July 25, 2008

VIA EMAIL

Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Comments on Release Nos. 33-8929; 34-57942; 39-2457; IC-28298; File No. S7-12-08

Dear Acting Secretary Harmon:

I appreciate this opportunity to submit comments on the SEC's proposed Interactive Data for Mutual Fund Risk/Return Summary (the "Proposal") described in Release Nos. 33-8929; 34-57942; 39-2457; IC-28298; File No. S7-12-08 (the "Proposing Release"). I offer my comments on the Proposal both from my personal perspective as a long-time mutual fund investor, as well as from my professional perspective as an investment management attorney with over 20 years of experience assisting funds in meeting SEC regulatory requirements, which spans a period from before the inception of EDGAR to the present day. Please note, however, that the comments I offer are my own and do not necessarily reflect the views of any of my clients.

General Comments and Concerns

In general, I am a strident supporter of the Commission's use of technology in connection with the securities law filing and disclosure system.[1] However, I have deep concerns about the Proposal and believe it warrants further consideration prior to adoption,[2] for a variety of reasons outlined below:

1) Let the Marketplace Find the Best Approach. While I firmly believe that interactive tagging can add value to fund data, I believe it is unnecessary and inefficient regulatory intervention for the SEC to mandate that funds start tagging their information in the manner and on the time frame proposed. Moving to interactive data tagging strikes me as an evolutionary step in the financial reporting system for funds that would be best left to market forces to determine how and when the developments should occur, without SEC mandates and without government sanction of a particular reporting language.[3] If all the potential benefits of data tagging referenced in the Adopting Release are really going to arise, it would seem that all parties involved – funds, data providers,[4] analysts and

[1] I am also generally sympathetic to the viewpoint that the U.S. should stay in the forefront of initiatives -- like interactive data tagging -- that become widely recognized and used internationally. However, as compelling as that may be for operating companies that trade and compete in the global marketplace, it is less compelling in the case of mutual funds since U.S. funds are generally not sold abroad to non-U.S. investors, at least under the law as it currently stands.

[2] While I appreciate all the effort that has gone into the Commission's multi-year evaluation of interactive data, including having the Staff follow the work of such groups as the Advisory Committee on Improvements to Financial Reporting (CIFiR), I am not convinced that has done much, if anything, to advance the discussion of XBRL as applied to funds, which appears to me to still be in its earliest stages. For example, all of the CIFiR webcasts, materials and documents I have perused so far focus on operating companies and their reports, financials and issues. Funds are referenced as an afterthought, if at all.

[3] Although I am not aware of other languages that are likely to become competitive with XBRL for this purpose, it just seems wise that the government should be cautious about endorsing XBRL, which might have the effect of stifling competition for other, better languages.

[4] By "data providers" I mean commercial data aggregators (for example, EDGAROnline and Morningstar) as well as fund marketplaces, distributors and broker-dealers (for example, Schwab's Mutual Fund Marketplace) that make fund data available to their customers and/or to the general public.

investors alike – will have sufficient economic and competitive incentive to adopt and make available tagged data without SEC mandates.[5] Moreover, the marketplace would seem to be the best mechanism for determining the language of choice and which party should bear the cost.

For many years now, data providers have been selling or making commercially available vast amounts of fund data that they have mined, rehashed and re-presented in their own proprietary fashion at their own cost.[6] These commercial ventures seem to be already operating well,[7] without SEC intervention mandating a particular language or shifting the cost of tagging the data to the funds themselves. Certainly, one could presume that the Proposal would make it easier and cheaper for these commercial ventures to operate.[8] But this does not strike me as a cost that funds -- and their shareholders -- should have to bear. Unless the fund itself will be sufficiently advantaged by tagging,[9] it seems unjustified for the SEC to mandate that the cost[10] of tagging be borne by the fund rather than borne

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[5] In other words, if it is valuable enough to data providers to provide their customers with tagged data, they will either pay funds to submit the data to them tagged in a particular way or -- as I gather is already happening -- they will bear the cost of mining and tagging the data themselves. Similarly, if funds believe it is valuable enough to tag their own data – for example, to be included in databases or marketplaces from which they would otherwise be excluded, or to be able to more efficiently check or manage their own data internally -- then they will do their own tagging and justify bearing the attendant cost. Lastly, if tagged data is useful enough to advisers and investors in making investment decisions, they will pay for or otherwise gain access to the databases and marketplaces that provide tagged data to them in the format they desire. All of this seems manageable without the SEC stepping in to mandate that the cost of tagging be borne by funds.

[6] Examples include the data providers I previously mentioned, EDGAROnline, Morningstar and the Schwab Mutual Fund Marketplace, as well as many others. Indeed, as I understand it, some of the data aggregators are already providing data tagged in XBRL.

[7] Some of these commercial ventures are already providing free public access on their websites to their fund research databases. See, for example, the Schwab mutual funds research website at: http://www.schwab.com/public/schwab/research_strategies/mutual_funds?cmsid=P-980434&lvl1=research_strategies&lvl2=mutual_funds
This free data helps serve the needs of even small, individual investors who may choose not to pay fees to subscribe to commercial databases or who may not otherwise have access to fund data through another fund marketplace or broker-dealer relationship.

[8] One could easily envision that data providers will reap any cost savings benefit derived from funds having to tag their own risk/return data under the Proposal and then continue to distinguish themselves competitively in the marketplace by, among other things, how much additional fund data – beyond the data required to be tagged -- they make available to their subscribers and customers in their proprietary database.

