February 26, 2008

VIA EMAIL

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Comments on Release Nos. 33-8861; IC-28064; File No. S7-28-07

Dear Secretary Morris:

I appreciate this opportunity to submit comments on the SEC's proposal concerning Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Investment Companies (the "Proposal") described in Release Nos. 33-8861; IC-28064; File No. S7-28-07 (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 adviser and fund clients in meeting SEC regulatory requirements, including those implicated in the Proposal. 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

In general, I support the Proposal and applaud the Commission's effort to improve mutual fund disclosure. Despite improvements made in the past, there is still, in my view, a profound need for more effective communication with investors and much to be gained by pursuing more efficient methods of delivery. Although some aspects of the current regulatory regime are important stepping stones in the evolution of fund disclosure,[1] the current regime does not go, in my view, as far as it could or should in realizing the potential for effective communication of content or in the efficient delivery of information.

Toward that end, I support the Proposal's effort to build on the idea of providing fund information in "layers," first instituted years ago when the mutual fund Prospectus delivered to all investors was separated from the Statement of Additional Information ("SAI") delivered only to those investors who request it. The Summary Prospectus envisioned by the Proposal is a significant step forward, in my view, beyond even the current fund profile. Moreover, I strongly support the Proposal to the extent it allows greater use of widely available technologies, such as the Internet, to effect delivery. That offers the promise of cutting down on voluminous paper prospectuses often considered useless by investors, which wind up being merely thrown away at great cost to fund companies, investors and the environment alike.

Access Equals Delivery

Although not referred to as such in the Proposing Release, I view the Proposal as yet another variation on the "access equals delivery" model that has come under discussion in recent years,[2] and I fully support the Proposal to the extent it embraces a model that allows access to certain fund information to be considered delivery of it for various purposes under the Securities Act. So,

[1] For example, the risk/return summary dictated by Form N-1A and the fund profile permitted under Rule 498.

[2] Of course, this Proposal is different in some respects from other proposals where the "access equals delivery" model has been adopted, but there are significant similarities as well.

for example, I am in favor of allowing delivery of a Summary Prospectus to suffice for prospectus delivery purposes under Section 5(b)(2) if investors are provided access to the statutory prospectus and other specified information on an Internet website under the conditions contemplated by the Proposal.[3]

Of course, the Proposal doesn't go nearly as far as the "access equals delivery" model that the Commission implemented for non-investment companies under the securities offering reforms of 2005,[4] which permit prospectus delivery obligations to be met in certain circumstances by simply filing a final prospectus on the SEC's EDGAR system.[5] Nonetheless, the Proposal is a long overdue advancement from where we are today. Plus, given how many less sophisticated, retail investors participate in the typical fund offering, and how difficult it continues to be to locate any particular fund document on the SEC's EDGAR system, the Proposal's approach is arguably more suited to mutual funds than an approach relying on EDGAR filings such as that permitted under the 2005 reforms.[6]

Access Equals Conveyance

I also support the Proposal to the extent it applies the concept of "access equals delivery" – or perhaps more accurately, "access equals conveyance" – to Sections 12(a)(2) and 17(a)(2), two anti-fraud sections of the 1933 Act that impose liability for material misstatements and omissions in certain contexts. Thus, in light of Rule 159,[7] I strongly support proposed Rule 498 expressly stating that information incorporated by reference into a Summary Prospectus is deemed "conveyed" for purposes of Sections 12(a)(2) and 17(a)(2) no later than the specific time spelled out in the rule.[8] In that way, then, a Summary Prospectus that incorporates other information as contemplated by the Proposal should have the legal effect of "conveying" that information to investors for purposes of 12(a)(2) and 17(a)(2) no later than the time specified in the rule. Conveyance at or after that time should not have to be established under a "facts and circumstances" test. Rather, the rule itself should establish conveyance as a matter of law.[9]

I also support the proposition expressed in the Proposing Release[10] that the requirements of proposed Rule 498 are sufficient so that incorporated information is in fact "conveyed" in the circumstances contemplated by the rule. In my view, it should be more than sufficient that:

- investors are put on notice by a legend at the beginning of the Summary Prospectus that documents containing more information are available,
- investors are told how to access those documents in the legend, and

[3] In the same vein, I am also in favor of allowing supplemental sales literature accompanied or preceded by a Summary Prospectus to be excluded from the definition of "prospectus" for purposes of Section 2(a)(10), under the conditions proposed.

[4] See Securities Offering Reform, Release Nos. 33-8591; 34-52056; IC-26993; File No. S7-38-04 (July 19, 2005) at http://www.sec.gov/rules/final/33-8591.pdf.

[5] See, for example, Rule 172 under the Securities Act of 1933.

[6] At this stage in the development of EDGAR, it is still somewhat of a stretch to assume that the average fund investor could find much of anything on EDGAR, at least not readily.

[7] Rule 159 says in substance that information conveyed to a purchaser only after the "time of sale" should not be taken into account in an anti-fraud determination under Sections 12(a)(2) and 17(a)(2).

[8] See my comments under the Specific Comments section of this letter as to what "time" I believe conveyance should be tied to for purposes of Rule 159.

[9] However, I agree with the sentiment expressed in the Proposing Release that parties may also establish in any given case that the incorporated information was conveyed prior to the time specified in the rule, although conveyance no later than the time specified in the rule would be established by the rule itself.

[10] See the Proposing Release at http://www.sec.gov/rules/proposed/2007/33-8861.pdf at pp. 69-70.

- incorporated documents are made readily accessible to investors free of charge through the various means referenced in the legend.

These are all facts and circumstances which support the notion that incorporated documents are "conveyed" and should be treated as such as a matter of law.

Moreover, it only logical that if the Commission is going to allow delivery of a Summary Prospectus incorporating the statutory prospectus to "count" for purposes of meeting prospectus delivery requirements under Section 5, then the same Summary Prospectus ought to "count" as well for purposes of conveying the statutory prospectus information to investors under the anti-fraud rules.[11] It would seem rather odd to provide that "access equals delivery" strictly for purposes of Section 5, so that a fund gets a benefit from the incorporated prospectus for purposes of meeting its prospectus delivery obligations but gets no benefit from it for purposes of meeting its anti-fraud obligations. Section 5 requires delivery of the prospectus for a reason, presumably in order to make sure that investors are fully informed in the course of making their investment. Therefore, if the Summary Prospectus is sufficient for prospectus delivery purposes, it should be sufficient for anti-fraud purposes as well.

Lastly, I would note that allowing incorporation by reference into the Summary Prospectus, in conjunction with the provisions of proposed Rule 498 aimed at Rule 159, should go some ways toward addressing the sticky issue that was raised when the fund profile was proposed over 10 years ago,[12] as to whether fraud claims could be made alleging material omissions simply because the profile omits information contained in the statutory prospectus. Although the issues may not have been eliminated entirely with the Proposal,[13] I would expect them to have been eased sufficiently for use of the Summary Prospectus to catch on in a way the fund profile never did.

Underlying Premises

I fully support these premises that appear to underpin the Proposal:

- Premise #1 -- that Internet use is widespread enough to warrant incorporating its use into the Commission's rules in the proposed fashion.

  I agree with this premise wholeheartedly and believe the Internet currently offers the greatest opportunity to provide investors with fast and convenient access not only to all regulatorily required information, but astonishing amounts of supplemental information as

[11] Indeed, funds that deliver the Summary Prospectus in compliance with the requirements in the Proposal are deemed to have met their Section 5 prospectus delivery requirements whether or not they specifically incorporate by reference the statutory prospectus. It is not clear to me why there should be a distinction between the effect of complying with the Proposal for purposes of Section 5/prospectus delivery and for purposes of Rule 159/Section 12(a)(2) and 17(a)(2)/anti-fraud. In my view, funds should not have to add the magic words "incorporated by reference" (somewhat meaningless words to most investors anyway) to the Summary Prospectus in order to get the benefit under Rule 159 (and therefore Sections 12(a)(2) and 17(a)(2)) offered by proposed Rule 498(b)(3)(iii). It seems more logical to me that using a Summary Prospectus in compliance with the conditions contemplated by the Proposal -- including putting a legend on the Summary Prospectus referencing that additional documents are available, posting the referenced documents on the Internet and so on -- should have three effects: (1) satisfying Section 5(b)(2) prospectus delivery requirements; (2) "conveying" the Internet-posted information to investors as provided in Rule 498(b)(3)(iii); and (3) excluding other communications accompanied or preceded by the Summary Prospectus from the definition of "prospectus" under Section 2(a)(10).

[12] See Release Nos. 33-7399; IC-22529 (February 27, 1997) at http://www.sec.gov/rules/proposed/33-7399.txt where the fund profile was proposed and Release Nos. 33-7513; IC-23065 (March 13, 1998) at http://www.sec.gov/rules/final/33-7513.htm where the profile was adopted.

[13] Significantly, I don't believe the anti-fraud issues have been entirely eliminated for the reasons I discuss later in my comments with regard to incorporation by reference and Rule 159, and throughout my comments on the question of whether funds should be permitted to include information in a Summary Prospectus beyond the items specifically required.

well, often offered in ways that facilitate useful fund comparisons and investor education in addition. And, of course, use of the Internet for delivery is not only convenient for investors but also offers funds, distributors and intermediaries a more efficient and cost-effective way to meet regulatory delivery requirements and investor needs, as compared to more expensive and slower methods that depend on paper delivery via mail or courier.

At the same time that I support efforts to incorporate Internet use into the regulatory regime, I am concerned about those investors who do not have or use ready access to the Internet.[14] While the number of investors in that category may be diminishing each year, I don't believe that Internet use – in particular, affordable high-speed Internet use -- is so universal yet that non-Internet using investors should be overlooked by the Proposal. Accordingly, I am in favor of the aspects of the Proposal that require Summary Prospectuses to include a toll-free (or collect) telephone number that investors can use to request paper copies of the statutory prospectus and other information. While in that case, non-Internet using investors who want the statutory prospectus might have to take an extra step beyond what would be necessary to get the statutory prospectus under the current regulatory regime, I believe the Proposal strikes an appropriate balance between adequately protecting their interests and still allowing the more cost-effective Summary Prospectus to be delivered in cases where a statutory prospectus would otherwise be required.

- Premise #2 -- that while the more complete information in the statutory prospectus may be of interest to some investors, it may not be of sufficient interest to enough investors to warrant requiring delivery of that information to every investor. Accordingly, a Summary Prospectus can effectively be used as the first "layer" of information delivered to investors, with additional "layers" of information (statutory prospectus, SAI and shareholder reports) being made available through other means.

