



August 29, 2008

Ms. Nancy Morris  
Secretary  
U.S. Securities and Exchange Commission  
Station Place  
100 F Street, NE  
Washington, DC 20549-1090

Re: Enhanced Disclosure and New Prospectus Delivery Option for Registered  
Open-End Management Investment Companies (File No. S7-27-07)

Dear Ms. Morris:

NewRiver, Inc. appreciates the opportunity to provide its additional views on the reopening of the Securities and Exchange Commission's proposal regarding Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies ("Proposal").<sup>1</sup> NewRiver filed on February 28, 2008 with the Commission its comments on the original Proposal ("NewRiver Comment Letter").<sup>2</sup> As we previously stated, we applaud the Commission's efforts and generally support the Proposal.

NewRiver has provided electronic delivery products and services since 1995 to entities in the financial industry, including issuers, distributors, underwriters, broker-dealers, sponsors and administrators ("Financial Intermediaries") of registered open-end management investment companies, exchange traded funds, variable annuities, and variable life products ("Funds"). NewRiver maintains an electronic database that provides Financial Intermediaries access to a comprehensive online library of Fund-related disclosure documents ("Disclosure Documents"), including prospectuses, statements of additional information, shareholder reports, and supplements to the above. NewRiver helps Financial Intermediaries comply with their disclosure obligations under the Investment Company Act

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<sup>1</sup> Proposed Rule, Reopening of Comment Period, Securities and Exchange Commission, *Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies*, Investment Company Act Release No. 28346 (July 31, 2008).

<sup>2</sup> See Comment Letter to Securities and Exchange Commission Regarding Investment Company Act Release No. 28064; File No. S7-28-07 from Russell Planitzer, Chairman and Chief Executive Officer, NewRiver, Inc. (Feb. 28, 2008); Proposed Rule, Securities and Exchange Commission, *Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies*, Investment Company Act Release No. 28064 (Nov. 21, 2007) ("Proposal").

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of 1940, as amended (“1940 Act”), by providing Disclosure Documents to investors using digital print-on-demand or electronic mail.<sup>3</sup>

#### **NEWRIVER’S ADDITIONAL COMMENTS ON THE PROPOSAL**

NewRiver believes that the additional materials provided by the Commission’s consultant concerning views and opinions of certain investors regarding summary prospectuses, mutual fund prospectuses and investors’ reliance on financial advisors (collectively, “Consultant Materials”) provide further support to the NewRiver Comment Letter. The additional materials also underscore the role of financial advisors and the importance of finalizing the Commission’s Proposal on Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities (“Point of Sale Proposal”), originally proposed in January 2004.<sup>4</sup>

In light of the Consultant Materials, we reiterate the following prior comments from the NewRiver Comment Letter as well as additional comments on the Proposal, which are discussed in greater detail below:

- *Existing technologies make the implementation of the Proposal realizable.*
- *Requiring a standardized format and a single-fund presentation for summary prospectuses not only reduces the cost of maintaining summary prospectuses but also facilitates comparisons among funds.*
- *Investors will be better served by including contact information of Financial Intermediaries in summary prospectuses.*
- *Electronic delivery and print-on-demand may mitigate concerns for quarterly distribution of updated summary prospectuses.*

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<sup>3</sup> NewRiver was founded on the premise that Financial Intermediaries, though wanting to comply with the 1940 Act and their delivery obligations under it, were not best-positioned to develop efficient delivery vehicles for Disclosure Documents. That was so because Financial Intermediaries’ businesses primarily focused on providing services and superior investment returns for their clients. NewRiver saw an opportunity to help Financial Intermediaries more effectively comply with their delivery obligations under the 1940 Act. To this end, NewRiver pioneered the first electronic prospectus and delivery services designed to meet the electronic delivery requirements set forth in the Commission’s e-delivery releases, as well as “investor specific” digital print-on-demand and data mining technologies. Print-on-demand technology enables custom delivery of Disclosure Documents that relate solely to each investor’s securities holdings and are based on the investor’s transaction history. Data mining technology allows delivery of Fund information in the form of interactive data based on the currently effective disclosure documents, and allows auditability and enhanced disclosure by enabling linking from the data to its location in the source document.