[9] The potential fund benefits identified so far seem less than compelling. For instance, the Proposing Release (see pp. 16-17) suggests tagging may: reduce the time necessary for funds to gather and review information in the fund's traditional filings; enhance the ability of in-house professionals to identify and correct errors in the fund's traditional filings; and allow the fund to compile information more quickly and potentially more reliably for internal purposes and communications with third parties, such as intermediaries, information providers and the public. Not only do these benefits sound speculative, they would seem to require the fund to make an even greater capital outlay (for example, in the form of internally developed software or data control procedures) before they could realize those benefits in practice.

There has also been a suggestion (see p. 83 of the Proposing Release) that having funds tag their own data would make the tagged data more accurate because it would eliminate the need for manual re-keying of the data by third-party data providers. However, I am not aware that accuracy has been a huge issue with fund data. Moreover, enhancing a third-party data provider's commercial product does not seem like an appropriate basis on which to make a far-reaching, cost-shifting policy decision such the Proposal.

Another suggestion (also on p. 83 of the Proposing Release) has been that having funds tag their own data would help make the data more uniform and precise because the tagging process would reflect the fund's own decisions about what should be tagged, rather than the interpretative decisions of third-party data providers. However, as recognized in the Proposing Release, varying interpretations in tagging among funds can also undercut industry-wide uniformity and potentially require data providers to still have to re-tag, re-key or otherwise manipulate the fund-tagged data in order to normalize the data in their databases.

[10] By "cost" here, I mean not only the out-of-pocket cost associated with having to produce tagged submissions, but also the compliance and legal cost funds will incur under the Proposal to ensure faithful compliance with new tagging requirements and new regulatory deadlines and the increased exposure to liability funds will face if they fail to comply properly.

by, say, commercial ventures that can recoup that cost from their subscribers and customers. In my view, the bottom line is this: If the anticipated advantages of tagging are really there, the fund industry should adopt XBRL tagging on its own and the cost burden should gravitate toward the party able to bear it most efficiently.

2) Cost Estimates are Low. I believe the cost and burden estimates set out in the Proposing Release will turn out to be low and that the real, higher cost of the Proposal would tip the balance even more clearly toward not imposing this cost on funds through mandates at this time. I believe your cost estimates are low because the XBRL test period for funds has not yet been sufficiently rigorous, as reflected by several factors:

    a. Only 6 Voluntary Program participants (representing 10 funds) have submitted cost information so far. This is a breathtakingly small sample from which to generalize time and cost burdens for an entire industry of nearly 9,000 funds.

    b. The Voluntary Program participants so far have tended to be large fund complexes, whose resources and experiences may not generalize well to the smaller and medium-sized funds that make up the bulk of the funds not yet in the Voluntary Program.

    c. While the Proposing Release suggests that the filers that have already participated in the Voluntary Program represent a "wide variety of fund families," unless they also represent a wide variety of "problems" that could be encountered under the Proposal,[11] their experience would be even less reliable for estimating industry-wide costs.

    d. The cost estimates from the Voluntary Program do not include many (or any) costs associated with tagging data other than the risk/return summary in the N-1A, even though once finalized, the Proposal may permit tagging data beyond the risk/return summary.[12]

    e. Since the Voluntary Program did not permit the tagging of risk/return information until mid-2007, volunteer participants are unlikely to have filed thus far more than one year of tagged risk/return data,[13] making less reliable any subsequent filing cost estimates based on that experience.

    f. The estimates in the Proposing Release did not include any professional costs from outside accountants and lawyers that funds might incur in implementing the Proposal. Although the Proposing Release suggests that funds will or should not need the involvement of these types of professionals in their XBRL submissions, I believe it will be the exception rather than the rule for a fund to incur no additional outside accounting or legal costs whatsoever in the course of becoming compliant under the Proposal.

3) Viewers Are the Key for Funds. Of course, funds are very different than operating companies, and I believe that difference makes the XBRL story for funds far less

[11] For example, did the volunteer group include a wide variety of master-feeder funds, funds of funds, merged or converted funds with supplemental financial highlights information, funds reporting both "gross" and "net" expenses in their fee tables and/or other types of funds that may run into unique issues in presenting risk/return information or financial statement data in an XBRL-tagged format? Did the volunteer group test rigorously the use of any customized data tags?

[12] This would include, for example, portfolio holdings information which is proposed to be added to the Voluntary Program. Depending on the Commission's decision in response to comments, this might ultimately also include elements from the Summary Prospectus beyond the risk/return summary.

[13] Although they may have submitted more than one filing, they may not have submitted more than one year (or cycle) of information, and I would expect subsequent year filings to pose more potential problems (and therefore be potentially more costly) than subsequent filings of same-year information.

compelling than it is for operating companies. By shifting the focus of fund tagging to the risk/return summary, the Commission has already recognized that fund investors tend not to select funds by analyzing their GAAP financial statements, but by analyzing factors such as objectives, fees, risks, performance and so on, which contain a heavy dose of narrative text-based information in addition to numerical information. This contrasts starkly with operating companies, where detailed number-crunching of GAAP financial statement information – often 'sliced and diced' in myriad ways with the help of applications like Excel -- tends to drive investment decisions and makes interactive data tagging of their financial statements of more obvious benefit.

Consequently, it seems that the importance of XBRL for funds is less likely to depend on the development of XBRL-compatible analytical software or applications that interface with Excel, than on the development and availability of XBRL viewers that can adequately facilitate identifying, sorting and comparing funds. Moreover, to be successful, the viewers will have to be much better designed, easier to navigate and more capable than the free viewer on the SEC's website.[14] In addition, investors will still need tools to help them sort through the universe of available funds based on specified screening criteria (for example, all large cap funds, or all funds with an expense ratio of less than 1.00%, etc.), rather than merely viewing or comparing information about already identified funds. Otherwise they will not be able to take the most basic, first step of identifying all the funds fitting a particular description that might be of interest to them, from which they can then whittle down to their final selection based on more detailed criteria.

