



February 15, 2008

Ms. Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-0609

Re: Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies; File No. S7-28-07

Dear Ms. Morris:

The Independent Directors Council<sup>1</sup> appreciates the opportunity to comment on the Commission's proposal to enhance the disclosures that are provided to mutual fund investors.<sup>2</sup> In its proposal, the Commission develops a mechanism to deliver to investors a standardized summary prospectus containing key information about a fund and provide them with access to additional, more detailed information electronically or, by request, in paper. This layered disclosure approach marks a revolutionary development in the use of the Internet to help investors increase their understanding of mutual fund investments.

IDC strongly supports the Commission's proposal and its layered disclosure approach, which would allow investors to get the information they find most useful, at the level of detail they desire and in a format they prefer. In addition, the standardized format of the summary prospectus would promote effective comparisons of funds.

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<sup>1</sup> IDC serves the fund independent director community by advancing the education, interaction, communication, and policy positions of fund independent directors. IDC's activities are led by a Governing Council of independent directors of Investment Company Institute member funds. ICI is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds, and unit investment trusts. Members of ICI manage total assets of \$12.68 trillion and serve almost 90 million shareholders. The views expressed by IDC in this letter do not purport to reflect the views of all fund independent directors.

<sup>2</sup> See Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, SEC Release Nos. 33-8861 and IC-28064 (Nov. 21, 2007) ("Proposing Release"), available at <http://www.sec.gov/rules/proposed/2007/33-8861.pdf>.

From the perspective of promoting the best interests of shareholders, directors take great interest in the disclosures made to potential and existing mutual fund investors. As a result of director interest in fund disclosure and IDC's strong support for the Commission's proposal, IDC would like to take this opportunity to offer both general comments to extend the proposal's layered disclosure framework to other areas, and specific comments to improve upon the proposed summary prospectus and make it as user friendly as possible so that fund investors and management companies alike will embrace it. The specific comments relate to the proposal's quarterly updating requirements, required disclosure of a portfolio's top ten holdings, the location of the fee table, required disclosure of portfolio turnover rates, the length of the document, and the application of Section 11 of the Securities Act of 1933 to the summary prospectus.

### General Comments

In light of the significant anticipated benefits of the proposal's layered disclosure approach, IDC encourages the Commission to extend the approach to other documents, such as shareholder reports. Like prospectuses, shareholder reports typically are lengthy, difficult to understand, and not often read by investors.<sup>3</sup> We think investors would benefit from receiving the information they value the most, such as the manager's discussion of fund performance, in a summary document, and having access to other, more detailed information, such as the fund's financial statements, that may only be of interest to a more limited number of shareholders, in a more detailed document on the Internet.

In addition, we understand that the Commission has been working with the Employee Benefits Security Administration of the U.S. Department of Labor to develop a summary disclosure framework to apprise defined contribution plan investors of information about the investment objectives, strategies, risks, performance and fees of the funds available in their plans. IDC supports this cooperative initiative and encourages the Commission to continue these discussions in order to help fund investors in defined contribution plans be better informed about their investment options.

### Specific Comments

*Quarterly Updating.* The Commission's proposal would require quarterly updating, with a one-month lag time, of the performance and holdings information in the summary prospectus. IDC believes that there is a better way to achieve the Commission's underlying objective and, thus, is concerned about unnecessary costs being passed on to shareholders. We are also concerned that the costs and operational difficulties associated with the proposal could discourage funds from using the summary prospectus. For example, the staffing and workflow challenges associated with creating the summary prospectus at the same time that fact sheets and other marketing materials are being updated

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<sup>3</sup> See Investment Company Institute, *Understanding Investor Preferences for Mutual Fund Information*, Research Report, August 2006, available at [http://www.ici.org/stats/res/rpt\\_06\\_inv\\_prefs\\_full.pdf](http://www.ici.org/stats/res/rpt_06_inv_prefs_full.pdf).

will create bottlenecks during these periods. In addition, the printing and distribution of updated summary prospectuses to a fund's vast network of intermediary channels within one month of quarter end would be difficult to accomplish. Finally, the compliance and quality control measures necessary to ensure that the most current summary prospectuses are available for use on a timely basis – either by replacing a physical inventory of documents with updated documents that have been shipped and catalogued or by making updated documents available through a “print-on-demand” system – would be burdensome and difficult to meet before the process would have to begin again for the next quarter end. IDC does not believe that these costs would sufficiently outweigh any potential benefits to shareholders.

We believe a more cost-effective approach would be to require annual updating of the summary prospectus, with prominent disclosure in the document describing how investors can access quarterly or other periodic performance and holdings information (*i.e.*, through a website address or a toll-free telephone number). This alternative approach also makes sense from an investor's perspective, as nearly all mutual fund shareholders have Internet access.<sup>4</sup>

*Top Ten Holdings.* The Commission's proposal would require disclosure of a fund's top ten holdings in its summary prospectus. In many instances, the top ten holdings may be of limited value to investors looking for an overview of information about a fund's investment. For example, the holdings may comprise a small percentage of the fund's overall holdings and provide very limited insight into the portfolio's holdings. In addition, investors may not even recognize the names of the securities included in the top ten holdings, such as in the case of a fund investing in small capitalization stocks. This information also could quickly become stale, and we do not believe, for the reasons stated above, requiring a periodic updating more frequently than annually is advisable. If the Commission continues to believe that this disclosure is of value in all instances, it could require funds to disclose their top ten holdings on their websites or provide a hyperlink to the most recently filed Form N-Q, which lists a fund's complete portfolio holdings. If the Commission still believes that disclosure of a fund's top ten holdings should be included in the prospectus, then it should be placed in a fund's more detailed statutory prospectus, rather than the fund's summary prospectus.