<sup>4</sup> Investment Company Act Release No. 26341 (Jan. 29, 2004).

- *Implementation of the Point of Sale Proposal would provide investors information on Financial Intermediary payments and conflicts that investors do not obtain through mutual fund prospectuses.*

***Existing Technologies Make the Implementation of the Proposal Realizable.***

As discussed in the NewRiver Comment Letter, NewRiver continues to believe that the technology exists today to meet efficiently the requirements set forth in the Proposal relating to the summary prospectus. NewRiver also believes that electronic and print solutions are readily available to allow Financial Intermediaries and Funds to implement efficiently the delivery requirements under the Proposal. Finally, we continue to believe that the cost savings to investors when delivering a summary prospectus rather than a statutory prospectus will be material.

NewRiver has the technology to implement fully the Commission's Proposal. We currently provide for the electronic delivery and on-demand printing of Disclosure Documents to investors. Operationally, such services are implemented much the same way the Proposal envisions. NewRiver electronically delivers compliance envelopes to investors that contain live links to an on-line library of Disclosure Documents. We expect that summary prospectuses could easily be delivered in the same manner.

***Requiring a Standardized Format and a Single-Fund Presentation  
for Summary Prospectuses Not Only  
Reduces the Cost of Maintaining Summary Prospectuses But Also  
Facilitates Comparisons Among Funds.***

The Consultant Materials report that focus group participants noted the importance of each Fund using the same format for its summary prospectus to facilitate investors' comparisons among Funds.<sup>5</sup> As we suggested in the NewRiver Comment Letter, NewRiver recommends that the Commission adopt those aspects of the Proposal that require a standardized format for the summary prospectus. As is fully supported by the Consultant Materials, NewRiver believes such standardization would better allow Financial Intermediaries, their employees and investors to compare Funds, which the Commission noted is one of its goals for the summary prospectus. In addition, such standardization would make updating the summary prospectus less expensive, and make it easier to replace stale information with current information, particularly for Financial Intermediaries that use on-demand printing.

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<sup>5</sup> *Final Report, Focus Groups on a Summary Mutual Fund Prospectus*, Abt SRBI Inc., at 6 (May 2008) (hereinafter referred to as "Focus Group Report").

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The Consultant Materials also report that focus group participants found it helpful for summary prospectuses to contain information regarding more than one fund.<sup>6</sup> Notwithstanding this, however, the Consultant Materials report that focus group participants indicated that it would not be acceptable for summary prospectuses to contain information regarding five funds or more.<sup>7</sup>

NewRiver acknowledges that the Commission must weigh the benefits and disadvantages of the Proposal requiring information regarding a single fund in summary prospectuses versus permitting information regarding multiple funds in summary prospectuses. From NewRiver's perspective, NewRiver believes that the benefits of a single-fund summary prospectus outweigh the potential benefits of a multiple-fund summary prospectus. Those benefits include: (1) greater readability; (2) improved comparability among other Funds; and (3) lower costs to Funds, Financial Intermediaries and, ultimately, investors related to the printing and delivery of summary prospectuses.

In addition, based on feedback from Financial Intermediaries, NewRiver understands that many Financial Intermediaries plan to deliver to investors confirmation statements with summary prospectuses in a single envelope via U.S. mail. To accomplish this goal and permit delivery at the cost of a single first class stamp, the total number of pages included in the envelope must be no more than four or five. Therefore, NewRiver recommends that the Commission consider limiting either (1) the information in summary prospectuses to a single fund or (2) the number of total pages of summary prospectuses to four or five. Permitting longer summary prospectuses would result in a less affordable delivery option for investors.