And that brings me back to the point I made earlier – fund investors already have impressive fund screening and comparison capabilities available to them in databases today, much of it accessible for free, without an XBRL mandate,[15] making me even less inclined to view the Proposal as an important step forward in fund reporting and more inclined to view it as merely a cost-shifting measure.

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Accordingly, I urge the Commission <u>not</u> to mandate XBRL tagging for funds at this time. Rather, I believe the Commission should proceed more cautiously and slowly at this stage, deferring any XBRL mandate for funds at least until the following thresholds have been crossed:

- Ø The first phase report has been completed on the "21st Century Disclosure Initiative" announced by the Commission. Funds have already had to deal with so many different formats since the inception of EDGAR, it just seems logical that the Commission should take into consideration the outcome of any effort aimed at "fundamentally rethinking" the way issuers report and investors acquire information before imposing yet another costly format requirement.

[14] I "test drove" the SEC's free Interactive Risk & Return Summary Report Viewer at http://a.viewerprototype1.com/viewer on a couple of occasions and, frankly, I found it rather rudimentary and awkward. For example, the viewing pane where actual fund data was displayed appeared to be no more than 1" – 2" high on my 17" PC monitor, making it necessary for me to scroll excessively in order to read even one paragraph of information. Then, when more than one fund was selected for viewing at a time, multiple scroll bars appeared nested inside of other scroll bars, making it confusing and frustrating to actually see the displayed information. In addition, the "Page Up" and "Page Down" buttons on the side menu seemed to move the fund list up and down one entry at a time, not one entire "page" at a time, making it unclear what the word "page" means there. Lastly, when I exported to Excel comparison data on three funds, one fund's performance data (Vanguard 500 Index Fund's) displayed left to right from newest to oldest (2007, 2006, 2005, etc.), whereas the other funds' data (Fidelity Cash Reserves' and American Funds Tax Exempt Fund of Maryland's) displayed in the opposite order, oldest to newest (1997, 1998, 1999, etc.), making the table lay-out all but useless as a comparison among those three. These are just a few of the problems I ran into that caused me to conclude I would not likely use the viewer in my own fund selection process.

[15] It is true in some cases that these databases contain only funds available for purchase through the marketplace or intermediary that maintains the database, but many of them still include a gargantuan number of funds. Moreover, the limited universe offered by those databases can actually be of help to investors who are only interested in funds available through that marketplace or intermediary, so they will not have to waste time having to sort through other funds as well.

- Ø The mutual fund Summary Prospectus proposal has been finalized so we will know exactly what will be required in a fund's risk/return summary and in the Summary Prospectus as a whole. Moreover, we will know more about what the required updating schedule will be for performance and holdings information and therefore be able to better evaluate how that updating requirement will square with the vision in the Proposal to update XBRL-tagged data only when the risk/return summary is amended via N-1A.

- Ø XBRL tags have been developed and received appropriate acknowledgement from XBRL International for the risk/return summary as it may be revised by the mutual fund Summary Prospectus proposal, as well for any other items from the Summary Prospectus or other reports that the Commission determines to include under mandatory rules or the Voluntary Program.

- Ø XBRL tags can be embedded seamlessly in the body of the official traditional filing – or the entire filing can be formatted in XBRL -- so that funds will not have to create and bear potential liability for stand-alone submissions containing only XBRL data taken out of context, or have to grapple with portions of their information being required in 2 or 3 different formats. While I appreciate the cautiousness reflected in your proposal to monitor the usefulness of XBRL reports for some period before attempting to integrate the XBRL format further, I am concerned that many of the added costs and legal issues that arise under the Proposal (and are reflected in my comments below) stem from the fact that the tagged data will appear in a separately created document, rather than embedded seamlessly into the traditional Related Official Filing. This suggests to me that mandates should be deferred at least until embedded tags are permitted or the "dueling formats" issue that overlays ASCII and HTML with XBRL is otherwise resolved.

In the meantime, I would urge the Commission to consider extending the Voluntary Program as proposed, without adopting a mandate to go into effect at the end of 2009. That way, at least for the time being:

- EDGAR can continue to act as a central repository for tagged data filings available to whoever is interested in accessing them;[16]
- more funds can gain more than a few months of experience in tagging risk/return filings and can gain experience with tagging data beyond risk/return data and tagging data in documents other than the N-1A; and
- market forces will have a chance to operate for a longer period to see whether any or all of the benefits of tagging anticipated in the Proposing Release actually come to fruition (new or better viewers are developed and made available commercially and/or for free, etc.), including sufficient benefits for funds to justify them bearing the cost of tagging their own filings.

Comments on Specific Aspects of the Proposal

As noted, I favor a decision to defer XBRL mandates for funds at this time. However, if the Commission nonetheless decides to move forward with mandates, I would urge you to reconsider various elements of the Proposal that I believe warrant further deliberation, including those reflected in the following comments, which are intended to help ensure that any mandates imposed are both rational and workable:

1) Why Tag Registration Statements? It is puzzling to me why the Commission is proposing that funds tag risk/return information appearing in their registration statement filings, rather than in their prospectus filings. Tagging only registration statement filings fails to

[16] At this point, I think this is a superior approach to simply ending or suspending the Commission's involvement in XBRL altogether since, until we know for sure if XBRL tagged documents are going to be mandated for funds at some point in the future, I believe there is a benefit to having them publicly and centrally available on the EDGAR database.

ensure that a fund's current risk/return information will be available in an interactive data format, given that information in a registration statement can be -- and often is -- amended by a subsequent prospectus or sticker filing made between registration statement amendments.