*Fee Table Location.* The proposal would move the location of the fee table forward from its current location, which follows disclosure about a fund's investment objective, strategies, risks, and performance. The new location of the fee table would follow disclosure of the fund's investment objective, and precede disclosure of the fund's investment strategies, risks, and performance. The location of the fee table should be left in its current location, and not be moved, so that the discussion regarding a fund's key investment characteristics is not broken up. We fully recognize that a fund's key investment characteristics and its cost are both indisputably material to an investment decision, but we

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<sup>4</sup> See Investment Company Institute, *Ownership of Mutual Funds and Use of the Internet*, 2006, Research Fundamentals, Vol. 15, No. 6, October 2006, available at <http://www.ici.org/fundamentals/fm-v15n6.pdf>.

feel it is important for investors to consider the key investment characteristics of a fund *before* they consider its cost. We firmly believe that a fee table located after disclosure about a fund's key investment characteristics in such a short document will be no less prominent and no less likely to be looked at by investors than a fee table located after the fund's investment objective.

*Portfolio Turnover Rate.* The Commission's proposal would require, for a fund other than a money market fund, disclosure of its one-year portfolio turnover rate and an explanation of the effect of portfolio turnover on transaction costs and fund performance. We are concerned that disclosure of a fund's portfolio turnover rate for just a one-year period, in some instances, could be misleading. Portfolio turnover rates may vary significantly from time to time depending on a variety of factors, including if a fund needs to meet redemption requests or "put to work" unexpected cash inflows due to sharp swings in the markets. In addition, disclosure for a one-year period may be confusing if a significant event occurs that is not likely to be repeated in following years, such as a fund merger or a new portfolio manager restructuring the fund's holdings. For these reasons, the Commission should require disclosure in the summary prospectus of the portfolio turnover rate for each of the past three years, with the flexibility for funds to provide a narrative explanation of any anomalies in the data. Turnover rates for each of the past three years, rather than for an annualized three-year time period, are easy to compare and readily available, as funds already compute them to meet existing regulatory requirements.

*Length of the Summary Prospectus.* IDC strongly supports the Commission's efforts to provide investors with a streamlined disclosure document with material information relevant to investors. We are pleased that the Commission has mandated the format and content of the summary prospectus. We also applaud the ease with which a standardized summary prospectus will allow investors to compare funds. We note that the Commission has stated its intention that the summary prospectus would be no more than three or four pages, but declined to impose a specific page limit. We suggest that the Commission consider imposing a page limit, such as four or five pages. Even though the proposal would prohibit the inclusion of any information that is not explicitly permitted, we are concerned that the potential for disclosure "creep" may lead to an expansion of the document over time and undermine its usefulness.

The proposal also would prohibit disclosure about more than one fund in a summary prospectus. We recognize the possibility that, for certain funds, sponsors may wish to include multiple funds in a single summary prospectus or bind together more than one summary prospectus. This may be appropriate for some funds, such as lifecycle funds, which invest in a mix of underlying funds based on factors such as age or risk tolerance. In making their investment decision, investors may wish to consider the various iterations of these funds as part of a set of investment alternatives. We therefore would not object if the Commission were to except these types of funds from the single fund or any page limit mandate.

*Application of Section 11 Liability.* A fund's directors may be personally liable under Section 11 of the Securities Act to investors if the fund's registration statement, which is signed by the directors, contains an untrue or misleading statement of material fact. In its proposal, the Commission concludes that, inasmuch as the summary prospectus is not deemed part of the registration statement for purposes of Section 11, this liability will not extend to the proposed summary prospectus. We agree, and ask that the Commission reaffirm its conclusion in its release adopting the summary prospectus. As the Commission noted in its proposal, this Congressional exception from liability for summary prospectuses was put into place to encourage the use of summary prospectuses.<sup>5</sup>

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IDC commends the Commission's efforts to modernize fund disclosure and appreciates the opportunity to comment on the Commission's proposal. IDC strongly supports the efforts of the Commission to provide concise, clear, and standardized disclosure to fund investors. The layered disclosure approach takes appropriate advantage of the Internet and provides investors the opportunity to dig as deeply as they wish into the operations of their fund investments.

If you have any questions about our comments or would like to meet with us to discuss them, please contact Amy B.R. Lancellotta, Managing Director, Independent Directors Council, at 202-326-5824.

Sincerely,

/s/ Robert W. Uek

Robert W. Uek  
Chair, IDC Governing Council

cc: The Honorable Christopher Cox, Chairman  
The Honorable Paul S. Atkins  
The Honorable Kathleen L. Casey

Andrew J. Donohue, Director  
Susan Nash, Associate Director  
Division of Investment Management

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<sup>5</sup> Proposing Release, *supra* note 2, at n.140. *See also* L. Loss & J. Seligman, Securities Regulation, § 2-b-5 (3d ed. 2006) (*citing* S. Rep. 1036, 83d Cong., 2d Sess. 17-18 (1954) and H.R. Rep. 1542, 83d Cong., 2d Sess. 26 (1954)). Congress and the federal securities laws have long contemplated the concept of summary prospectuses. *See id.* The Commission's proposed mutual fund summary prospectus is consistent with that concept.