  Again, I agree wholeheartedly with this premise. This is a logical extension of the rationale that led to splitting the SAI from the prospectus and that underpinned the fund profile proposal -- that not all investors need or want the full-blown detail in order to make an investment decision. Moreover, the notion that a summary-type document will suffice for most investors in most cases has been borne out by years of experimentation in the marketplace, where practical solutions have been devised by funds and others to give investors the fund information they want in the form they want it. This has resulted in the widespread use of fund "fact sheets," "fund at-a-glance" disclosures and similar fund "overview" materials as sales literature[15] that are in many cases simply variations on the Summary Prospectus contemplated by the Proposal.

  The regulatory scheme has long supported a "line" being drawn between first "layer" information (such as the prospectus) delivered to investors in the first instance and other "layers" of information (such as the SAI) made accessible to investors who choose to pursue it. This Proposal simply pushes that "line" toward a more summary document, the Summary Prospectus, being available as the first layer of information for use in more contexts and for more purposes. In my view, it is high time that the Commission push the line in that direction given the appetite that investors have long shown for concise summary fund information being made available to them in a convenient way and the ease with which the Internet makes the additional information accessible to them.

[14] Of particular concern is that this group might include a disproportionate number of lower income, rural and/or senior investors, among whom high-speed Internet access may be less available, less affordable and/or less utilized.

[15] Not to mention the fund "profile" under current Rule 498 and the "Profile Plus" proposed by the NASD's Mutual Fund Task Force in its Report on Mutual Fund Distribution at http://www.finra.org/web/groups/rules_regs/documents/rules_regs/p013690.pdf.

- Premise #3 -- that investors can and should be responsible for taking a certain amount of initiative on their own to investigate and inform themselves about their investments. Thus, investors who desire information beyond that provided in the Summary Prospectus should be responsible for seeking the more detailed information accessible to them by readily available means, rather than the fund being responsible for delivering it to them in the first instance.

  I agree with this third premise as well. At their root level, the federal securities laws depend on investors taking the steps necessary to inform themselves of matters important to their investment decisions. Our disclosure-based regime relies on investors protecting themselves by reading disclosures made available to them and seeking out any further information they may desire. While recent studies have again confirmed that many investors don't read or can't understand the disclosures made available to them,[16] permitting the use of a concise, standardized Summary Prospectus as a substitute for (or supplement to) our current long and complex disclosure documents could only increase the likelihood that investors will actually read and understand important basic disclosures about their fund investments. Moreover, with more complete information and investor-friendly explanations immediately accessible on the Internet at the click of a mouse, fewer investors will be deterred from actually taking the time and making the effort necessary to seek out any more detailed information they desire.

  Accordingly, I support the Proposal's "layering" approach, distinguishing summary information that must be provided to investors in the first instance from the more detailed, additional information that any particular investor might desire to seek out for themselves through readily available means.

"Transitional" Period

Many of the issues under discussion in the Proposal seem relevant only in this "transitional" period we're in, prior to the time when Internet use becomes more or less universal among investors and paper disclosures are entirely replaced with electronic ones. In this period, the most significant advancement the Proposal offers, in my view, is to allow a paper Summary Prospectus, backed by an electronic statutory prospectus, to suffice as the legal equivalent of the prospectus for various purposes, cutting down on the burden, clutter and cost of having to deliver the full prospectus on paper.

On the other hand, the Proposal doesn't seem to offer much advancement in the use of an electronic Summary Prospectus because funds today can easily use an equivalent document in electronic form, even without adoption of the Proposal.[17] As a result, funds may not find the Proposal all that useful for making delivery of electronic documents. Nonetheless, the Proposal will be useful as long as deliveries are still being made on paper, and I have formulated my

[16] See Investor and Industry Perspectives on Investment Advisers and Broker-Dealers, a Technical Report by RAND Corporation, Pre-Publication Copy (December 2007) at http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf at pp. xxii and 21.

[17] Any electronic sales document "accompanied" by the statutory prospectus is treated as sales literature excluded from the definition of prospectus under Section 2(a)(10). According to existing Commission guidance, electronic documents will be considered "accompanied" by a statutory prospectus if the prospectus is accessible via a hyperlink included in close proximity, using the so-called "envelope" theory. See, among others, Use Of Electronic Media For Delivery Purposes, Release No. 33-7233; 34-36345; IC-21399 (October 6, 1995) at http://www.sec.gov/rules/interp/33-7233.txt, Use Of Electronic Media By Broker-Dealers, Transfer Agents, And Investment Advisers For Delivery Of Information; Additional Examples Under The Securities Act Of 1933, Securities Exchange Act Of 1934, And Investment Company Act Of 1940, Release No. 33-7288; 34-37182; IC-21945; IA-1562; (May 9, 1996) at http://www.sec.gov/rules/interp/33-7288.txt and Use of Electronic Media, Release Nos. 33-7856, 34-42728, IC-24426 (April 28, 2000) at http://www.sec.gov/rules/interp/34-42728.htm. Accordingly, funds today can use the sales literature equivalent of an electronic Summary Prospectus if they simply hyperlink the statutory prospectus nearby. Using that approach also avoids the form, content, filing and prospectus liability issues that would accompany use of a 'true' Summary Prospectus under proposed Rule 498.

comments with that in mind, understanding that this requires an appropriate balance between investor protection and cost.

SPECIFIC COMMENTS

For the reasons outlined above, I support the Proposal in general. However, I do have concerns, questions and comments about certain elements of the Proposal, which I have set out below. For convenience, my comments are presented in the same order as are the related topics in the Proposing Release and, where applicable, are offered in response to the specific questions posed by the Commission in the Release.

A. Proposed Amendments to Form N-1A

1. General Instructions to Form N-1A

- *Should we amend the General Instructions to Form N-1A in other respects? For example, should we impose any formatting requirements on the summary section of the prospectus, such as limitations on page length (e.g., three or four pages) or required font sizes or layouts?*

  Comment: No, page length limitations would simply create artificial pressure to shorten important disclosures, which would be antithetical to full and fair disclosure and the principles underpinning the anti-fraud rules. Moreover, the concept of "pages" is less meaningful when dealing with documents in electronic form, raising questions about how such a limitation would apply to an electronic summary, since the same electronic document could conceivably result in a different number of pages when printed, depending on the printer, format and paper size used to print the document.

  As for summaries printed on paper, there are already sufficient inherent incentives (cost and user-friendliness) to keep them short without express page length limitations. Indeed, many funds will probably strive to keep summaries (and Summary Prospectuses) to 2 pages (i.e., 1 sheet, front and back) for maximum reader friendliness and economy in printing.

  Similarly, font size requirements are less meaningful with summaries viewed in electronic format. Computer monitors and electronic documents often allow users to adjust font size on their screens to suit their preference, making SEC mandates unnecessary. For summaries on paper, the Commission's existing guidance on font sizes is sufficient.

  Aside from page length or font requirements, one formatting idea that might enhance the readability of a summary section or Summary Prospectus is putting the itemized headings in a "Q&A" type format. A few examples might be:

  > What are the fund's objective and principal investment strategies?
  > What are the principal risks of investing in the fund?
  > What does it cost to invest in the fund?
  > How has the fund performed in the past?
  > Who manages the fund?

  Although I don't believe the N-1A instructions should require this type of heading format, the instructions and the Adopting Release should permit funds the flexibility to use it if they so choose and perhaps encourage funds to consider using it or some similar format designed to enhance readability, particularly for funds with a retail orientation.

- *Is it appropriate to prohibit a fund from including information in the summary section that is not required?*

Comment: No. In the interest of full and fair disclosure and meeting applicable anti-fraud standards, funds should be permitted to include information in the summary that is not specifically required by the proposed items.[18] For the same reasons, funds should be permitted to include information in a Summary Prospectus that is not required by proposed Rule 498. However, in order to preserve the uniformity of the summary section from one fund prospectus to another -- and the uniformity of one Summary Prospectus to another -- any such additional disclosures should be required to appear in a separate section or sections (for example, under an "Additional Information" heading) at the end of the required disclosure items.

Examples of disclosures that funds may believe in any given case are appropriate to include in the summary (and in a Summary Prospectus) that are not specifically enumerated in the proposed instructions and Rule include, for example:

- Disciplinary actions, legal proceedings or similar matters involving the fund, its adviser or other affiliates or key service providers;
- Limits on transferability of fund shares;
- The fund's intention to close once it reaches a certain specified size;
- The identity of any persons in voting control of the fund;
- Material obligations or potential liabilities associated with owning fund shares (apart from investment risks);
- Extraordinary tax matters, such as the tax consequences if the fund anticipates not qualifying as a RIC under Subchapter M;[19]
- Pending proxy votes or other anticipated material changes, such as proposed changes in the fund's objective or investment restrictions, changes in the adviser, portfolio manager or other key service providers, or changes in any other fund features/characteristics that may materially impact the mix of information provided elsewhere in the summary and that would not necessarily appear in the specifically required items.

Pointing to Section 19(a),[20] some commenters may argue that funds are better protected from anti-fraud claims based on omissions from the summary (or Summary Prospectus) if the SEC's rules/forms expressly prohibit additional information from appearing there, particularly if the information appears in other sections of the prospectus or SAI, or in documents incorporated by reference. Indeed, the Commission itself has stated that it believes persons would be able to rely on 19(a) to protect against claims that the summary (or a Summary Prospectus) did not include information disclosed in the statutory prospectus, whether or not the statutory prospectus was incorporated by reference.[21] Nonetheless, in my view, funds should be free to decide for themselves

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[18] Aside from the question of whether funds should be able to disclose information in addition to the required items, I am assuming that the Proposal is not intended to preclude funds from disclosing whatever information they believe is necessary and appropriate (for example, to meet applicable anti-fraud standards) within each required item. So, for instance, funds that have experienced circumstances material to their performance should be permitted to footnote or otherwise accompany their performance table with any appropriate disclosures. While I would expect the Staff, as it always has, to be able to comment on filings that they believe are so long and detailed as to not comply with the spirit of the rules, I would not expect a fund's flexibility concerning disclosure within the required items to be any different under the Proposal than it is under the current disclosure regime. If I am mistaken on this point, I would urge the Commission to clarify in the Adopting Release.

[19] Although perhaps this could be included as part of the Tax Matters item included in the list of required items.

[20] Section 19(a) of the 1933 Act 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."