It seems oddly paradoxical for the Commission to be so enthusiastic about having XBRL data available for funds and then be content with the data being updated only when the registration statement is amended – perhaps as infrequently as once a year -- rather than when the risk/return information itself is amended by whatever means. This seems particularly odd when you consider that a fund's XBRL-tagged risk/return summary will include information way beyond simply performance information – which can be expected to be constantly changing – but will also include information as basic as the fund's objective, principal strategies, principal risks and fee table. Does the Commission really want investors accessing XBRL-tagged information that includes an out-of-date statement of a fund's objective, strategies, risks or fee table? One would assume not, although that could easily occur under the Proposal in cases where the revision to that information was made through a Rule 497 prospectus or sticker filing rather than through an amendment to the fund's N-1A?[17]

While I cringe at the burden that would result if funds were required to create XBRL submissions for every prospectus and sticker filing that contained risk/return information, it seems that the approach laid out in the Proposal all but ensures XBRL users would be accessing out-of-date risk/return information in a significant number of cases, that is, in every case where a fund revised any risk/return information between registration statement filings. That would not only systematically disadvantage XBRL users, it would seem potentially dangerous to their interests as well.

Accordingly, I would urge the Commission to reconsider whether tying the tagging requirement to the fund's registration statement is really the best approach, or whether the Proposal should instead aim to keep up-to-date tagged data publicly available by, for example, tying the tagging requirement to the risk/return summary as it appears in the fund's prospectus and related sticker filings.[18] Hand-in-hand with that issue, the Commission should also consider the increased burden the prospectus alternative would impose on funds, the EDGAR reprogramming that would be needed if that alternative were pursued and the necessity for revised cost estimates supporting the Proposal that would result.[19]

2) XBRL Submissions Should be Separate Documents, Not Exhibits. Until it is feasible and permitted for funds to embed XBRL tags in their traditional ASCII or HTML filings – or to submit their entire filing in XBRL rather than ASCII or HTML – XBRL-tagged information should be submitted in documents completely separate from the related traditional format

[17] Of course, not every revision to a fund's objective, strategies, risks or fee table would require an amendment to its N-1A, even if the revision were material.

[18] All of this becomes even more complex when viewed in light of the pending mutual fund Summary Prospectus proposal where funds are proposed to have to update their Summary Prospectuses at least quarterly, for performance and Top 10 holdings information. While it might be acceptable if funds do not create XBRL submissions for every quarterly update of performance or holdings -- particularly if those updates are ultimately allowed to be made via telephone or website postings rather than through 497 filings -- I nonetheless would remain concerned if a fund's XBRL-tagged information were not updated between registration statement amendments in cases where the fund had made other material revisions to its risk/return summary, such as to its objective, strategies, risks or fee table.

[19] If you nonetheless decide to tie the tagging requirement to Form N-1A and require a fund's XBRL-tagged risk/return summary to be filed as a post-effective amendment containing only a facing page, signature page, revised exhibit index and XBRL exhibit, then I would urge you to also make appropriate revisions to General Instruction B.2.(a) of Form N-1A to clarify that not every registration statement filing is required to include Parts A, B, and C in addition to the facing page and signature page, and that in certain circumstances -- such as when an XBRL exhibit is being filed -- an "exhibits-only" N-1A filing is permitted. In addition, it would be helpful if you clarified that the written representation from counsel referenced in Rule 485(b)(4) is not required with an XBRL exhibit filing made under Rule 485(b), even if counsel assisted in the preparation or review of the tagged exhibit.

filing, rather than in exhibits. XBRL submissions should also be made on EDGAR form types that have unique names including letters that identify them as containing only XBRL-tagged data.[20] This would have several advantages:

- It would avoid XBRL problems in any fashion adversely affecting the Related Official Filing in traditional format, causing it to be rejected, suspended, late or otherwise negatively impacted.
- It would make filings containing tagged data easily searchable and easily identifiable on the EDGAR system by data providers, investors or others specifically looking for XBRL-tagged information.
- It would avoid EDGAR users who are looking for a fund's traditional filings from wasting their time having to sort through any filings -- such as post-effective amendments identified generically as 485BPOS filings -- which contain only the fund's tagged interactive data and which are therefore completely useless to them.
- It would avoid the need for any EDGAR reprogramming so that Rule 497 prospectuses (or any other new documents) can be filed with exhibits.[21]

3) Tag All Summary Prospectus Items. It would seem only logical that all of the items required in a fund's Summary Prospectus (or prospectus summary) should be XBRL tagged, not just the risk/return items. If the rationale behind those items being included in the Summary Prospectus in the first place is that they are the core items investors use to select funds, then presumably a technology designed to facilitate manipulating those items to aid in the investment decision-making process should be capable of handling all of the items and not just some of them.[22] To the extent not currently available, XBRL data tags for Summary Prospectus items outside the risk/return summary should be developed. In addition, even though this would add more text-based information to the tagged information,[23] the risk/return summary already contains a fair amount of text-based information, which is nonetheless useful to investors in their decision-making process.[24]

4) Accompany Interactive Data Files with a Warning Legend. Any risk/return or other selected information appearing in an Interactive Data File submission should be accompanied by a legend warning investors that more complete information is available in the full prospectus, similar to the legend required for Summary Prospectuses and for the same reason required there. If the legend is important for a Summary Prospectus, it would seem equally -- if not more -- important in a document containing only XBRL-

[20] For example, form type INDAT-N1A might be used for an interactive data submission containing data from Form N-1A. Or, as other commenters have suggested, form types ending in /X might be used, such as form type N-Q/X to designate the XBRL submission containing data from Form N-Q.

[21] Although it may require other EDGAR reprogramming to permit the filing of new form types containing only interactive data.

