3, and 4 of the pro-forma relates to AIF-specific information and this will be reported on an AIF basis. As such, AIFM managing more than one AIF will be required to submit information for each AIF [which is of a material size],” indicating that ESMA is still considering under what circumstances this information will need to be provided for a particular AIF. We believe that, in making this determination, ESMA should consider excluding from this disclosure requirement non-EU AIF whose EU-based shareholders (as listed on the AIF’s books and records) hold assets under a de minimis amount and that are already reporting similar information in the jurisdiction where they are domiciled. Absent such a carve-out, we understand that a U.S. RIC that has marketed its shares to one professional investor in the EU in accordance with a Member State’s national laws would be required to complete the entire pro-forma template. We believe that, since such AIF are reporting similar information in the jurisdiction where they are domiciled, requiring such AIF to report this information would be unnecessary and duplicative.

### Delegation

The Paper provides advice on Article 20(1)(a) of the AIFMD, which requires that the AIFM be able to justify its entire delegation structure on objective reasons. The Paper outlines two options for addressing this requirement and requests comment on which option is preferable. Under Option 1, an AIFM would fulfill the justification condition if it is able to demonstrate that the delegation is for the purpose of a more efficient conduct of the AIFM’s management of the AIF. As noted by ESMA, Option 1 is based on the UCITS approach. Option 2, in contrast, provides a non-exhaustive list of objective reasons for delegating tasks instead of providing a high-level principle.<sup>23</sup>

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in the report. The certification on Form N-Q (which contains portfolio holdings disclosure) requires a certifying officer to state, based on the officer’s knowledge, that the schedules of investments included in the report fairly present in all material respects the investments of the registrant as of the end of the fiscal quarter for which the report is filed.

<sup>23</sup> Under Option 2, reasons for delegating tasks include, but are not limited to: optimizing of business functions and processes; cost saving; expertise of the delegate in administration/specific markets/investments; and access of the delegate to global trading capabilities.

Although either Option 1 or Option 2 could provide a workable delegation framework, we believe that Option 1 is preferable to Option 2. First, the UCITS Directive's delegation provisions have worked well for investment managers over a number of years, and regulators have developed methods for supervising delegation under this standard. Absent indication that this standard has not worked properly, harmonizing the regulatory regimes would help eliminate confusion and uncertainty among the industry and regulators that may arise from two different standards. Second, there is some concern that, although the list specified in Option 2 is "non-exhaustive," this standard could be interpreted narrowly and, in effect, as limiting the reasons for delegation to those listed. We find it preferable, therefore, to utilize the UCITS framework and permit an AIFM to delegate so long as it can provide an objective reason why the delegation is for a more efficient conduct of the AIFM's management of the AIF.

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We appreciate the opportunity to provide comments on the Paper. If you have any questions about our comments or would like additional information, please contact me ([kmcmillan@ici.org](mailto:kmcmillan@ici.org) or 202-326-5815) or Susan Olson, Senior Counsel – International Affairs ([solson@ici.org](mailto:solson@ici.org) or 202-326-5813).

Sincerely,

/s/ Karrie McMillan

Karrie McMillan  
General Counsel

## **Appendix A**

In addition to a registration statement, which is amended and updated at least annually, a U.S. registered investment company (“RIC”) is subject to various ongoing reporting requirements that provide investors and the U.S. Securities and Exchange Commission (“SEC”) with detailed information regarding its current activities.

### **Annual and Semi-Annual Report (Form N-SAR)**

Filed with the SEC and available publicly through the SEC’s website.

- RICs (other than face-amount certificate companies) are required to file with the SEC a report on Form N-SAR not more than 60 days after the close of the fiscal year and not more than 60 days after the close of the fiscal second quarter.
- The form, available at <http://www.sec.gov/about/forms/formn-sar.pdf>, provides the SEC with statistical information to aid in monitoring a RIC’s operations and obtaining necessary compliance information about fund complexes.
- Form N-SAR requests information about, among other things, a RIC’s service providers, brokerage commissions, advisory fees, types of portfolio securities, investment practices, and income and expenses.

### **Annual and Semi-Annual Reports to Shareholders**

Delivered to shareholders, generally available on a fund’s website, and filed with the SEC (see below).