[21] Proposing Release at http://www.sec.gov/rules/proposed/2007/33-8861.pdf at 71.

whether information other than that specifically required by the proposed instructions or rules ought to be included in a summary section or Summary Prospectus, given that:

- Section 19(a) appears on its face to be a "savings clause" applicable when a person relies on an SEC rule that is later rescinded or amended, or determined to be invalid judicially, and therefore may not be construed to apply in cases where none of those circumstances exist;
- while the Commission's interpretation of 19(a) may be accorded deference by a court, its interpretation of the federal securities laws will not be considered definitive in determining Congressional intent;[22]
- a straightforward reading of Section 19(a) protects only against claims brought under the 1933 Act, and may not protect against claims brought under, for example, Rule 10b-5 or state anti-fraud laws;[23]
- the case law on 19(a) and the effect of incorporation by reference is not well-developed;[24]
- courts can and have applied a "buried facts" doctrine on the theory that accurately disclosed facts may nevertheless mislead reasonable investors if scattered throughout a document, or confusingly arranged so as to obscure their meaning;[25]
- anti-fraud claims tend to be decided on a case-by-case basis under a "facts and circumstances" test; and
- the ultimate goal should be to adequately inform investors which, in certain cases, may require going beyond the required disclosure items.

If the Commission nonetheless decides to expressly prohibit information in a summary or Summary Prospectus other than the required items, I would urge the Commission to clarify in the Adopting Release that funds are expressly permitted to accompany the summary or Summary Prospectus with disclosures or documents containing any additional information[26] that the fund believes should be disclosed along with the required items. Otherwise, funds with information of that nature might find themselves vulnerable to anti-fraud claims or, contrary to the Commission's goals in proposing amended Rule 498, might refrain from using a Summary Prospectus altogether over concerns about such claims, even if they are allowed to "incorporate by reference" the full statutory prospectus and SAI into the document.

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[22] SEC v. Sloan, 436 U.S. 103 (1978).

[23] At least one court has dismissed fraud claims under the 1933 Act on the basis of Section 19(a), while at the same time not dismissing claims under Rule 10b-5 of the 1934 Act. See Spicer v. Chicago Board Options Exchange, Inc. 1992 U.S.Dist. LEXIS 18796 (N.D. Ill. 1992).

[24] The now 17-year-old district court case of White v. Melton, 757 F. Supp. 267 (SDNY 1991), seems to be the most frequently cited case addressing the question of whether a securities fraud claim alleging material omission in a fund prospectus would survive a motion for summary judgment when the allegedly omitted disclosure appeared in the SAI incorporated by reference into the prospectus. In that case, the court dismissed plaintiff's complaint finding that no genuine issue of material fact was raised, after analyzing whether the disclosure at issue was properly placed in the SAI rather than the prospectus. However, the effect of the decision on both the incorporation by reference issue and the 19(a) issue is unclear. Two more recent cases cite White v. Melton without further analysis. See Press v. Quick & Reilly, 1997 U.S. Dist. LEXIS 11609 (SDNY August 8, 1997) and Robert Strougo v. Bear Stearns & Co., Inc., et al., 1997 U.S. Dist. LEXIS 11665 (SDNY August 8, 1997). See also Majeski v. Balcor Entertainment, 893 F. Supp. 1397 (E.D. Wis. 1994) (knowledge of registration statement contents imputed to plaintiffs as a matter of law).

[25] See, for example, Werner v. Werner, 267 F.3d 288, 298 (3rd Cir. 2001) (the "buried facts" doctrine applies when the fact in question is hidden in a voluminous document or is disclosed in a piecemeal fashion which prevents a reasonable shareholder from realizing the "correlation and overall import of the various facts interspersed throughout" the document). See also Kennedy v. Tallant, 710 F.2d 711, 720 (11th Cir. 1983) (fact that defendants had gained control through a nominal investment disclosed only through pieces of information scattered throughout prospectus).

[26] A supplement accompanied by a Summary Prospectus could presumably have the status of "supplemental sales literature" or other communication not deemed to be a prospectus under Section 2(a)(10) by virtue of proposed Rule 498.

- *Are the proposed requirements for the order of information appropriate?*

  Comment: No. See my comments below (under heading A.2. Information Required in Summary Section) about the order of the items in the summary (and the Summary Prospectus counterpart).

- *Is it helpful for the prospectus to have a separate summary section?*

  Comment: Yes, I believe having certain key items designated as a summary followed by more detailed items would normally be helpful, although I am concerned about the redundancy that will occur when an investor gets a Summary Prospectus containing the same information as the summary section prior to receiving the statutory prospectus.

- *Are the requirements with respect to multiple fund and multiple class prospectuses appropriate?*

  Comment: I agree that multiple classes should be allowed in summary sections and Summary Prospectuses.

  I also agree that multiple funds in Summary Prospectuses should not be allowed in most cases. However, I believe an exception should be made where the information between the funds overlaps so substantially (e.g., bond funds that vary only by duration, lifestyle funds that vary only by asset class mix, etc.) that a multiple fund presentation can be formatted side-by-side or in some fashion so as to be helpful to comparison.

  Whether or not an exception of that sort is carved out for the Summary Prospectus, I believe an exception should be carved out for the summary section of the statutory prospectus covering multiple funds. The summary section should not be subject to a rigid "one summary following another" requirement in cases where comparisons among substantially similar funds can be made side-by-side or in some other non-confusing and informative way.

  Should we prohibit multiple fund or multiple class prospectuses altogether?

  Comment: No. Multiple class and multiple fund prospectuses can be helpful tools for investors to understand their alternatives and make comparisons. At the same time, they offer potential economic advantages to funds in reducing printing and delivery costs.

- *Should we eliminate or otherwise modify the optional separate purchase and redemption document?*

  Comment: No, the optional document should not be eliminated. I believe funds should still be permitted to utilize a separate purchase and redemption document if they so choose. A separate purchase and redemption document (shareholder guide or similar document) may be the preferred approach for complexes:

  - that choose not to produce a Summary Prospectus at all and therefore intend to continue to deliver the full statutory prospectus whenever required;
  - that choose to deliver a full statutory prospectus instead of a Summary Prospectus with certain categories of investors; or
  - that, regardless of their use of a Summary Prospectus, find it desirable to produce a separate purchase and redemption document to supplement their statutory prospectus whenever a statutory prospectus is delivered (such as upon shareholder request after receiving a Summary Prospectus).

  What, if any, purpose will this option serve if we adopt the new Summary Prospectus?

The separate purchase and redemption document would serve the same purpose it always has. From the investor's standpoint, it will provide a single convenient source to consult regarding purchase and redemption information for all funds in a complex. From the fund company's standpoint, it will avoid the cost and redundancy of having to restate that information in every multiple- or single-fund prospectus produced by the complex.

- *Are there alternatives we should consider that would achieve our goal of providing enhanced disclosures to investors in a more cost effective manner?*

  Comment: If it hasn't already, I would suggest that the Commission consider whether the short-form Summary Prospectus should now become, in effect, the new 10(a) statutory prospectus, with the current prospectus and SAI becoming, in effect, the new SAI. To me, that idea has a lot of appeal and is consistent in many respects with where the Proposal leaves us anyway, without all the re-labeling. However, having considered that alternative myself, I decided I would not urge the Commission to pursue it at this time, because concerns about the potential liability of using such a short-form prospectus as "the" prospectus are just too great, with all the uncertainties I mentioned previously. In my view, the idea loses even more appeal when one considers the myriad unintended consequences that could flow from such a far-reaching change, which haven't even begun to be identified.

  As yet another alternative, the Commission might consider whether the prospectus and SAI should be – or should be permitted to be -- combined back together again. The benefit of this would be to cut down on the number of requests investors would have to make if after receiving the Summary Prospectus, they decide they want more information. Under the current Proposal, they would first have to request the statutory prospectus and, if that still doesn't answer their questions, make a second request for the SAI. Of course, this would be most inconvenient and frustrating for investors who are requesting all these documents in paper form and waiting for them via postal mail. If, on the other hand, the prospectus and SAI were combined back into just one document, an investor could make just one request after the Summary Prospectus and get the whole 'ball of wax' at once.

  After having considered this alternative myself, I decided it too should not be pursued at this time because the cost and complexity of a combined prospectus/SAI is not worth the convenience of just one follow-up request for that small group of investors who need SAI-level detail to make their investment decision. Moreover, even if the prospectus and SAI were combined back into one document, any financial statements incorporated into the SAI would still typically be delivered as a separate document, undermining the goal of having just one document to deliver. In any event, leaving the prospectus and SAI separate is consistent with the fundamental concept of the Proposal to provide "layered" information, so that in cases investors may have to "drill down" through several layers to access the level of detail that they believe is right for them.

2. Information Required in Summary Section

- *Does the proposed summary section encourage prospectuses that are simpler, clearer and more useful to investors?*

  Comment: Yes, in general, although it is unclear without some experience under the Proposal what impact the summary section will have on the rest of the prospectus.

  Would the proposed summary section help investors to better compare funds?

  Comment: Yes, it likely will, although the use of a separate Summary Prospectus containing the same information is likely to go much further in comparability than the proposed summary section, especially in comparability of funds in different fund complexes. In addition, see my comments above supporting an exception from the

prohibition on multiple fund summaries in the interest of permitting formats conducive to comparisons in the case of substantially similar funds.

- *Should each of the proposed items be included in the summary section?*

  Comment: Subject to my comments below on the particulars of each of the individual items, I am in favor of including each of the items proposed for the summary section (and the Summary Prospectus), except that I would suggest dropping the Top 10 holdings item and, if anything, adding it to the list of items permitted but not required.

  Should any additional disclosure items currently required in Form N-1A be included in the summary section?

  Comment: No, not required, although as I mentioned previously, I believe funds should be permitted to include in the summary section (and Summary Prospectus) any additional disclosures they believe are desirable in the interest of full and fair disclosure and meeting applicable anti-fraud standards.

  Should we consider disclosure items that are not currently in Form N-1A? If so, what types of additional disclosures should we consider including in the summary section?

  Comment: I believe you should consider permitting, but not requiring, certain other information in the summary section (and Summary Prospectus) that are not required by N-1A. These include:

  - the fund's ticker symbol;
  - a line graph illustrating the growth of $10,000 over 10 years (the graph that currently appears in the fund's annual report to shareholders);
  - additional performance metrics for the fund (inflation-adjusted performance, alpha, beta, etc.);
  - pie charts or tables illustrating things like the fund's sector or country allocations, its bond quality diversification, and the like;
  - the fund's ratings/rankings (Morningstar, Lipper or the like); and
  - the fund's style box designation.