[22] One could easily envision investors finding information outside the risk/return summary being of interest to them in a fund comparison, for example, numerical information such as the fund's minimum investment amount, as well as text-based information such as the fund's portfolio manager. If a particular investor, data provider or other XBRL user were not interested in all the tagged items, they could presumably pick and choose to use only the tagged information of import to them.

[23] Alternatively, if the Commission determines that XBRL tags should be required only for numerical data and not text-based data, then the tagging requirement should be limited to only the fund's fee table and performance information from the risk/return summary and perhaps key information from other fund statements or reports, such as portfolio holdings, minimum investment amounts and financial highlights.

[24] Actually, even if all the items in a fund's Summary Prospectus were tagged, data providers would probably still be supplementing their databases with information such as the fund's star-rating or ranking, style category, beta and other information that does not even appear in the typical fund prospectus. Presumably, data providers will have to continue to mine and re-key that additional information manually, without the benefit of the fund's XBRL tagging.

tagged information, particularly if it is limited to only risk/return information. I believe that type of legend would be an appropriate substitute for the legend used for submissions made under the Voluntary Program to the effect that users should not rely on interactive data in making investment decisions, which seems to refer more to the experimental nature of the Voluntary Program rather than the fact that the submission contains only selected information which investors should consider in context with the rest of the prospectus.

5) Allow Incorporation by Reference into the Interactive Data File. In addition, so long as XBRL-tagged data is required to be submitted in a separate, stand-alone Interactive Data File (as opposed to embedded in the traditional filing), the Interactive Data File (or at least any containing risk/return information) should be permitted to incorporate by reference the entire Related Official Filing. This comment stems from the fact that the Interactive Data File is proposed to be subject to anti-fraud liability, which opens up the same "can of worms" that was opened with the mutual fund profile and the mutual fund Summary Prospectus proposal, as to whether a fund should bear any potential anti-fraud liability for omissions that result from compliance with SEC rules which dictate that only selected information be included in a particular submission, and require it to be included in a specified way.[25] Since what constitutes a materially misleading statement or omission under the federal securities laws is highly contextual in nature and typically based on a facts-and-circumstances test, I believe it is unfair for the fund (or anyone else, such as distributors, etc.) to bear any anti-fraud exposure for creating and disseminating an Interactive Data File consistent with SEC rules. Accordingly, to address the potential anti-fraud liability that could result, the Interactive Data File should be permitted to incorporate by reference the entire Related Official Filing, just as it is now contemplated that the full statutory prospectus and SAI will or may be incorporated by reference into a Summary Prospectus.

   Because "incorporation by reference" is so legalistic and antithetical to the spirit of "Plain English," I am dismayed to find myself once again advocating its use, particularly in this case, since an Interactive Data File will presumably not be used as a "sales document" in the same way that a fund profile or Summary Prospectus might be.[26] However, the reality is that risk/return information in an Interactive Data File is excerpted from a sales document and, as such, one could readily envision that the Interactive Data File -- or the XBRL-tagged data in it – may become the singular focus of at least some investors who wind up using it to make investment decisions. For that reason, the concern over information taken out of context is, in my view, just as significant here as it was with the profile and Summary Prospectus. Moreover, the only reason that the fund would bear exposure on this issue at all is because the SEC's rules will require XBRL tagging[27] and

[25] In my mind, this issue arises because XBRL tags cannot be embedded in the Related Official Filing. If they could be, there would be no issue about the fund disseminating selected information pulled out of the context from the Related Official Filing. Even though users in that case could still pluck the XBRL-tagged data out of the Related Official Filing if they chose to, at least the fund would not be involved in disseminating the data in that way. Furthermore, this issue is not resolved just because the Interactive Data File is submitted as an "exhibit" to the Related Official Filing, particularly given that funds are proposed to be required to post the Interactive Data File on their websites.

[26] Nonetheless, I would urge the Commission to address in the Adopting Release the question of whether the Interactive Data File would potentially have the status of a "prospectus" under Section 2(a)(10) of the Securities Act of 1933, thus needing to be preceded or accompanied by a full statutory prospectus (for example, when posted on a fund's website) in order to fit within the permitted supplemental sales literature or free writing portion of the Section 2(a)(10) definition.

[27] Indeed, some may argue that funds should be able to rely on Section 19(a) of the 1933 Act to avoid liability for simply following SEC rules. That section says, in pertinent part: "No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Commission, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason." However, for all the reasons I pointed out on page 8 of my February 26, 2008 comment letter on the Summary Prospectus proposal, I do not believe Section 19(a) provides sufficient protection for funds on this issue.

will not permit tags to be embedded in context in the Related Official Filing.[28] Although I would like to think that the legend described in Comment 4 above warning investors to read the more complete information in the Related Official Filing would be enough to protect funds on this issue, I am concerned that it would not be, given the history of the phrase "incorporation by reference" under the securities laws. Accordingly, I would urge you to permit incorporation of the Related Official Filing by reference into the Interactive Data File.[29]

6) Liability for Interactive Data Files Should be Limited. In my view, Interactive Data Files should not be subject to potential liability under any provisions of the federal securities laws if the filer meets what might be called the "Rule 406 standard," meaning it makes a good faith and reasonable attempt to comply with Rule 405 and corrects any failure to comply as soon as reasonably practicable after becoming aware it.[30] Of course, excluding the Interactive Data File from liability in this way would not affect liability otherwise applicable to the Related Official Filing, which would still be subject to potential liability as usual,[31] giving funds sufficient incentive to ensure the accuracy and completeness of the substantive content of the Interactive Data File, which corresponds to the Related Official Filing. Moreover, filers who do not meet the "Rule 406 standard," should remain subject to exposure under the anti-fraud laws for the substantive content of the submission under Rule 406(c)(3)(C)[32] as well as subject to regulatory action by the SEC for failure to comply with Rule 405.