***Investors Will Be Better Served by Including Contact Information of  
Financial Intermediaries in Summary Prospectuses.***

The Consultant Materials affirm that most mutual fund investors rely on their financial advisor for information regarding mutual funds rather than read or gather relevant information themselves.<sup>8</sup> The Consultant Materials found that over half of investors use the Internet to access information regarding their investment.<sup>9</sup>

The Proposal requires that the summary prospectus contain a legend setting forth, among other items, the Internet address, toll-free telephone number and e-mail address

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<sup>6</sup> *Focus Group Report* at 7.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Mandatory Disclosure Documents Telephone Survey* at 4, by Abt SRBI (July 30, 2008) (hereinafter referred to as "Telephone Survey").

(“Contact Information”) that investors can use to obtain the statutory prospectus or other information. The Proposal, however, does not designate that the Contact Information be that of a Fund. Thus, the Proposal seems to permit the legend to indicate that such information is available from a Financial Intermediary through which shares may be purchased or sold.<sup>10</sup>

Given investors’ widespread reliance on Financial Intermediaries and the fact that those Financial Intermediaries may have account policies, procedures and charges different from or in addition to those of a Fund, NewRiver believes that it would be in the best interests of investors to allow Financial Intermediaries to include their Contact Information, rather than or in addition to the Fund’s, in summary prospectuses. A more detailed discussion of our recommendation is included in the NewRiver Comment Letter. We further note that investors would greatly benefit from access to the Financial Intermediary Contact Information where, for example, an annuity holder who has sub-investments in fifteen Funds will receive a summary prospectus from each Fund directing the investor to the Contact Information for one particular Fund, rather than the Contact Information of the Financial Intermediary through whom he or she invested. In such case, the investor would be directed to information and charges for fifteen different Funds that may not be relevant to his or her particular investment. In addition, to the extent that such investor is interested in an exchange into a different sub-investment option, the investor would need to access even more Fund web sites.

NewRiver believes that an investor who purchases Fund shares through a Financial Intermediary should receive a summary prospectus that provides the URL belonging to the Financial Intermediary. This information may replace or be in addition to the URL belonging to the Fund. Permitting the legend to be so tailored respects the investor’s express decision to obtain investment information from, and make investment decisions and receive ongoing services with the help of, a Financial Intermediary. In addition, with respect to investor transactions placed through a Financial Intermediary, it is the Financial Intermediary – and not the Fund – that has an obligation to deliver a prospectus to the investor. It is most appropriate, therefore, for the legend to reflect a URL that belongs to the Financial Intermediary.

In addition, NewRiver requests that the Commission clarify that tailored versions of summary prospectuses need not be filed (as supplements) under rule 497 of Regulation C under the Securities Act of 1933, as amended, as discussed in greater detail in the NewRiver Comment Letter. NewRiver suggests that tailoring summary prospectuses in such a manner should not be deemed a change in the disclosure but is more correctly viewed as a change in the mechanism that enables investors to access further layered disclosure.

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<sup>10</sup> Proposal at 47.

***Electronic Delivery and Print On Demand May Mitigate Concerns for Quarterly Distribution of Updated Summary Prospectuses.***

The Consultant Materials state that mutual fund investors rely on portfolio holdings information to make investment decisions and evaluate mutual funds.<sup>11</sup> Indeed, the Consultant Materials find that “virtually all of the focus group participants felt that the top ten portfolio holdings should be disclosed in a summary prospectus.”<sup>12</sup> The Consultant Materials further note investors’ concern that such information would be quickly outdated. Based on this information, it appears that investors would support the Commission’s Proposal to include portfolio holdings information in a mutual fund summary prospectus and updating such data on a quarterly basis.

Recognizing the quarterly updating requirements of the Proposal, NewRiver continues to believe that electronic delivery and print-on-demand of summary prospectuses are efficient and effective methods of distributing updated summary prospectuses on a quarterly basis that efficiently mitigate some concerns voiced by commenters on the Proposal regarding the quarterly updating requirements. NewRiver asserts that utilizing these methods of distributing updated summary prospectuses would permit Financial Intermediaries and Funds to manage their inventory of summary prospectuses effectively so as to obviate excess copies of documents in field offices and the need to ship and maintain warehouse storage of summary prospectuses.