  However, given that these items are or can be addressed in other disclosure documents or in supplemental sales literature accompanying the prospectus or Summary Prospectus, I do not feel strongly that they should necessarily be included in the enumerated items required or permitted by the Proposal.

- *How would the required narrative explanations of various items contribute to readability and length of the summary section?*

  Comment: Of course, narratives would tend to lengthen but hopefully also serve to clarify various items.

  Should each of these explanations be required, permitted, or prohibited in the summary section?

  Comment: Permitted.

- *Is the proposed order of the information appropriate, or should it be modified? If so, how should it be modified?*

  Comment: In my view, the order of the required information should be changed and the items re-designated as follows:

(1) Investment objectives (brief statement) and principal investment strategies (brief narrative).

I would envision this item basically being a combination of what is currently called for in Items 2(a) and (b) of N-1A. In my view, investment objectives and principal strategies logically go hand-in-hand and should be discussed together. Often, a fund's objective is so succinct and generic (for example, "capital appreciation" or "total return consistent with capital preservation") that is does not give investors enough meaningful information to determine even what kind of fund it is. I realize that the proposed instructions would also allow the fund to identify its basic "type" (for example, money market fund or balanced fund), but it would be better to also provide a brief statement of strategies (for example, "The fund pursues its objective by investing in stocks of smaller companies that are out-of-favor with or misunderstood by the broader investment community" or "…by investing at least 80% of its total assets in bonds rated below investment grade" etc.). That way, investors get at least enough information to decide if the fund is of interest to them and whether they ought to delve into the rest of the information provided. While in some cases, that more detailed information may be evident from the name of the fund or from the investment objective alone, in many cases it will not, and investors should not have to hunt for this basic "what-does-the-fund-do?" type of information fragmented across different sections of the summary.

(2) Principal risks (brief narrative).

I would envision this section being parallel to the information called for in current Item 2(c)(1) of N-1A. As narrative risk disclosure, this would go hand-in-hand with and supplement the narrative objectives/strategy disclosure in item (1).

(3) Costs (fee table).

I envision this section being largely parallel to current Item 3 of N-1A. (See my comments below on the specifics of the proposed fee table disclosure.) While I am sympathetic to the Commission's attempt to enhance the prominence of cost information by pulling it forward in the enumerated items, I believe it is unrealistic to view it as more significant than <u>everything</u> <u>except</u> the objective, as the proposed placement would suggest. Therefore, I have suggested that it be placed third, after the basic narratives describing what the fund does (the fund's objective, strategies and risks), but before performance, even though, rightly or wrongly, most investors probably narrow down their fund choices by looking at performance <u>before</u> looking at costs.

(4) Past performance (performance table and bar chart).

I envision this section being largely parallel to current Item 2(c)(2) of N-1A. By placing performance <u>after</u> costs, performance will be separated from the other information that has historically appeared clumped together with it under the broad "risk/return" heading in Item 2 of N-1A (that is, objectives, strategies, and risk narrative). However, I don't believe this disrupts the connection between risk and performance, which can still be highlighted in the narrative accompanying the performance table and chart. Indeed, my suggested order still clumps together all the elements that appear today as part of the "risk/return summary" (that is, investments, risks, performance called for by current Item 2 and the fee table called for in current Item 3 of N-1A).

(5) Top 10 holdings (table). (In my other comments, I am suggesting that this be dropped altogether from the list of required items. However, if the Commission determines that it should nonetheless be included, this is where I believe it should appear.)

(6) Investment advisers and portfolio managers.

(7) Brief purchase and redemption and tax information.

(8) Financial intermediary compensation.

I envision items (5) through (8) appearing largely as contemplated by the Proposal, subject to my specific comments on each of those items below.

(9) Additional information.

As mentioned in my comments under heading 1.A. above, I believe funds should have the option of including any other information at the end of the summary (and Summary Prospectus) that they may choose to include in addition to the required items, so that they can disclose whatever they believe may be necessary in the interest of full and fair disclosure and meeting applicable anti-fraud standards.

- *Should we also require a fund to disclose whether its objective may be changed without shareholder approval in the summary section?*

  Comment: No, because even if this is theoretically possible in any given fund, it is typically so remote a likelihood that it would be immaterial. However, if a particular fund believes this is both possible and a significant enough likelihood that it should be disclosed in the prospectus summary and/or Summary Prospectus, then the fund should be allowed to disclose it as supplemental information in, for example, the "Additional Information" section I have suggested be permitted at the end of the prospectus summary or Summary Prospectus.

- *Are our proposed revisions to the fee table and example appropriate? Are there any other revisions to the fee table or example that we should consider?*

  Comment: I have commented above on the proposed placement of the fee table in the list of enumerated required items. In addition, I have the following comments on the proposed Annual Fund Operating Expenses heading change:

  - I agree that the parenthetical following the "Annual Fund Operating Expenses" heading should be revised, but I would suggest that it read as follows:

    > "(ongoing expenses paid out of fund assets which reduce the return on your investment each year by the percentage shown)"

    To me, that is a significantly more accurate and understandable statement of what the operating expense table actually depicts. It correctly states that the expenses are fund expenses (not "paid" by shareholders), but still conveys the point that the expenses are borne by shareholders by reducing their returns. In my view, this meets the Commission's goal of emphasizing the "real" cost to shareholders of investing in a fund, but avoids the confusion that could accompany the Commission's proposed wording which implies that shareholders "pay" the fund's operating expenses.[27]

[27] No doubt, fund expenses could be characterized as being "paid" by shareholders in some sense. However, when investors are told they will "pay" for certain expenses, they could easily misunderstand that to mean there will be a charge for (or deduction of) that amount appearing on their statement at some point, the same way there would be when they are asked to "pay" wire transfer charges or custodian account fees, for example. I realize that some commentators have suggested shareholders should have a specific dollar amount reflected on their statement for their proportionate share of the fund's operating expenses to help make the point that they are indeed "paying" the expenses, albeit indirectly subsumed in the NAV calculation. However, I am not in favor of funds having to calculate or include any such dollar amount on shareholder statements.

A perhaps more effective way to communicate to investors the impact of fund expenses on their investment would be to have the performance bar chart show the fund's "gross-of-expenses" performance side-by-side with (or "shadowed" by) the fund's "net-of-expenses" performance for each of the calendar years covered by the bar chart. That would create a graphic visual image illustrating at-a-glance what effect fund expenses have had on investors' returns each year.

- *Is the proposed disclosure at the beginning of the fee table regarding discounts on front-end sales charges for volume purchases (i.e. breakpoint discounts) appropriate?*

  Comment: Yes, I believe it is worthwhile to alert investors to the availability of breakpoints in the summary (and Summary Prospectus) as long as the disclosure can be kept brief.

- *Should we consider any other revisions to headings in the fee table to make them more understandable to investors? For example, should the term "load" or "12b-1" be eliminated? Do investors generally understand these terms, or are there clearer terms that we should require?*

  Comment: In my view, it would be beneficial if the terms "load" and "12b-1 fees" could be phased out altogether, since the majority of (retail) investors probably don't understand the meaning of those terms. However, to the extent investors have a sense of those words at all, they probably understand them as setting off cautionary alarms or as "bad" or "to be avoided." Consequently, if the words are eliminated altogether, investors might mistakenly think that funds with loads and 12b-1 fees don't have either of those features.

  Therefore, I think the better approach at this stage would be to simply continue explaining the terms with parenthetical wording, such as "Sales Charge (Load)" and "Distribution, Marketing and/or Shareholder Servicing[28] (12b-1) Fees," instead of eliminating them altogether.

- *How, if at all, should expense reimbursement and fee waiver arrangements be reflected in the fee table and expense example and accompanying disclosures?*

  Comment: I agree with the Proposing Release that gross operating expenses may overstate actual, current expenses, as well as long-term expenses. I therefore support the Proposal to the extent it permits funds with expense reimbursement or fee waiver arrangements in effect to include additional captions in the fee table showing reimbursements/waivers and net expenses.

  However, I am unclear on some of the specifics of the Proposal. The Proposing Release refers to expense reimbursements or waivers that are "expected to continue" for no less than one year. My question is: How does the Staff's prior guidance concerning disclosure of "contractual" versus "voluntary" reimbursement/waiver arrangements apply to the new proposed instructions, if at all? Under prior guidance, reimbursement/waiver arrangements were permitted in the fee table if fees were subject to a "contractual" limitation. Disclosure of "voluntary" arrangements were permitted only in a footnote.[29] Under the new proposed instructions, may a fund add the reimbursement/waiver and net expenses captions to the fee table if the reimbursement/waiver "is expected to continue" for no less than one year under a voluntary arrangement? In other words, can a voluntary arrangement suffice to meet the conditions contemplated by the proposed instructions allowing for tabular presentation?

[28] Using here whatever wording is appropriate to describe the use of 12b-1 fees under that particular fund's 12b-1 plan.

[29] See Question 6 in N-1A FAQ Letter dated October 2, 1998, from Barry D. Miller, Associate Director of the SEC's Division of Investment Management, to Craig S. Tyle, General Counsel of the ICI at http://www.sec.gov/rules/other/ici1002.txt.

The Proposing Release does not mention "contractual" and "voluntary" arrangements and I would therefore urge the Commission to clarify its intentions in this regard in the Adopting Release. In my view, voluntary (non-contractual) arrangements can, in circumstances, be "expected to continue" in much the same way as contractual arrangements can and in those circumstances should be allowed to be disclosed in the fee table itself.

Lastly, I would also suggest that the Commission clarify in the Adopting Release whether funds are permitted to disclose in footnotes to the table any reimbursement/waiver arrangements that don't qualify for tabular presentation, or whether they would be relegated to other sections of the prospectus. In my view, they should be permitted to be disclosed in a footnote or otherwise nearby the fee table in the interest of full and fair disclosure.

- *Should funds be required to disclose the detailed fee table information in the summary section or would it be more useful to investors to require disclosure of total shareholder fees and total annual fund operating expenses in the summary section and require disclosure of the detailed fee table outside the summary section?*

  Comment: Although total expenses may be sufficient information for some investors in choosing funds, some investors (like me) make their first cut narrowing fund choices on the basis of some of the more detailed fee table information, such as figuring out whether the fund has a 12b-1 fee and, if so, how much it is. Therefore, I believe the detailed tables should be presented. Besides, the fee table is typically succinct enough not to add too much complexity or take up too much space in a summary document even when presented in the more detailed form.