   In my view, that is the appropriate approach to liability if XBRL mandates are going to be imposed at this stage. That should create sufficient incentive for funds to strive for accuracy of their submissions without undue exposure to liability for essentially failing to meet a technical tagging format in an unofficial, stand-alone submission that is created by the fund strictly for purposes of complying with SEC filing and format rules. Accordingly, I would urge the following changes to proposed Rule 406 of Reg. S-T:[33]

   - In Rule 406(c)(2), delete the ending phrase "for failure to comply with Rule 405."
   - Revise the opening clause of Rule 406(c)(3)(C) to read: "Other than as stated in paragraph (c)(2) and subparagraph (c)(3)(A),…."

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[28] I realize that currently, there may be technological obstacles to embedded tagging as well, but that further bolsters my point that the Commission should not impose XBRL mandates for funds until embedded tagging is both feasible and permitted.

[29] Indeed, as with the Summary Prospectus, funds should be permitted to incorporate by reference not only the statutory prospectus, but also the SAI, into any Interactive Data File containing risk/return information. This would be aimed at making the additional information in the SAI part of the Interactive Data File as a matter of law in addition to the prospectus, without having to rely on two-step incorporation by reference of the SAI into the prospectus, which is itself is incorporated by reference into the Interactive Data File, raising issues under Rule 10(d) of Regulation S-K.

[30] In addition, I agree with the Proposal that Interactive Data Files submitted under either the Voluntary Program or mandatory rules should be deemed not "filed" and not bear liability under Sections 11, 12, 18 and 34(b), as referenced in proposed Rule 406(c)(3)(A). See Interactive Data to Improve Financial Reporting, Release Nos. 33-3924, 34-57896, 39-2455, IC-28293, File No. S7-11-08 (May 30, 2008) at http://www.sec.gov/rules/proposed/2008/33-8924.pdf. I would note, however, that this leaves Interactive Data Files subject to potential liability under other anti-fraud provisions, such as Section 17(a) of the 1933 Act, Section 10(b) and Rule 10b-5 under the 1934 Act and state anti-fraud laws.

[31] As such, I generally support the basic idea behind proposed Rule 406(a). However, the first sentence of that section seems entirely redundant of the second and I would therefore urge you to eliminate the first. That would also eliminate the presumably unintended implication raised by the wording of the first sentence that disclosures in a document not otherwise covered by a particular statute (for example, disclosures in a fund's Form N-1A, which would not be covered by the Trust Indenture Act) somehow become subject to that statute's "liability provisions" as a result of that sentence.

[32] However, I must admit that it is not clear to me what Rule 406(c)(3)(C) means when it says the Interactive Data File is subject to liability for its substantive content, "as distinct from its compliance with Rule 405," since Rule 405 includes substantive content requirements, as well as tagging, format, submission and posting requirements.

[33] See Rule 406 as proposed in the release cited in footnote 30 above.

Following is a table with some examples illustrating how and why I believe this approach should work:

Problem in Interactive Data File results from:	**Related Official Filing says, for example:**	**Interactive Data File says, for example:**	**Result / rationale:**
Securities fraud (meaning intentional, "scienter"-based conduct)	Inaccurately inflates performance to 50%	Inaccurately inflates performance to 50%	Interactive Data File is not shielded from anti-fraud or regulatory liability because fund did not meet the "Rule 406 standard" of acting in good faith and making reasonable attempt to comply.[34]
Unreasonable care was exercised or there was reckless or intentional alteration of Interactive Data File information	Accurately discloses 2007 performance as 10% OR Accurately labels 2007 performance as 2007	Inaccurately discloses 2007 performance as 100% OR Inaccurately tags 2007 performance as 2006	Interactive Data File is not shielded from anti-fraud or regulatory liability because fund did not meet "Rule 406 standard" of acting in good faith and making reasonable attempt to comply.
Completely inadvertent typo in translating Related Official Filing information to Interactive Data File or in applying tags (i.e., reasonable care was exercised)	Accurately discloses 2007 performance as 10% OR Accurately labels 2007 performance as 2007	Inaccurately discloses 2007 performance as 100% OR Inaccurately tags 2007 performance as 2006	Fund should not bear any anti-fraud or regulatory liability for Interactive Data File if it corrects Interactive Data File as soon as reasonably practicable after becoming aware of problem because fund met the "Rule 406 standard" of acting in good faith and making reasonable attempt to comply.
Information taken out of context	Principal risk disclosure deemed materially accurate and complete when disclosed in context with other prospectus information and SAI information incorporated by reference	Principal risk disclosure deemed materially misleading when disclosed out of context, without other prospectus and SAI information, which is not included in the Interactive Data File because is it not required risk/return summary information	Fund should not bear any anti-fraud or regulatory liability for the Interactive Data File so long as fund met the "Rule 406 standard" of acting in good faith and making reasonable attempt to comply. Moreover, if the fund incorporated by reference the rest of the prospectus and SAI into the Interactive Data File (as I am suggesting the fund be allowed to do), they should become part of the Interactive Data File as a matter of law, thereby protecting the fund from liability for information taken out of context.

Even if a fund's liability for the Interactive Data File is limited as I have suggested, I would still expect data providers to use the Interactive Data File information provided by funds. They might be more cautious about double-checking the accuracy of the data against the Related Official Filing, but that would be to everyone's benefit. Investors will likely also use the data, although I do not envision most fund investors – either institutional or retail -- accessing XBRL data on their own directly from the fund's Interactive Data File. Rather, I would expect most of them to continue to access fund data through databases provided by data providers.

