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March 3, 2008

CONFIDENTIAL DRAFT

Via Electronic Delivery

Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: Release No. 33-8861; IC-28064 (File No. S7-28-07): Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies

Dear Ms. Morris:

We respectfully submit this comment letter in response to a request by the U.S. Securities and Exchange Commission (the "Commission") for comments regarding the above-referenced release (the "Proposing Release"). The Proposing Release proposes rule and form amendments ("Proposed Rules") that would permit a mutual fund to satisfy its prospectus delivery obligations under the Securities Act of 1933, as amended (the "Securities Act") by providing key information directly to investors in a "summary prospectus," and making available the statutory prospectus and certain other information on an Internet website, and upon an investor's request, in paper or by email.[1] The Proposed Rules also would require each fund to provide key information in plain English in a standardized order at the front of the statutory prospectus, using the same format as the summary prospectus.

Dechert LLP is an international law firm with a wide-ranging financial services practice that

[1] *See* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, SEC Release No. 33-8861 (Nov. 21, 2007).

serves clients in the United States and abroad. We represent a substantial number of mutual fund complexes, fund boards, fund independent directors, fund advisers, and service providers to funds. Although we have discussed certain matters addressed in the Proposing Release with some of our clients, the comments that follow reflect views of the firm, and not necessarily those of any client of the firm.

In general, we support the Commission's Proposed Rules insofar as they are intended to provide investors with short, user-friendly disclosure documents and they recognize the utility of the Internet as a delivery medium for disclosure documents. We offer the following comments regarding several of the items contained in the Proposing Release:

1. Standardized Order of Key Items

The Proposed Rules would require mutual funds to disclose enumerated "key" information in a standardized order within the summary prospectus and in the summary section of the statutory prospectus, preceded only by the cover page and a table of contents. While a fund would continue to be able to include other information that is not strictly required elsewhere in the statutory prospectus, subject to General Instruction C.3.b of Form N-1A, a fund would be unable to include such other information in the summary prospectus or at the front of the statutory prospectus.

In the late 1990s, in response to a major "Plain English" initiative begun by the Commission and its staff (including the 1998 amendments permitting funds to provide investors with a "profile prospectus"), mutual fund complexes took steps to revise and simplify their prospectus disclosure to make the prospectuses easier to read and understand. In our experience, a number of funds devoted significant resources to create helpful tabular presentations of required disclosure items at the front of their prospectuses. For example, we have reviewed prospectuses for funds where, in a two-page spread before the beginning of the statutory prospectus, the fund complex currently includes a "Funds at a Glance" page containing a tabular presentation with four columns: a fund's name, its investment objective, its principal investments and its principal risks, each described briefly. While we understand that a standardized format is a cornerstone of the Commission's current proposal insofar as it would, at least as a general matter, promote increased investor understanding and facilitate comparisons between funds, we believe that there is room for a measured amount of flexibility. Accordingly, we believe that funds should be allowed to continue to utilize the aforementioned types of summary presentations in summary prospectuses and at the front of their statutory prospectuses. Not all fund complexes are the same, and they should be allowed to tailor the presentation of their documents, within reason, to meet the particularized needs of the specific groups of investors that they serve.

2. Multiple Fund Prospectus

The Proposed Rules would require that the summary section of the statutory prospectus for a multiple fund prospectus present all of the key information sequentially, fund by fund. In other words, it disallows the integration of common information for multiple funds.

We recommend that the final rules accommodate the integration of the key information, at least for certain funds. Presenting the information sequentially in multiple fund prospectuses would result in duplicative disclosure (examples of information that is likely to be repeated include: adviser names, portfolio manager biographical information, purchase and sale of fund shares information, tax information and financial intermediary compensation information) that would add to the length and complexity of those prospectuses. This additional length and complexity is inconsistent with the stated goal of the Proposing Release.

We believe that the Commission's goal of providing investors with streamlined and user-friendly key information can be achieved more effectively if information about multiple funds can be presented in an integrated manner. In most cases, an integrated document for multiple funds will shorten the length of the document. Furthermore, it has been our experience that presenting summary information in an integrated format (*i.e.*, in tabular presentations) does not confuse investors. In fact, if the Commission's goal is to provide "concise readable summaries" that are useful to investors for making investment decisions, presenting information in an integrated manner for certain types of funds is a better means of achieving that result. This is especially true for fund of funds products (*i.e.*, retirement/life cycle funds), or funds on a variable product "menu," where an integrated presentation would work better in providing a more complete picture to investors in significantly fewer pages.