  Are there any details regarding fund fees or expenses that should be included only outside the summary section? For example, the fee table currently permits "Other Expenses" to be subdivided into no more than three subcaptions that identify the largest expense or expenses comprising "Other Expenses." Should we permit this detail in the summary section of the prospectus or should we require that funds providing this level of detail include it outside the summary section?

  Comment: While the "Other Expenses" detail could probably suffice outside the summary (or Summary Prospectus) just as readily as inside, funds should be able to include it in the fee table if they so choose. If the detail is important, the fee table would appear to be the best place to disclose it.

- *Should the proposed disclosure regarding a fund's portfolio turnover rate be included in the summary section? Should the proposed portfolio turnover narrative disclosure be modified or should funds be required to disclose their portfolio turnover in the summary section without any narrative explanation? Should any additional information regarding a fund's portfolio turnover rate be required to be disclosed as part of the summary section, for example, information about a fund that engages in active and frequent trading of portfolio securities and the tax consequences to shareholders and effects on fund performance of increased portfolio turnover? Should funds be required to provide an explanation of the effect of portfolio turnover on transaction costs and fund performance?*

  Comment: Yes, I believe portfolio turnover should be included in the summary section (and in a Summary Prospectus). However, I believe the turnover disclosure should be numerical only and that any narrative explanation, for example describing the effect of turnover on transaction costs and fund performance, should be left out of the summary and placed in other parts of the prospectus. For many funds, that narrative would be purely "educational" in nature and would not serve to distinguish one fund from the other. However, in those cases where a fund engages in active and frequent trading and a narrative on turnover would be material to a basic understanding of the fund, then the fund should be permitted to include narrative information about its turnover and the effect of it in the "Additional Information" section I have proposed funds should be permitted to

include at the end of the summary section and Summary Prospectus, if it did not already appear in the principal risks or other disclosure.

Should new funds (e.g., funds with less than six months or one year of operations) be required to include information about portfolio turnover in the summary section given their limited period of operations? Is the portfolio turnover rate meaningful enough for a new fund that it should be required in the summary section?

Comment: No, new funds should not be required to include their turnover because they have not had enough operations to make the number meaningful. New cash inflows and trades aimed at building out a fund's portfolio could significantly skew a new fund's turnover rate relative to its usual expected rate in normal circumstances.

- *Should we consider any revisions to the bar chart or table disclosing a fund's returns? For example, should we modify or eliminate the required explanation that this information illustrates the variability of a fund's returns?*

Comment: Yes, the following changes to the bar chart and performance table should be considered.

Bar Chart. Currently, Item 2(c)(2)(ii) of Form N-1A calls for non-calendar year end funds to footnote the bar chart with year-to-date returns through the end of the most recent quarter end. While this footnote disclosure might be OK in the statutory prospectus for funds that choose to not use a Summary Prospectus, I am unclear on how it would appear in the Summary Prospectus for funds that choose to use one. Would it be subject to the updating requirement in the Summary Prospectus? The Proposing Release does not address this explicitly but suggests not, since the updating requirement in proposed Rule 498 seems to apply only to the performance table. I would think that the footnoted YTD returns should be updated, along with all the other returns in the Summary Prospectus. However, then the question becomes should all funds – including those with a calendar year end -- be required to disclose YTD returns in a footnote to the bar chart, updated quarterly? Presumably they should in the interest of uniformity, even though for a statutory prospectus or Summary Prospectus prepared in the first calendar quarter of the year, YTD returns as of the most recent calendar quarter end would not yet exist.

As an alternative, I suggest dropping altogether the YTD return footnote under the bar chart for all funds, both in the statutory prospectus and the Summary Prospectus. This takes the emphasis off short-term performance and avoids all the issues I just raised. Potentially, this would leave a "gap" in returns information from the calendar year end returns shown in the bar chart to the date of the prospectus, but only in the statutory prospectus for non-calendar year funds. Moreover, this "gap" would be significantly mitigated – if not eliminated – by the fact that any funds using a Summary Prospectus (probably most funds) will be required to make updated quarterly returns information available anyway. Indeed, if funds are permitted to satisfy the Summary Prospectus updating requirement with information provided via telephone and/or website (an approach I favor), then even the returns in the statutory prospectus would effectively be updated, albeit not necessarily with YTD returns.

If the Commission nonetheless decides to retain the YTD return footnote, I would suggest at a minimum clarifying the instruction now appearing in Item 2(c)(2)(ii) of Form N-1A to read: "If the Fund's fiscal year is other than a calendar year, include the calendar year-to-date return information as of the end of the most recent calendar quarter in a footnote to the bar chart." This helps to distinguish fiscal years and quarters from calendar years and quarters. Moreover, I would suggest instead that the YTD requirement be made uniformly applicable to all funds and that it be amended to read to the following effect:

> "If the bar chart is to appear in a prospectus or Summary Prospectus dated after March 31 in any given year, include in a footnote to the bar chart calendar year-to-date return information as of the most recent calendar quarter end."

Another suggested change to the bar chart would be, as I mentioned earlier in my comments, to have the bar chart show the fund's "gross-of-expenses" performance side-by-side with (or "shadowed" by) the fund's "net-of-expenses" performance. This would serve as another visual reminder of the "real cost" to investors of the fund's operating expenses, in terms of reduced returns. It would also serve to emphasize that fund expenses are ongoing, affecting the fund each and every year, and vary from year to year.

Performance Table. As for the performance table, I would suggest that the instructions in N-1A be amended to require performance as of the most recent calendar quarter end rather calendar year end. This prevents performance information in prospectuses prepared late in the year from being so stale. Moreover, it makes the return information in prospectuses synch more closely with the calendar quarter updating scheme being proposed for Summary Prospectuses. In my view, there should be no confusion over the fact that the "as of" date for the performance table is different than the "as of" dates used for the bar chart, since the bar chart serves a different purpose than the performance table (visually illustrating the year-to-year variability of returns) and for comparability should remain consistent with the bar charts of other funds.[30]

Lastly, I must say that it is odd to me that the narrative explanation required to accompany the performance information calls for an explanation of how the table and chart depict risk (variability from year to year and broad market comparison), while no mention is made of how they depict return. While I think it is helpful to focus investors on the fact that there is risk associated with even positive performance returns,[31] this seems oddly unbalanced. Perhaps the Commission feels that the data speak for themselves on returns, or that the only point worth making about returns is the already required disclosure that "past performance is not necessarily an indication of how the fund will perform in the future." Having made this observation, I have no specific suggestions for changes in wording.

- *Are there additional performance measures, such as past performance adjusted for the impact of inflation, that should be required in the summary section?*

  Comment: No, none that should be required, although as I mentioned in my comments previously, the Commission should consider permitting funds to include inflation-adjusted performance along with other performance metrics such as the fund's alpha, beta, etc.

- *Should we require disclosure regarding portfolio holdings in the summary section? If so, what information should be required, e.g., top five holdings, top 10, top 25? If we require portfolio holdings disclosure, should any funds be exempt from the requirement, e.g., money market funds or exchange-traded funds? Should new funds be exempt from this requirement? Are there circumstances where this disclosure might not be useful to investors or where additional information regarding a fund's investment exposures would be necessary to make the portfolio holdings information useful, for example, where the top 10 holdings represent a relatively small*

[30] On a related issue, I would note that the performance returns in the hypothetical Summary Prospectus included in the appendix to the Proposing Release appear to be presented as of an incorrect date, even by the standards appearing in the Proposal. The performance table speaks "as of" the last calendar year end, December 31, 2006, which would be correct for a presentation in the statutory prospectus but a stale date for performance in a Summary Prospectus, which under the Proposal should speak "as of" September 30, 2007, the last calendar quarter end prior to first use (assuming that the November 1, 2007 date on the front of the Summary Prospectus is indicative of the date of first use).

[31] Indeed, I think requiring disclosure of the fund's highest and lowest quarterly returns is probably the most effective disclosure the Commission has ever called for to make that point. See Item 2(c)(2)(ii) of Form N-1A.

percentage of the fund's total holdings? Should we require funds to disclose additional information such as the percentage of a fund's net assets represented by the combined top 10 holdings? Should we require a fund to disclose its holdings that represent a specified percentage of the fund's holdings?

Comment: As I mentioned in my comments previously, I personally do not find portfolio holdings disclosures helpful in my fund investing and believe it should be dropped from the list of required items. However, if enough other investors find it useful so that the Commission decides to require it, Top 10 is better in my view than Top 5 (too few) or Top 25 (too many). Of course, the disclosure will be more useful in the case of some funds than others, and exemptions from the requirement might be appropriate in certain cases (for example, money market or exchange-traded funds).

Along with the percentage of net assets represented by each holding, I believe it would be helpful for funds to disclose the percentage of assets represented by the Top 10 holdings combined so that, at a glance, investors can better understand the significance of the list to the fund as a whole.

I don't feel requiring disclosure of all holdings in excess of a specified percentage is necessary or helpful if a list of the Top 10 is required, but if the Commission decides to include such a requirement, disclosure of holdings in excess of 5% would seem most appropriate, in my view.

Lastly, I would suggest for clarity that newly designated Item 5 in Form N-1A call for disclosure of the ten largest holdings contained in the Fund's portfolio, rather than the ten largest issues, with the accompanying instructions similarly drafted to specify what is considered a single "holding" (rather than "issue") for purposes of the list.

- *Would the proposed exception to the requirement to list the top 10 holdings that would permit a fund to list an amount not exceeding five percent of the total value of the portfolio holdings in one amount as "Miscellaneous securities" adequately guard against the premature release of certain positions that could lead to front-running and other predatory trading practices? If not, what other protections would be necessary? Is the "Miscellaneous securities" exception necessary and appropriate?*

  Comment: If Top 10 disclosure is ultimately required, I believe the "Miscellaneous securities" exclusion should be permitted as proposed. Funds that could or do rely on that alternative in their financial statements should be permitted to rely on it in the summary (and Summary Prospectus), to keep their financial statements parallel to their summary disclosures and to protect against the deleterious effects of premature disclosure.

  However, I don't believe the "Miscellaneous securities" exclusion is necessarily enough to protect against premature disclosure of holdings in all cases. Moreover, I am concerned that the timing of the holdings disclosures required by the Proposal, including the updating requirements, unnecessarily re-opens the thorny issues about holdings disclosures that were debated extensively in 2004 when the Commission proposed quarterly holdings disclosure on Form N-Q with a 60-day delay,[32] to supplement the holdings disclosures already required in the fund's annual and semi-annual reports to shareholders. At that time, the Commission declined to adopt a requirement for more frequent than quarterly holdings disclosure due to concerns over predatory practices. However, the Proposal for many funds would require them to disclose holdings more frequently than quarterly in order to meet their ongoing disclosure requirements geared to their fiscal year, along with the Proposal requirements (in particular, the updating requirements for the Summary Prospectus) geared to the calendar year.