7) Funds Should Have No Liability for Data in Viewable Form. I am further of the view that Interactive Data in Viewable Form should not be considered part of the fund's "official"

[34] Under this line of reasoning, a filer that acted with "scienter" would not have met the "Rule 406 standard" because acting with "scienter" would be inconsistent with acting in good faith and/or making a reasonable attempt to comply.

filing or "filed" for purposes of any liability, and moreover that funds should bear no liability whatsoever for Interactive Data in Viewable Form. Accordingly, I would urge you to eliminate proposed Rule 406(b) altogether. I do not see what additional protection is this potential liability intended to provide anyway. Funds already have incentives to assure accuracy of the substantive content and the proper tagging of their Interactive Data Files, as discussed in Comment 6 above. Why should funds have any liability for data once it is converted by someone else's viewer to human-readable form or for the way the data is displayed by the viewer? That not only raises the possibility of liability for something completely out of the fund's control -- how the viewer converts and displays the data – but, again, opens up the "incorporation by reference" issue of whether a fund should bear anti-fraud exposure for data that is plucked out of context from the Related Official Filing and displayed by a viewer in a manner dictated by someone other than the fund. As you know, what is considered "fraudulent" or "misleading" under the securities laws can be influenced by myriad factors such as:

- where information is displayed,
- in what order it is displayed,
- what type size, font and color is used,
- whether certain information is inside or outside of graphic boxes,
- whether certain information is given "greater prominence" than other data,
- what other disclosure is provided along with the information (i.e., the context),
- the audience viewing the information, and so on.

It is unclear to me if you intend these issues to be eliminated by either:

- Subparagraph (2) in the proposed definition of Interactive Data in Viewable Form, which says that Interactive Data in Viewable Form (for which a fund would bear liability) means the information that is converted by the Commission's software "in all material respects identically" to the corresponding information in the Related Official Filing.
    - § Does this mean funds may assume that the Commission's viewer converts their Interactive Data in Viewable Form accurately?
    - § Or must funds test their submissions with the Commission's viewer each time they make a submission?
    - § Does "in all materially respects identically" mean just the substantive content of the data, or does it include the font size, order, relative prominence, etc., of the data as displayed as well?
    - § What does "in all materially respects identically" mean with regard to context? In other words, will funds bear potential liability because the Interactive Data in Viewable Form appear out of context relative to the corresponding information in the Related Official Filing?
- Or Rule 406(b) itself, which says Interactive Data in Viewable Form are subject to liability under various federal securities laws "in the same way" and "to the same extent" as the Related Official Filing.
    - § Does this mean funds are not subject to liability under this section for tagging?
    - § Does this mean Interactive Data in Viewable Form are to be viewed for liability purposes under this section as if they were in context in the Related Official Filing?
    - § Does this mean that Interactive Data in Viewable Form are intended to be subject to liability under the cited securities laws only "in the same way" and "to the same extent" as the Related Official Filing, or are there intended to be other exposures to potential liability under those provisions for Interactive Data in Viewable Form as well?

If these provisions are in fact intended to remove any issue about how the data are displayed once converted (order, font, prominence, etc.), what tags are used (meaning are the data tagged properly) and in what context the data appear (including whether they

are plucked and displayed out of context from the Related Official Filing), leaving only issues about whether the data are accurate and complete in and of themselves, viewed for liability purposes as if they were in context in the Related Official Filing, then I would urge you to clarify this in the Adopting Release. Limited in that way, this may be liability funds should accept for their Interactive Data in Viewable Form, but it would also seem redundant of the liability imposed on the substantive content of the Interactive Data File, which is of course the basis for the Interactive Data in Viewable Form, and which is already covered by Rule 406(c). As such, I would urge you to focus any potential for liability not on the Interactive Data in Viewable Form, but rather on the Interactive Data File, which is at least under the fund's control. And, for the reasons discussed in my prior comment, I would urge you to subject funds to potential liability for their Interactive Data File only if they fail to meet the "Rule 406 standard."

8) Human-Readable ASCII and HTML Should be Retained. Until embedded tagging is permitted or the "dueling formats" issue is otherwise resolved, human-readable ASCII, HTML or other information should still be filed and available for a fund's filings, even if the same information is also required to be tagged and submitted in XBRL. Perhaps some day, all web browsers and other commonly used software will be able to display XBRL-tagged information in an intelligible, human-readable way, but that is not the case now and risk/return information is too important to make it accessible electronically to only those investors and other users who have XBRL viewers.

9) Eliminate the Website Posting Requirement. Once submitted via EDGAR, a fund's tagged data should be considered sufficiently public to satisfy the Commission's regulatory requirements without the data having to be posted on the fund's website. If a fund wants its tagged data to be more accessible by search engines or other data providers that cannot or will not access that information via EDGAR, it can choose to post its tagged data on its website voluntarily without the Commission requiring them to do so. This would not only avoid the legal and practical questions raised by the posting requirement (some of which are mentioned in my comments below), but would also avoid the potential confusion XBRL data could cause investors who access the posted data on a website without the benefit of a viewer.

10) Clarify "Fund's" Website. If the website posting requirement is nonetheless adopted, please clarify in the Adopting Release whether a website maintained by a third party (such as a fund's third-party administrator or distributor) on which a fund's literature, documents or other information is posted constitutes a "fund" website or "corporate" website covered by the Proposal requirements.

