

**Congress of the United States**  
**Washington, DC 20515**

March 13, 2008

**VIA FACSIMILE: 202-772-9200**

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

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CHAIRMAN'S  
CORRESPONDENCE UNIT

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**Re: Proposed Rule on "Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies," 17 CFR Parts 230, 232, 239, and 274.**

Dear Chairman Cox:

We are writing in response to the Security and Exchange Commission's (SEC) proposed rule on "Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies."

We appreciate the SEC's effort to encourage the mutual fund industry to adopt a summarized and useful mutual fund prospectus. Today's current prospectus typically contains a large quantity of detail that, while useful to a sophisticated institutional investor, may only serve to obscure or confuse an individual investor such as an employee participating in his employer sponsored 401(k) or similar plan.

Currently, there are over 93 million individuals contributing to either a 401(k)-type plan or an individual retirement account (IRA). These retirement investors hold over \$5 trillion in mutual fund investment assets which represents approximately 40 percent of the \$12 trillion mutual fund market. Evidence indicates that the number of 401(k) and IRA retirement investors will continue to grow significantly.

Because there is a large and growing number of individual retirement investors, it is imperative that the summary mutual fund prospectus meet the informational needs of the typical retirement investor. These investors generally do not have the financial background, time, or resources necessary to conduct meaningful investment research. Employees are dependent on their employers to select appropriate investments and provide meaningful information, however, their employers also may not have adequate financial expertise or information. Unfortunately, the proposed rule does not mention or appropriately address the informational needs of retirement investors.

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One of the results of not providing information appropriate for the individual retirement investor is that such investors are not familiar with basic investment information necessary for making critical investment decisions, including fee information. Recent studies by the Government Accountability Office (GAO) and AARP found that 80 percent of workers did not know that mutual fund investments include any fees.<sup>1</sup>

It is necessary that a summary prospectus be designed to include information consistent with the needs of today's growing number of mutual fund retirement investors. The following recommendations are meant to address the needs of retirement investors.

### **Recommendations**

We recommend that in order for such a rule to be useful to retirement investors, the final rule should include the following recommendations.

#### **1) Useful and Uniform Fee Disclosure**

The typical retirement investor is not familiar with the SEC's 12b-1 rule, "distribution" fees, or ambiguous "service" fees. These terms and categories are not helpful to the retirement investor. Further, it is our understanding that mutual fund companies have much discretion in labeling the fees they charge. In order to provide meaningful information to the retirement investor, the SEC should:

- Establish fee categories using commonly understood terms,
- Define the types of fees that must be reported in these fee categories, and
- Provide a description in the summary prospectus of the types of fees that fall into each of these categories.

Based on the broad input committee staff has received from numerous sources on the issue of fee disclosure, it is strongly recommended that the SEC consider the following fee categories for inclusion in the summary prospectus.

1. Investment Management Fees
2. Commission Fees
3. Administrative Fees
4. Other Fees

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<sup>1</sup> Government Accountability Office, *PRIVATE PENSIONS Changes Needed to Provide 401(k) Plan Participants and the Department of Labor Better Information on Fees*. November 2006

For purposes of comparability, the SEC must define the types of fees that fall into each of these fee categories and must require the mutual fund industry to consistently disclose the fees in the proper fee category.

## **2) Mutual Fund Disclosure Specific to Plan**

One of the main purposes of providing the retirement investor with a summary prospectus is that the full prospectus often contains a sea of information that may obscure the most useful information. In order to avoid this problem in the summary prospectus, the information must be relevant to the individual retirement investor. For retirement investors who participate in a 401(k)-type plan, the plan sponsor may have negotiated special terms and conditions, such as reduced fees, with the provider. In such cases, it is critical that the summary prospectus include the information that is relevant to the retirement investor's plan and exclude information that is not relevant.

## **3) Portfolio Turnover Information**

The typical retirement investor would not understand what a "63 percent portfolio turnover rate" means. However, they would be more likely to understand that last year's transaction costs were .063 percent. In addition, the SEC needs to clearly explain in the summary prospectus that these are charges that investors pay in addition to operating expenses. The SEC could also note that the fund investment return is reduced to reflect these additional expenses. We understand that these expenses will not be fully known until the subsequent year, but investors should be clearly informed of the estimated monetary impact of any additional charges pertaining to portfolio turnover transaction costs.

## **4) Timing for Providing Investment Information**

The SEC proposed rule does not discuss when service providers would be required to make the summary prospectus available. In the context of a 401(k)-type plan, the summary prospectus should be made available to both the plan sponsor and the plan participant such that both parties have sufficient time to review and assess the investment information and make educated decisions. The sponsor will need the information contained in the summary prospectus to select the best provider and the appropriate funds to be offered in the plan. Participants will need this information in selecting which funds being offered by the plan best meet their needs. The SEC and the Department of Labor should coordinate their efforts to ensure the timely availability of the summary prospectus.

## **5) Glossary of Key Terms**

The SEC proposed rule does not discuss defining the terms included in the summary prospectus. Industry terminology should be explained in layman's terms. While this will make the summary a bit lengthier, it is necessary to ensure that retirement investors are able to understand the terms in the summary.

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**6) Access to Investment Information**

Not all retirement investors have access to the internet or have the skills to utilize the internet. The SEC should ensure a simple process for obtaining mutual fund information in paper format in order to maximize accessibility.

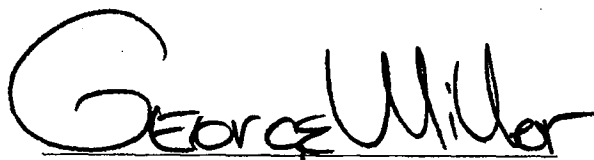
We agree with the provision for access to mutual fund investment information on the SEC website and hope that this provision is retained in the final rule.

**7) Compliance**

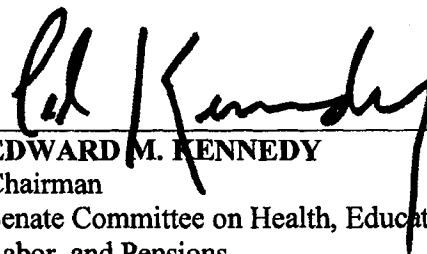
In order to maintain the integrity and reliability of information in the summary prospectus, it will be necessary for SEC to enforce compliance. The SEC must engage in proactive enforcement by designing a program to conduct statistically valid testing of compliance with the provisions of the final rule. Further, SEC should prescribe sanctions and penalties for mutual fund companies that are found to be non-compliant.

Thank you for your consideration. If you have any questions on the above recommendations, please contact the committee's Labor Policy Director, Michele Varnhagen, at (202) 225-3725.

Sincerely,



**GEORGE MILLER**  
Chairman  
House Committee on Education and Labor



**EDWARD M. KENNEDY**  
Chairman  
Senate Committee on Health, Education,  
Labor, and Pensions




**ROBERT E. ANDREWS**  
Chairman  
House Subcommittee on Health, Employment,  
Labor, and Pensions



**TOM HARKIN**  
Senator  
Senate Committee on Health, Education,  
Labor, and Pensions

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**HERB KOHL**  
Chairman  
Senate Special Committee on Aging

cc: Congressman Barney Frank, Chairman,  
House Financial Services Committee  
The Honorable Brad Campbell, Assistant Secretary  
Employee Benefits Security Administration