3. Presentation of Expense Reimbursement and Fee Waiver Arrangements

The Proposed Rules would permit a fund to add two line items to its fee table to reflect the effect of an ongoing expense reimbursement or fee waiver arrangement, and to use that net expense ratio in its example. Under the circumstances, we agree that the proposed format would provide a truer picture of applicable costs to investors than gross fee presentations. In our experience, the proposed format is generally consistent with current industry practice and Commission staff positions. Accordingly, we support this aspect of the Proposed Rules, in principle.

As currently drafted, however, we believe that the proposed format introduces an unintended requirement. Namely, the Proposed Rules would seem to require an operating fund that enters into a new expense reimbursement or fee waiver arrangement to wait up to one year before presenting the effect of that arrangement in its fee table and example. The Proposed Rule would permit a fund to present the net effect of an expense reimbursement agreement or fee waiver arrangement in the fee table and example only if (i) the arrangement is expected to continue in effect for at least one full year from the date of the fund's registration statement and (ii) the arrangement was previously in effect (during the prior fiscal year for the table, and during the

prior calendar year for the example). This second prong imposes a backward-looking requirement, which we believe is unintended and inconsistent with current Commission staff positions and general industry practice. For example, if a fund with a September 30 fiscal year end entered into a three-year fee waiver arrangement with its investment adviser that became effective in January 2008, the Proposed Rule would not allow the fund to reflect the effect of that arrangement in its January 2008 registration statement because the arrangement would not have been in effect during the fiscal year ending September 30, 2007 and the calendar year ending December 31, 2007. Accordingly, we believe that technical amendments to Item 3(e) and 4(a) are required.

We suggest amending proposed Item 3(e) by replacing "If there were expense reimbursement or fee waiver arrangements that reduced any Fund operating expenses and will continue to reduce them for no less than one year from the effective date of the Fund's registration statement" with "If there is an expense reimbursement or fee wavier arrangement that will reduce any Fund operating expenses for no less than one year from the effective date of the Fund's registration statement." We also suggest a conforming change to proposed Item 4(a), by replacing "that reduced any Fund operating expenses during the most recently completed calendar year and that will continue to reduce them" with "that will reduce any Fund operating expenses." This would achieve the Commission's stated objective without what we believe is an unintended consequence.

4. Inclusion of Top Ten Portfolio Holdings

The Proposed Rules would require a summary prospectus and the summary section of a statutory prospectus to include a list of the fund's ten largest holdings, in descending order, together with the percentage of net assets represented by each.

We recommend that this information not be required, for the following reasons. First, we believe that the information will not be useful to investors in many funds. For example, in a well-diversified fund where the top ten holdings represent a relatively small percentage of a fund's total holdings, providing a list of the top ten holdings by itself may provide an incomplete picture of how the fund has invested and will invest. This could mislead investors who may form an opinion about a fund's investment strategy based on those holdings. Second, this information has the potential to become stale immediately upon or shortly after publication, as active managers may change the composition of fund portfolios frequently. Finally, funds currently report a complete list of their holdings quarterly, through their filings on Form N-CSR or Form N-Q. Therefore, portfolio holdings information is already in the public domain and available for review by interested shareholders.

5. Quarterly Updates to Certain Information

The Proposed Rules would require that the top ten holdings information be provided as of the end of the most recent calendar quarter prior to the summary prospectus's first use or the immediately prior calendar quarter if the most recent calendar quarter ended less than one month prior to the summary prospectus's first use. The Proposed Rules also would require quarterly updating of performance and portfolio holdings information in the summary prospectus. However, a fund would not be required to update the performance and holdings information in the statutory prospectus on a quarterly basis.

We recommend that the final rules eliminate the requirement to update quarterly performance and portfolio holdings information in the summary prospectus for the following reasons. First, this requirement could lead to investor confusion. As stated above, the portfolio holdings must be provided either as of the end of the most recent calendar quarter or the immediately prior calendar quarter. The result is that, on any particular date, different funds may have portfolio holdings information from different dates presented in their documents, making comparisons between funds less meaningful. Furthermore, since the same information is not required to be updated in the statutory prospectus, there is a possibility that two sets of portfolio holdings and performance information will be available publicly in fund documents. Also, the differences between the two documents could increase the potential liability risks for fund complexes. One could conceive a scenario where one investor may have more recent information than another investor, leaving the investor with the older information questioning the decision behind not receiving the more recent information.