[32] See Release Nos. 33-8164; 34-47023; IC-25870 at http://www.sec.gov/rules/proposed/ic-25870.htm proposing Form N-Q and Release Nos. 33-8393; 34-49333; IC-26372 at http://www.sec.gov/rules/final/33-8393.htm adopting Form N-Q.

This is explained more fully in my comments below concerning the one-month lag provision, along with my suggested approach for addressing this problem.

- *Should we require funds to present tables, charts, or graphs that depict portfolio holdings by reasonably identifiable categories (e.g., industry sector, geographic region, credit quality, maturity, etc.) either instead or, or in addition to, top 10 portfolio holdings?*

  Comment: As I mentioned previously in my comments, I believe the Commission should consider permitting these types of disclosure but not requiring them.

- *Should, as proposed, a fund having three or more sub-advisers be required to identify only those sub-advisers that are (or are reasonably expected to be) responsible for the management of a significant portion of the fund's net assets?*

  Comment: Yes, I generally favor the Proposal in this regard, although I am not convinced that 30% is the appropriate cut-off for determining "significant." (It seems high.)

- *Should any or all of the information that we propose to require in the summary section regarding the purchase and sale of fund shares be permitted rather than required? Should any of this information be prohibited from being included in the summary section?*

  Comment: In my view, the summary section (and Summary Prospectus) should include the minimum initial and subsequent investment requirements but leave the details concerning how to invest and redeem to the more detailed disclosures in the actual prospectus (outside the summary). Minimum investment requirements are a common characteristic that investors use to narrow their fund choices, whereas the details of how to invest would typically be a post-selection matter requiring a more complete description than a summary should contain (application requirements, "good order" definitions, online or telephone availability, next calculated NAV, etc.). Similarly, the details of redemption (differences between fund transfers and redemptions for cash, signature guarantee requirements, redemption within 7 days, etc.) would not typically be pertinent to an investor's initial investment decision, even if they might seek out that information at the time they choose to redeem.

  If nonetheless a particular fund believes it should disclose more purchase and sale details in its summary (or Summary Prospectus), for example, for anti-fraud reasons or because of restrictions imposed that it believes all investors should be made aware of, then it should be permitted to include that disclosure in an "Additional Information" section at the end of the summary (or Summary Prospectus) as I have suggested in my previous comments.

- *Should any additional information regarding the purchase and sale of fund shares be required to be disclosed in the summary section? For example, should information regarding policies and procedures with respect to frequent purchases and redemptions of fund shares be disclosed in the summary, or is it appropriate to maintain the location of this information elsewhere in the prospectus?*

  Comment: In most cases, the fund's policies with respect to frequent trading should be disclosed elsewhere in the prospectus. However, as I mentioned in the prior bullet point, funds that believe the detail is necessary or warranted in the summary should be permitted to disclose their policy in an "Additional Information" section at the end of the summary (or Summary Prospectus).

- *Is there any additional tax information that should be included in the summary section?*

  Comment: No. However, funds that believe more tax information is necessary or warranted in their particular case should be permitted to disclose it in an "Additional Information" section at the end of the summary (or Summary Prospectus).

- *Should we require disclosure regarding the compensation of broker-dealers, banks, and other financial intermediaries in the summary section? Should we permit this disclosure to be omitted or modified in any context? For example, should a fund be permitted to omit this disclosure if the fund is marketed directly to investors or where a transaction is initiated by an investor and not on the basis of a financial intermediary's recommendation? Should funds be permitted to modify this disclosure to reflect the fact that some transactions may be initiated by an investor and not on the basis of a financial intermediary's recommendation?*

  Comment: In my view, it would have been best for the Commission to consider these questions hand-in-hand with the pending point-of-sale disclosure proposals[33] since what funds disclose to investors about intermediary compensation should "dovetail" with whatever disclosure investors would be getting directly from their intermediary.

  However, given that the final point-of-sale requirements have not yet been adopted and that intermediary compensation disclosure is just as important in this context, I generally support requiring disclosure of the type contemplated in the Proposal, where applicable. It should be permitted to be omitted for any fund that is only direct-marketed and where financial intermediary disclosure would therefore be irrelevant. It should also be permitted to be modified as appropriate for funds that are sold only through intermediaries and for those funds that may be either direct-marketed or sold through intermediaries.

- *In addition or as an alternative to directing customers to ask salespersons or visit a financial intermediary's Web site for more information about intermediary compensation, should the summary prospectus direct customers to other sources of information? Do all financial intermediaries that distribute mutual funds have Internet Web sites? Is information typically available on the Web sites of financial intermediaries? Should the Commission require that such information be made available on intermediaries' Web sites?*

  Comment: Investors might also be directed to the intermediary's own point-of-sale disclosure statement for more information concerning intermediary compensation, but I would not suggest requiring that alternative until the point-of-sale disclosure proposals are finalized.

  As for websites, I suspect that not all financial intermediaries that distribute mutual funds have Internet websites and, among those that do, I suspect many do not post intermediary compensation information. While it might be helpful if more of them did, I don't believe it is necessary for the Commission to require it. It might be more effective for the Commission to require that the intermediary provide the information to the investor, whether orally, by mail or via a website, but that is something which, again, would be more appropriately considered in connection with the point-of-sale disclosure proposals, including considering who is an "intermediary" subject to the disclosure requirement.

- *Should we require or permit a fund to include its ticker symbol in the summary section? Alternatively, should we require or permit a fund to include its ticker symbol on the front or back cover page of the statutory prospectus or SAI or elsewhere in those documents?*

  Comment: Yes, funds should be permitted (but not required) to include their ticker symbol in the summary section (and in a Summary Prospectus), as well as on the front cover and back cover of the statutory prospectus and SAI. Essentially, funds should be permitted to include their ticker symbol everywhere the fund's name appears as an identifier, as a help for investors to trade the shares or to pursue additional information about the fund using Web-based databases that require ticker symbol look-up.

[33] See Release Nos. 33-8544; 34-51274; IC-26778 at http://www.sec.gov/rules/proposed/33-8544.htm.

B. New Delivery Option for Mutual Funds

1. Use of Summary Prospectus and Satisfaction of Statutory Prospectus Delivery Requirements

- *Should we permit mutual funds to meet their prospectus delivery obligations in the manner provided in the proposed rule? Does this approach adequately protect investors and provide them with material information about the fund? Does the proposed approach adequately protect investors who have no Internet access or limited Internet access or who prefer not to receive information about mutual fund investments over the Internet? Should we make any other changes with respect to prospectus delivery obligations?*

  Comment: Yes, as I discussed more fully in my General Remarks above, I believe funds should be able to meet their prospectus delivery obligations in the manner proposed and that the Proposal adequately protects investors.

- *Are there other approaches that would provide mutual fund investors with key information in a user-friendly format?*

  Comment: Yes, but none that I believe the Commission should mandate. For example, online, investors might be offered each item of information about one or more funds in such a way that they can choose the type and amount of information they want to view and the format in which they want to view it, fully customized to their own particular preferences. Some funds (or third-party sources) are already offering fund information online with more customizable features of this nature. Of course, as feasible as this might be online, this level of customization is not particularly feasible when offering information in a printed, paper format.

- *Should we permit mutual funds to meet their prospectus delivery obligations by filing with the Commission and/or by posting online without giving or sending a Summary Prospectus?*

  Comment: No, as I mentioned in my General Remarks, fund filings with the Commission are too difficult for (retail) investors to find, in my view, for an EDGAR filing to satisfy prospectus delivery requirements at this stage. If we are serious about delivering information that investors can actually access and use, then filings with the Commission via EDGAR should not suffice for fund prospectus delivery today. I would urge the Commission to "fix" EDGAR so that it can serve this purpose someday, however.

  On the other hand, allowing a prospectus posted on a fund's (or another) website to satisfy prospectus delivery requirements,[34] without delivering a Summary Prospectus, has some appeal even at this stage. Nonetheless, in this "transitional" period, when we are still utilizing paper documents to a fair degree, and where a fair number of investors still do not have or use Internet access, requiring delivery of a Summary Prospectus is probably the better approach on balance. That way, even investors still operating in the "paper world" will have ready access to at least the basic fund information. Besides, funds already communicating with their investors electronically can even now deliver the Summary Prospectus quite simply and economically by simply hyperlinking it to another electronic communication (such as electronic sales literature or an e-confirm).

- *Should mutual fund investors have the ability to opt out of the rule permanently and thereafter receive a paper copy of any statutory prospectus? How could this be implemented in practice? For example, how would a mutual fund that had no prior relationship with an investor be apprised of the investor's decision to opt out? Could such an opt-out provision be implemented on a fund or fund complex basis?*

[34] It would be appealing for a posted prospectus to suffice for both Section 5(b)(2) delivery purposes and for determining what is sales literature under 2(a)(10). That would avoid a lot of mailings of prospectuses and/or Summary Prospectuses along with confirms and sales literature and the like. The holy grail, of course, would be getting sufficient assurances that the website posting would suffice for anti-fraud purposes as well.

Comment: While a permanent opt-out might be nice, this is not something the Commission should mandate, in my view, because of the practical complexities. Fund companies might be able to implement something like that on a complex-wide basis, but implementing that more widely would likely involve more cost and complexity than it is worth, particularly given that fewer and fewer investors are likely to be opting for paper copies as time goes on.

- *Should we require that the Summary Prospectus be given greater prominence than other materials that accompany the Summary Prospectus and that the Summary Prospectus not be bound together with any of those materials?*

  Comment: No. In my view, this is unnecessary regulation. This is not done now with the statutory prospectus, so why should it be done with the Summary Prospectus? Investors will sort through and read whatever they feel is helpful to them.

  Should we permit a Summary Prospectus to be included within a newspaper or magazine?

  Comment: Yes, absolutely. Cost and space considerations may limit the practicality of this option, but it should be permitted. If an investor is favorably inclined toward what they read, they should be able to buy the fund's shares or seek additional information by getting a copy of the full statutory prospectus. As a practical matter, this is what often happens already with less complete Rule 482 ads, particularly for funds available through brokers and other intermediaries. Investors read ads and simply call their broker to place an order for fund shares, at best receiving the more complete statutory prospectus only after the fact with their confirm, despite being advised in the ad that they should get and read carefully a copy of the full prospectus before investing. Bottom line: A Summary Prospectus would simply serve to get even more complete information into the hands of investors earlier in the decision-making process.