- Open-end and closed-end RICs (including those that are ETFs) are required to transmit a semi-annual and annual report to shareholders within 60 days after the close of the period for which the report is being made.
- The following information, among other information, generally must be included in reports to shareholders: (i) actual and hypothetical expenses, (ii) a balance sheet, (iii) the amounts and values of portfolio securities (the fund may include a summary portfolio schedule, provided that a complete schedule is filed on Form N-CSR), (iv) a statement of operations, (v) a statement of changes in net assets, (vi) per share data, (vii) information about fund directors, (viii) information about matters submitted to a shareholder vote, (ix) material factors and conclusions that formed the basis for the board’s approval of the fund’s investment advisory contract, and (x) management’s discussion of fund performance (annual report only).

### **Certified Shareholder Reports (Form N-CSR)**

Filed with the SEC and available publicly through the SEC's website.

- Open-end and closed-end RICs are required to file a report with the SEC on Form N-CSR, available at <http://www.sec.gov/about/forms/formn-csr.pdf>, within 10 days after transmitting any annual or semi-annual report to fund shareholders.
- Form N-CSR includes the following information: (i) a copy of the report transmitted to fund shareholders, (ii) a complete portfolio schedule, if a summary schedule is provided in the report to shareholders, (iii) disclosure regarding the fund's code of ethics, (iii) disclosure regarding any conclusions from the fund's principal executive and financial officer(s) about the effectiveness of the fund's disclosure controls and procedures based on an evaluation done within 90 days prior to the report.
- The fund's principal executive and financial officer(s) must certify that (i) the report fairly presents in all material respects the fund's financial condition, results of operations, and changes in net assets and cash flows, (ii) that they have designed disclosure controls and procedures to ensure that material information regarding the fund is made known to them, evaluated the effectiveness of the fund's disclosure controls and procedures within 90 days prior to the filing date, and presented their conclusions about the effectiveness of the controls and procedures, and (iii) that they have disclosed to the fund's auditors and board audit committee any fraud involving management or employees with a significant role in the fund's internal controls.

### **Quarterly Reports to the SEC (Form N-Q)**

Filed with the SEC and available publicly through the SEC's website.

- Open-end and closed-end RICs are required to file with the SEC a complete portfolio schedule as of the end of the first and third fiscal quarter on Form N-Q, available at <http://www.sec.gov/about/forms/formn-q.pdf>, within 60 days after the end of the quarter. (A portfolio schedule is filed for the second and fourth quarter as part of the report to shareholders on Form N-CSR, described above).
- The portfolio schedule is required to contain information about (i) the name of the issuer and title of issue, (ii) the balance at close of period, and (iii) the value of each item at close of period.
- RICs have begun providing information about how portfolio valuations are calculated in accordance with Statement of Financial Accounting Standards No. 157, *Fair Value*

*Measurements* (FAS157). FAS 157 requires that portfolio holdings be broken into three categories, based on the reliability of the pricing inputs.

- A RIC, together with its principal executive and principal financial officers, must certify that the schedule of investments fairly presents in all material respects the investments of the RIC as of the end of the fiscal quarter.
- The Form N-Q must also disclose the results of the evaluation of the RIC's disclosure controls and procedures, and the certifying officer must state that he or she has disclosed any change in the RIC's internal control over financial reporting during the past fiscal quarter.

### **Disclosure of Actual Proxy Voting Record (Form N-PX)**

Filed with the SEC and available publicly through the SEC's website.

- Open-end and closed-end RICs are required to annually file a report with the SEC containing the fund's complete proxy voting record on Form N-PX, available at <http://www.sec.gov/about/forms/formn-px.pdf>.
- For each matter on which a fund is entitled to vote, the fund is required to disclose certain information, including: (i) name of the issuer of the security, (ii) brief identification of the matter voted upon, (iii) whether the fund voted on the matter, and (iv) how the fund voted on the matter.

### **Investment Adviser Registration – Form ADV**

Investment advisers that are registered with the SEC (*e.g.*, investment advisers to U.S. RICs) must complete an investment adviser registration form (Form ADV), which must be updated annually and when there are material changes to the information provided. Part 1A, which is filed with the SEC and available on the SEC's website, contains information regarding an adviser's activities and clients, including information regarding any private funds advised by the adviser or a related person of the adviser. Part 2A, which is filed with the SEC and available on the SEC's website and also delivered to clients and prospective clients, contains a narrative plain English brochure that describes the adviser's business, conflicts of interest, disciplinary history, and other important information that would help clients make an informed decision about whether to hire or retain that adviser. Part 2B, which is required to be delivered to investors, contains information about the advisory personnel providing clients with investment advice.