Second, the quarterly updating requirement would place additional unwarranted costs and administrative burdens on fund complexes. The costs and burdens seem to be disproportionate to any benefits that may be gained from quarterly updating, especially since this information is already available elsewhere (*i.e.* fund fact sheets, quarterly filings). We work closely with our clients' in-house legal and compliance departments, and we can attest that quarter-end periods are challenging times for many fund complexes as they work in earnest to meet existing quarter-end obligations. Adding the summary prospectus requirement to the list of quarter-end deliverables will only add to this burden, and we have been informed by some clients that they may have to hire additional staff in order to meet the demands of the Proposed Rules.

Third, the distribution of the summary prospectus and the related updating requirements will create logistical difficulties for intermediaries who will need to change their processes in order to be able to accommodate the distribution of the summary prospectuses on a quarterly basis.

Lastly, as a policy matter, the quarterly updating of performance information in the summary prospectus seems to place an undue emphasis on short-term investment performance. This is contrary to the Commission's traditional position on the appropriate role of performance information in prospectus disclosure.

6. Incorporation by Reference

The Proposing Release proposes Rule 498(b)(3)(iii) under the Securities Act, which states that "for purposes of [Rule 159]" information incorporated in a summary prospectus is conveyed not later than the time the summary prospectus is received. The Commission expressly requested comment on whether the proposal relating to Rule 159 is appropriate. We recommend that the Commission remove the express reference to Rule 159 from the final rules. Our concern is that the reference to Rule 159 will lead the reader to conclude that the incorporation by reference of the information into the summary prospectus is only available for purposes of Rule 159. Our understanding is that, under the Proposed Rules, investors will be deemed to have received the information incorporated by reference upon receipt of the summary prospectus for all relevant purposes. Therefore, we recommend either the removal of the reference to Rule 159 or the inclusion of broader language: "for purposes of the liability provisions of the federal securities law."

7. Prominence in Mailings

The Proposed Rules would require that a summary prospectus be sent or given no later than the time of the delivery of the fund security and, if any other materials accompany the summary prospectus, that the summary prospectus be given "greater prominence" and that it "not be bound" with those other materials.

We recommend that the Commission eliminate both of these requirements from the final rules for the following reasons. First, it is not clear how "greater prominence" can be achieved where a fund delivers multiple documents to a shareholder (*e.g.* multiple summary prospectuses, a privacy notice and other materials in connection with an annual mailing to shareholders). Fund complexes often send materials to shareholders together to reduce costs. The Commission should eliminate this requirement, or at least provide further clarification regarding how, in practice, a fund can comply with this standard.

Second, we recommend that the final rules remove the "not be bound" reference or articulate specific exceptions to this requirement. For example, we have a number of clients that offer variable insurance products. These clients follow an industry practice of binding a fund's statutory prospectus with the prospectus for the variable insurance product and any other related materials. Those bound materials are then sent in one complete package to investors. To be useful in this context, the new summary prospectus would need to be bound in the same package. Using any other delivery method would be prohibitively costly to the point of creating a disincentive to use the summary prospectus.

8. Maintaining the Statutory Prospectus Online

The Proposed Rules would require compliance with various conditions regarding access to a fund's statutory prospectus and certain other fund documents on the fund's website, specified by Proposed Rule 498(f), as a necessary condition to satisfying the fund's prospectus delivery obligations under Section 5(b)(2) of the Securities Act with a summary prospectus. Rule 498(f)(4), which recognizes the reality of system "glitches" and periods of system down time, provides a safe harbor. While we support the notion of a safe harbor, we believe that Proposed Rule 498(f)(4), as currently drafted, invariably will lead to difficult interpretive questions that could cloud the prospectus delivery issue and thus undermine the intent of the safe harbor.

We believe that the Commission could address this concern in a number of ways. For example, the Commission could amend the Proposed Rules to treat the requirements set forth in Proposed Rule 498(f) as conditions for compliance with Rule 498 only, and not as requirements for compliance with Section (5)(b)(2). Of course, we would expect fund complexes to address Rule 498(f) as part of their Rule 38a-1 compliance programs. Alternatively, the Commission could clarify some of the ambiguities created by Proposed Rule 498(f)(4). As one example, the rule could create presumptions that, for purposes of Proposed Rule 498(f)(4)(i) and (ii) respectively, board-approved procedures constitute "reasonable procedures" and corrective action taken within three business days of a known problem constitutes "prompt action" taken "as soon as practicable" following detection. If the Commission chooses to pursue this option, we encourage the Commission and its staff to seek further input from the industry regarding workable presumptions or other bright line objective tests for demonstrating compliance with the safe harbor.

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We appreciate the opportunity to comment on the Proposing Release. Please feel free to contact Anthony H. Zacharski at (860) 524-3937 or Reza Pishva (202) 261-3459 with any questions about this submission.

Very truly yours,

Dechert LLP

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