As we explained in the NewRiver Comment Letter, respondents to a Forrester Consulting survey commissioned by NewRiver to determine the effect a short-form or summary prospectus would have on the cost of printing, postage and warehousing of prospectuses (“Forrester Survey”) indicated that even greater cost savings could be realized if investors were to receive a summary prospectus in an electronic, rather than paper, format.<sup>13</sup> The Forrester Survey also found that, even absent a move by respondents or investors to electronic delivery of Disclosure Documents, additional cost savings could be realized if respondents adopted on-demand printing of the summary prospectus in lieu of traditional

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<sup>11</sup> *Focus Group Report* at 3 and 7.

<sup>12</sup> *Id.* at 7.

<sup>13</sup> In anticipation of the Proposal, NewRiver commissioned Forrester Consulting to conduct a survey of companies that sell or that make available Funds. Respondents to the Forrester Survey, consisting of operations managers, print/fulfillment managers, communications specialists and executives of such companies indicated that adoption of a summary prospectus and Financial Intermediaries’ usage of such a prospectus would generate significant cost savings. The respondents identified potential cost savings from reductions in printing, postage, processing and storage costs. The Forrester Survey may be found at

[http://www1.newriver.com/upload\\_files/ForresterConsulting\\_NewRiver\\_ShortForm\\_Prospectus\\_10\\_25\\_2007.pdf](http://www1.newriver.com/upload_files/ForresterConsulting_NewRiver_ShortForm_Prospectus_10_25_2007.pdf).

printing methods. The NewRiver Comment Letter discusses in detail the potential cost savings that could be realized by using such methods.

***Implementation of the Point of Sale Proposal Would Provide Investors Information on  
Financial Intermediary Payments and Conflicts That Investors Do  
Not Obtain Through Mutual Fund Prospectuses.***

The Consultant Materials state that nearly two-thirds of investors who received mutual fund prospectuses said they rarely, if ever, read mutual fund prospectuses when they received them.<sup>14</sup> The primary reason provided is that prospectuses are too complicated or difficult to understand.<sup>15</sup> Most investors that do spend time reading mutual fund prospectuses are not looking for information regarding payments to broker-dealers or other intermediaries.<sup>16</sup> Yet nearly three-quarters of all investors reported that they have a financial advisor or broker.<sup>17</sup> NewRiver draws from this data that investors are relying on their financial advisors for all critical information in making their investment decisions.

NewRiver notes that the Proposal does not contain disclosure regarding conflicts of interests or payments to broker-dealers or other intermediaries. Rather, the Commission sought to ensure disclosure of such matters to investors in the Point of Sale Proposal. NewRiver also notes that, as we discussed in our comment letter to the Commission dated November 17, 2005, the ability to use technology to provide investors better, customized disclosures regarding conflicts of interest and the cost of ownership of a fund exists today.<sup>18</sup>

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<sup>14</sup> *Telephone Survey* at 56.

<sup>15</sup> *Id.* at 58.

<sup>16</sup> *Id.* at 62.

<sup>17</sup> *Id.* at 113.

<sup>18</sup> Comment Letter to Securities and Exchange Commission Regarding Release No. 33-8544; File No. S7-06-04 from Roland Beaulieu, President and Chief Executive Officer, NewRiver, Inc. (Nov. 17, 2005).

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If you have any questions regarding these comments, please feel free to contact me at 978-247-7267.

Sincerely,

/s/ Russell Planitzer

Russell Planitzer  
Chairman and Chief Executive Officer  
NewRiver, Inc.

cc: Leonard Driscoll  
Jeffrey Levering  
Alex Magary  
NewRiver, Inc.  
Francine J. Rosenberger  
K&L Gates