  Should we impose additional requirements to encourage the prominence and separateness of a Summary Prospectus, when provided in paper, at an Internet Web site, or by email, such as requiring that the Summary Prospectus be at the top of a list of documents provided electronically or on top of a group of documents provided in paper?

  Comment: No.

2. Content of Summary Prospectus

- *Should the Summary Prospectus be required to include the same information as the summary section of the statutory prospectus in the same order as required in the statutory prospectus?*

  Comment: Yes, I believe that having uniformity between the two will be helpful. In addition, although I am concerned about the redundancy of the summary section in cases where a virtually identical Summary Prospectus is delivered prior to the prospectus, I think there will be enough cases of the prospectus being delivered alone that having a summary section in the prospectus will be beneficial.

  Should any of the information that we propose to require in the Summary Prospectus not be required? Should any additional information, such as additional information from the statutory prospectus, SAI, or annual or semi-annual report, be required to be included in the Summary Prospectus?

  Comment: No and no, subject to my earlier suggestion about dropping the Top 10 holdings requirement and my earlier comments on what should be permitted but not required.

- *Should we, as proposed, prohibit the Summary Prospectus from including information that is not explicitly permitted? What effect would this prohibition have on the length, usability, and completeness of a Summary Prospectus? If we include this prohibition, should we make any exceptions to the prohibition?*

  Comment: No, as I mentioned in my earlier comments with regard to the summary section, funds should be permitted to include additional information not specifically required. I believe this is imperative for funds to be able to do this, in particular when they feel it is necessary in the interest of full and fair disclosure and in order to meet applicable anti-fraud standards. Of course, this would lengthen a typical Summary Prospectus and might concern some readers, but would make for a more complete "self-contained" package of key information.

- *Should we restrict the number of funds or share classes that may be included in a Summary Prospectus? Would including multiple funds in a Summary Prospectus make it too long and confusing, and would it decrease the likelihood that investors would use the Summary Prospectus?*

  Comment: Yes, as proposed, a Summary Prospectus should be permitted to present multiple share classes and should be prohibited from presenting multiple funds in most cases. Including multiple funds in one Summary Prospectus will decrease the likelihood that investors will be able to readily find and therefore read the information pertinent to them. Moreover, where the content of the Summary Prospectus is so specific to each fund, there wouldn't be a large economy of scale that funds would derive from printing Summary Prospectuses for many funds together as one. Therefore, for me, the balance on this issue tips toward the handiness and usefulness of single-fund Summary Prospectuses over the economy of those covering multiple funds. Multiple classes should be permitted because so much of the information from one class to the other is the same.

  Or would including multiple funds in a Summary Prospectus contribute to investors' ability to compare those funds?

  Comment: Yes, as noted in my previous comments relating to the summary section, I believe an exception should be carved out to the general rule prohibiting multiple fund Summary Prospectuses for cases where the information between the funds overlaps so substantially (e.g., bond funds that vary only by duration, lifestyle funds that vary only by asset class mix, etc.) that a multiple fund presentation can be formatted side-by-side or in some fashion so as to be helpful to comparison.

  I must also add that I see this single-fund versus multiple-fund issue as largely another "paper world" issue that doesn't really exist in the "electronic world." Comparability of funds online can be fostered through formatable screens providing customized information selected according to investor preferences, showing all the funds an investor wants to see in a convenient side-by-side format. Moreover, all of that can be provided essentially as supplemental sales literature (or other permitted non-prospectus communication) when it is appropriately accompanied by the statutory prospectus via handy hyperlink.

  Are there groups of funds that should be permitted to be included in a single Summary Prospectus even if we generally prohibit multiple fund Summary Prospectuses?

  Comment: Yes, see my comments on this exception in the immediately preceding question.

  Instead of, or in addition, to, restricting the number of funds in a Summary Prospectus should we impose page limits on Summary Prospectuses (e.g., three or four pages)? If so, what should the page limits be? How would we address situations in which a fund may conclude that it cannot provide the information required in the Summary Prospectus within a prescribed page limit?

Comment: For the same reasons I expressed above with regard to the prospectus summary, I oppose page limits.

- *Is the information that we propose to require on the cover page or at the beginning of the Summary Prospectus appropriate? Should we include any additional information or eliminate any of the information that we have proposed to include?*

  Comment: Yes, the proposed information is appropriate. You might consider permitting (but not requiring) the fund's ticker symbol as well.

- *Is the proposed legend sufficient to notify investors of the availability and significance of the statutory prospectus and other information about the fund and how to obtain this information?*

  Comment: Yes, although I would suggest stating that investors may want to review the fund's "full prospectus" or "complete prospectus" just to distinguish it from the Summary Prospectus.

  Should the legend include greater detail about the information that is available?

  Comment: I think the legend would be slightly better if it read "….about the Fund and its management, risks and costs" or just "…about the Fund" rather than "…about the Fund and its risks."

  Will the legend adequately inform investors of the various means for obtaining additional information about a fund?

  Comment: Yes. As proposed, the Summary Prospectus should also be permitted to inform investors of the availability of the full prospectus through brokers and other intermediaries, where applicable.

  However, I would suggest that funds not be required to specify an email address where requests for the prospectus can be sent (although, if they so choose, they should be permitted to do so). Not all funds (or their administrators) offer an email response service, which requires setting up, monitoring and responding (within tight regulatory deadlines) to incoming emails from investors and others. This could quickly become an overwhelming task – particularly for small funds -- given the volume of incoming emails that could result, many of which might not be legitimate requests for the prospectus, but rather be spam, inappropriate requests for investment advice, inquiries from the media, misdirected messages, and so on. Realistically, any investor who might otherwise make a prospectus request by email will also have access to the Internet and should be able to access and download the prospectus from the Web address given in the legend. Alternatively, they can call the telephone number provided in the legend and request a copy of the prospectus be sent to them in any format they wish, including electronically via email, without the fund (or its administrator) being required to provide a publicly available email address for this purpose.

  Another question raised by funds using email to respond to prospectus requests -- no matter how the request arrives -- is whether using email for that purpose constitutes electronic delivery of a "required" document or information required to be provided in "writing," for which the fund must have the requester's advance informed consent.[35] While that may be manageable for investors with whom the fund already has an electronic relationship (for example, existing shareholders who have already given consent), it could pose problems for other investors and for funds not set up to handle obtaining consents. This underscores why funds should not be forced by proposed Rule 498 to respond to prospectus requests by email.[36]

[35] See the releases referenced in footnote 17 of this letter with regard to obtaining consent.

Are the proposed requirements for the Web site address where additional information is available adequate to ensure that the Web site and the additional information will be easy to locate?

Comment: Yes, I would expect them to be.

- *Should we require or permit a fund to include its ticker symbol in the Summary Prospectus? If so, where should such information be included (e.g., at the beginning or on the cover page)?*

  Comment: Yes, as I mentioned in my prior comments, I think the ticker symbol should be permitted in the Summary Prospectus, on the cover/at the beginning or anywhere the fund name appears as an identifier.

- *Will a one-month lag in reporting top 10 portfolio holdings sufficiently protect against potential dangers to shareholders, such as the dangers of front-running? Would a shorter or longer delay be more appropriate?*

  Comment: For the reasons explained below, I am concerned that the proposed Top 10 disclosure scheme may cause certain funds unnecessary harm from more frequent and premature holdings disclosure, particularly when viewed in conjunction with the calendar quarter updating requirement and the fund's already existing fiscal-quarter reporting requirements. I am also concerned that the Proposal does not appropriately take into account those funds that voluntarily disclose holdings more frequently than quarterly and on a time lag of less than one month.

  It is true that proposed Rule 498 would only require Top 10 holdings to be disclosed four times a year (quarterly) and that funds are already required to disclose holdings four times a year under the existing shareholder report/Form N-Q reporting scheme. However, proposed Rule 498 operating in conjunction with the existing reporting scheme means that funds with non-calendar fiscal year ends would have to report holdings more frequently than four times a year. This is because the Rule 498 updating scheme gears to calendar quarters, whereas the already existing shareholder report/Form N-Q reporting scheme gears to fiscal quarters.[37] Even for calendar year-end funds, the requirement to update the Summary Prospectus at the end of each calendar quarter not later than one month after the completion of the quarter will force funds to disclose on a shorter (one-month) time lag than the (60-day) time lag that occurs naturally under the already existing shareholder report/Form N-Q reporting scheme. In addition, for funds that voluntarily disclose portfolio holdings more frequently than quarterly and with a shorter lag than one month, the proposed instructions appear to require disclosure of Top 10 holdings in the Summary Prospectus as of a stale date, prior to the date as of which they had already disclosed their holdings for other reasons.[38]

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[36] It also underscores the need for the Commission to reconsider its prior guidance relative to electronic delivery and the E-SIGN Act, as referenced in my comments at the end of this letter.

[37] So, for example, a fund with a July 31 fiscal year end would have to disclose holdings in its usual shareholder reports/Form N-Q filings by September 30 (reporting in the annual report as of July 31), December 31 (reporting on Form N-Q as of October 31), March 31 (reporting in the semi-annual report as of January 31) and June 30 (reporting on Form N-Q as of April 30). But the proposed Summary Prospectus updating instructions would also require it to disclose Top 10 holdings by October 31 (reporting as of calendar quarter ended September 30), January 31 (reporting as of calendar quarter ended December 31), April 30 (reporting as of calendar quarter ended March 31) and July 31 (reporting as of calendar quarter ended June 30).

[38] Take, for example, a fund that has adopted an internal policy to voluntarily disclose its Top 10 holdings on its website each month within 10 days of the end of the month. For a Summary Prospectus issued by that fund on July 20, the proposed instructions would require it to disclose its Top 10 holdings as of March 31, the calendar quarter end immediately prior to the most recent calendar end, because the most recent calendar quarter end (June 30) would have ended less than one month prior to the July 20 issue date. This would be required despite the fact that the fund would have already disclosed on its website its March 31, April 30, May 31 and June 30 holdings, under its internal policy.