11) Clarify How Long Posted Data Must Appear. If the website posting requirement is adopted, the Commission ought to clarify in the Adopting Release that required XBRL-tagged submissions need to remain posted on the fund's website only so long as the Related Official Filing to which they relate is still current.[35] Archived (past) XBRL-tagged submissions should not have to be maintained on a fund's website.[36]

12) Suspend Fund, Not Other Series. If as contemplated under the Proposal you decide to suspend the ability of a "registrant" to file post-effective amendments under Rule 485(b)

[35] In other words, risk/return information from a registration statement should have to be posted only until that information is amended in another registration statement filing. If you decide funds should tag prospectus information instead, XBRL-tagged risk/return and other prospectus information should have to be posted only until that information is amended in a subsequent prospectus or sticker filing. XBRL-tagged portfolio holdings information from a Form N-CSR or N-Q should have to be posted only until the fund files its next report containing portfolio holdings (i.e., the next Form N-CSR or N-Q).

[36] The Proposing Release also does not address a lot of the detail the Summary Prospectus proposal did about website posting, such as whether the posting must appear at a particular URL on the website, what a fund must do if the posting becomes inaccessible for some period (for example, due to Internet outage), etc., etc. In my view, it would be best to avoid all those issues by simply dropping the website posting requirement altogether.

as a consequence of failing to submit required interactive data, I would urge you to clarify in the Adopting Release that the "registrant"[37] in that case means the "fund" (that is, the specific series at issue) and not the entire "investment company." Otherwise, funds that are under the same "investment company" umbrella but that are otherwise unrelated (for example, have different advisers) could inadvertently be suspended by a failure attributable solely to another fund. In addition, I support the Proposal to the extent it says that a fund's failure to submit interactive data should not affect its ability to incorporate by reference.

13) Permit Tagged Portfolio Holdings under Voluntary Program. I support the Proposal allowing fund portfolio holdings information (Schedule I) to be tagged and submitted as a stand-alone item under the Voluntary Program, so funds can get some experience with tagging portfolio holdings information. Having a fund's Schedule I tagged should make it easier for those investors who find holdings information useful to access and analyze it in any way that is meaningful to them, whether or not Top 10 holdings information is retained as a required item in the Summary Prospectus proposal. Moreover, simply tagging holdings information in already-existing reports does not raise the timing, frontrunning and other potentially harmful effects that are raised by the Top 10 requirement contemplated by the Summary Prospectus proposal. Further, tagging Schedule I information would allow viewer software to 'slice and dice' portfolio holdings information in ways far beyond simply Top 10 (such as Top 5, Top 20, all positions exceeding a particular percentage, etc.), addressing some of the shortcomings of the less flexible, "one-size-fits-all" Top 10 requirement in the Summary Prospectus proposal.

    One new issue that the Commission should address regarding tagged portfolio holdings is whether funds that voluntarily make their holdings information public more frequently than quarterly as required by regulation (by, say, posting it on their website after the end of each month) should have to tag that extra holdings information in XBRL and submit it via EDGAR and/or post it on their websites, even though it is not associated with any Related Official Filing. If they do not, users accessing the fund's holdings information from the fund's voluntary website posting will have more current information available to them than users accessing it solely through the fund's XBRL-tagged submissions. Although this highlights yet another problem engendered by the "dueling formats" issue, funds should not, in my view, be required to submit or post an XBRL version of any information that does not have a Related Official Filing. Funds should be permitted to voluntarily post the extra information in XBRL on their websites if they choose to, but the Commission should not mandate it.

14) Modify Summary Prospectus Legend. The legend on a fund's Summary Prospectus should be permitted to include a statement to the effect that the fund's risk/return summary items (or all of the items in the Summary Prospectus, if the Commission takes the suggestion to tag all of it) are available in an interactive data format, which can be viewed and compared with other funds using the free viewer available on the Commission's website or any other XBRL-compatible interactive data viewer.

15) Intermediary Compensation Information Should be Integrated. I would urge the Commission to take whatever steps are necessary to see that intermediary compensation information is appropriately integrated into fund-related XBRL viewers, so investors and others will have a more complete picture of the "full" cost of investing in particular fund shares when using viewers to select funds. This should include revenue sharing disclosure as well as any transaction fees or other transaction costs imposed by marketplaces, brokers or other intermediaries on top of shareholder and fund expenses reflected in the fund's fee table. For viewers made available by third parties to the general public, this might include only the "generic" intermediary compensation disclosure contemplated by Item 7 in the mutual fund Summary Prospectus proposal. However, for

[37] Rule 405 under the Securities Act of 1933 defines 'registrant' to mean the issuer of the securities.

viewers made available by a particular intermediary, the disclosure could be more tailored and include specific information about revenue sharing arrangements between that intermediary and the fund displayed (or its affiliates), as well as any charges an investor would bear if that particular fund were purchased through that intermediary.

16) Encourage Financial Highlights Tagging. I support the Proposal to the extent it permits a fund's Financial Highlights table to continue to be submitted as XBRL-tagged content under the Voluntary Program. Tagging Financial Highlights information like NAV per share, fiscal year performance, turnover rates and key fund ratios will make that data more accessible to those who find it useful, regardless of whether the Commission ultimately decides to require or permit any of that information to be included in a fund's Summary Prospectus.

17) Phase In by Fund Size. Similar to the phase-in proposed for operating companies, the Commission should phase funds into any mandatory XBRL regime over a period of a number of years (say, three years) based on fund size, with the largest funds going first, followed by mid-sized funds and finally, smaller funds. Prior to their mandatory phase-in date, funds should be permitted to submit under the Voluntary Program any content allowed under mandatory rules or the Voluntary Program. This will allow more time for any 'kinks' in the system to be addressed and resolved before the full weight of a mandatory regime falls on those funds that are least able to bear the cost burden.

* * *

I hope these comments and suggestions are helpful to your consideration of this important Proposal. If you have any questions or would like any further clarification about these or related points, please contact me at the phone number referenced below.

Sincerely,

L. A. Schnase
Individual Investor and Attorney at Law
713-741-8821