I suspect this is not what the Commission intended. Instead of debating once again the complex issue of what frequency of holdings disclosure and time lag is appropriate for funds[39] and trying to craft a one-size-fits-all instruction, I would suggest that the Commission drop the Top 10 holdings disclosure requirement altogether. If the Commission decides nonetheless to include a holdings disclosure requirement, I would urge you to consider the following --

Allow funds to update the Summary Prospectus performance and holdings information by making reference to a toll-free (or collect) phone number and/or website where investors can find more current information, rather than making funds re-print, supplement or sticker (and refile) their Summary Prospectuses every quarter. Then, funds should be required to make available at that phone number and/or website performance information current to at least the most recent quarter end, and Top 10 holdings disclosure that is current to the most recent date that the fund has already made holdings disclosure for other reasons, such as under its usual shareholder report/Form N-Q filing requirements, or because of its own internal policy on holdings disclosure mandating more frequent disclosure.[40] In each case, funds should be given a "grace period" of one month to get the updated information available on their phone number or website, so calendar quarter end performance information would be available there within one month of each quarter end, and Top 10 holdings disclosure would be available there within one month of the date that the fund disclosed those holdings for other reasons.[41]

This approach has several advantages:

- It avoids the costly and unnecessary burden of funds having to re-print, supplement or sticker – and re-file with the SEC – every one of their Summary Prospectuses each quarter.
- Investors who want more current information will still have easy and quick access to it, whether by phone or website. (Every investor is likely to have access to either a phone or the Internet.)
- Top 10 disclosure is updated to the most current date as of which the fund's holdings have already been disclosed, but funds are not forced to disclose more frequently or on a shorter time lag than they already are.
- Funds that are voluntarily disclosing performance and/or holdings information more frequently than quarterly and on a shorter than one-month lag are worked into the disclosure scheme more smoothly than under the current Proposal.
- The returns and Top 10 information in the fund's statutory prospectus is effectively updated, in addition to the information in the Summary Prospectus.
- Having performance in the actual, printed Summary Prospectus updated only once a year is more in keeping with the long-standing desire to discourage investors from focusing too closely on short-term performance.

[39] See "The Potential Effects of More Frequent Portfolio Disclosure on Mutual Fund Performance" by Russ Wermers, ICI Perspective Vol. 7 No. 3 (June 2001) at http://www.ici.org/pdf/per07-03.pdf.

[40] For the same reason, I would suggest a similar approach for determining the required "as of" date for Top 10 holdings disclosure in an initial Summary Prospectus, to avoid forcing a more frequent and/or out-of-sequence Top 10 holdings disclosure in those circumstances. Take, for example, a July 31 fiscal year end fund that discloses its holdings only as required by the usual shareholder reports/Form N-Q filings. If that fund were to issue an initial Summary Prospectus on April 20, it would disclose in that initial Summary Prospectus its March 31 calendar quarter end performance data and its Top 10 holdings as of January 31, because January 31 is the most recent date as of which the fund would have already disclosed its holdings information (as reported in its semi-annual report for the period ended January 31 filed by the end of March). If, on the other hand, that same fund was voluntarily disclosing Top 10 holdings each month on its website within 10 days of month end, then in an initial Summary Prospectus issued on April 20, it would disclose March 31 calendar quarter end performance data and Top 10 holdings as of March 31, since it would have already disclosed its Top 10 holdings as of that date under its voluntary policy.

[41] A shorter grace period might be acceptable as well. I note that Rule 482 requires performance updated via telephone or website to be current as of the most recent month ended 7 business days prior to the date of use.

I realize that under my suggested approach, the "as of" date for the Top 10 holdings disclosure will often be out of synch with the "as of" (calendar quarter end) date for the performance disclosed relating to the same Summary Prospectus. But since the two types of disclosure are typically used for different purposes, I don't see this as presenting a problem for investors. While there is some logic to standardizing performance disclosure to calendar quarter ends to facilitate fund-to-fund comparisons, Top 10 holdings disclosure is typically used by investors other reasons, for example, to get a sense of how the narrative description of the fund's investment strategy "translates" into real holdings and to gauge the impact of a fund investment on their potential exposure to various asset classes and industries. There is no reason that the holdings disclosure would be less useful or potentially confusing to investors if it spoke "as of" a different date than the fund's performance disclosure or if it spoke "as of" a different date than the holdings disclosure in another fund's Summary Prospectus. Indeed, investors are quite used to fund information of different types speaking "as of" different dates,[42] particularly when the information relates to different funds.

- *Should we require the performance and portfolio holdings information in the Summary Prospectus to be updated quarterly? How would the inclusion of performance and portfolio holdings information that is not updated quarterly affect the usefulness of a Summary Prospectus to investors? How would the inclusion of performance and portfolio holdings information that is not updated quarterly affect investors' perceptions of the Summary Prospectus and investors' interest in reviewing the information in the Summary Prospectus?*

  Comment: Yes, it should be updated at least quarterly, but in accordance with my suggested approach in the previous bullet point using toll-free numbers or website disclosure. Information that is not updated at least quarterly would be less useful and would, I believe, be perceived by many investors as outdated and of limited benefit. As an investor, I would not be comfortable buying fund shares without tracking down performance information that was at least as current as the last calendar quarter end.

- *Would semi-annual updating of performance and portfolio holdings information in the Summary Prospectus be more appropriate or should we require annual updating only?*

  Comment: See my prior comments on updating.

- *Would any concerns relating to investor confusion, liability, or other matters arise from requiring quarterly updating of performance and portfolio holdings information in the Summary Prospectus but not in the statutory prospectus?*

  Comment: I would hope not, so long as the instructions and Rules contemplate this scheme. As I alluded to before, we have lived for a long time with different "official" documents bearing and speaking "as of" many different dates – the registration statement versus the statutory prospectus versus the SAI versus the semi-annual reports incorporated into the SAI versus 482 ads versus fund profiles, etc., etc. -- without confusion or liability as far as I'm aware. Moreover, if updating is done via a toll-free number or website, the information in the statutory prospectus would be effectively updated as well.

- *If we require quarterly or semi-annual updating of performance and portfolio holdings information in the Summary Prospectus, should we also require this information to be updated quarterly or semi-annually in the statutory prospectus?*

[42] For example, the dates for performance information in the current prospectus and later issued shareholder reports vary from one another, the dates for performance in the financial highlights table varies from that in the risk/return summary in the same prospectus for non-calendar year end funds, the dates for performance in 482 ads typically vary from the dates for performance in the prospectus, the date of holdings disclosure made on a fund's own website often varies from the holdings disclosure in its current financial statements, and so on.

Comment: No. However, as I mentioned, if updating via telephone and/or website is permitted, the performance and Top 10 information in the statutory prospectus would effectively be updated anyway, at least for funds that choose to use a Summary Prospectus.

- *What, if any burdens would be associated with the requirement for quarterly updating of performance and portfolio holdings information? Would any burdens be reduced due to the availability of "on demand" printing technologies in which copies of documents are printed only as needed? How would any such burdens differ from those associated with quarterly updates to sales materials that include performance information, which funds routinely undertake today? If we require quarterly updating, how can we minimize any associated burdens?*

  Comment: An approach allowing updating via telephone and/or website avoids all of the printing and filing burdens that would be associated with requiring the updating in the Summary Prospectus itself, as printed on paper.

- *Should the rule require funds to provide quarterly updated performance and portfolio holdings information on an Internet Web site and/or on a toll-free telephone line instead of updating the Summary Prospectus quarterly? If so, should the Summary Prospectus be required to disclose the availability of the updated information? Would the addition of a legend to this effect, and the elimination of the updated information, effect the usefulness and perceived usefulness of the Summary Prospectus to investors, as well as the willingness to read and use the Summary Prospectus?*

  Comment: Yes, per my earlier comments, updating via phone number and/or website should be permitted. Yes, the Summary Prospectus should be required to disclose the availability of the updated information, in the same legend as is already required to disclose availability of the statutory prospectus and any other incorporated documents. I think this strikes an appropriate balance on updating between burdens and usefulness.

- *Would it be appropriate for the proposed rule to deem a previously provided Summary Prospectus to be current notwithstanding subsequent quarterly updates to performance and portfolio holdings information?*

  Comment: Yes, it could be, just as today under the current regime, the statutory prospectus can be considered current notwithstanding the fact that the fund may have subsequently issued many reports or other disclosures updating performance and similar information in the prospectus.

  If we require quarterly updating, should we include any additional safe harbors or provide for a cure provision in cases where a Summary Prospectus that lacks a required quarterly update has been inadvertently distributed?

  Comment: Yes, such a case (non-compliant updating) should constitute only a regulatory violation of Rule 498 rather than result in a Section 5 or similar statutory violation.

3. Provision of Statutory Prospectus, SAI and Shareholder Reports

- *Should we permit the fund's current statutory prospectus and other information to be provided in the manner specified in the proposed rule? For what period of time should persons relying on the rule be required to retain this information on an Internet Web site?*

  Comment: On these points, I support the Proposal as contemplated in the Adopting Release.

- *Should we require that the information on the Internet Web site be in a format that is convenient for both reading online and printing on paper?*

Comment: Yes. What is "convenient" may require more clarity, but I think everyone will agree that it is "inconvenient" if reading an online document requires excessive left-to-right scrolling on standard size monitors, or if a document prints on standard size paper in such a way as to cut off wording in various locations and make it illegible.

- *Are the proposed requirements regarding the ability to move back and forth within the statutory prospectus and the SAI from the table of contents to relevant sections, and between the Summary Prospectus, statutory prospectus, and SAI appropriate and useful? Would it be difficult or expensive for funds to comply with these requirements? Will these requirements help investors to navigate effectively within and between these documents and contribute to a more useful presentation of information than is possible through paper documents?*

  Comment: I think it would be relatively easy and inexpensive with widely available document software – and quite useful for investor navigation – for "internal" hyperlinks to be embedded where appropriate to allow users to jump back and forth from the table of contents to the relevant sections within an electronic version of the prospectus and SAI. So long as multiple hyperlinks are permitted, I think it should also be manageable to allow users to jump back and forth from the Summary Prospectus to more detailed sections in the prospectus and/or SAI (or the tables of contents).[43] I would expect this to work even if the Summary Prospectus is a separate document from the prospectus and SAI, if they are all posted on Web locations that don't change[44] so that the hyperlinks embedded in the Summary Prospectus will continue to "point" to the correct document and location.

  As apparently detected by the Commission, I believe it would be more problematic technically to require hyperlinks in a Summary Prospectus or other document downloaded by an investor onto their own computer to continue to work after downloading, and I support the Proposal to the extent it avoids this requirement.

- *Are there steps that the Commission should take to enhance the accessibility to the general public of fund Summary Prospectuses, statutory prospectuses, and other information that would be provided on an Internet Web site pursuant to the proposed rule? How can we enhance the availability of this information to investors, intermediaries, analysts, and others who are researching funds?*

  Comment: The Commission could "fix" EDGAR so that fund documents filed there are more readily located by members of the general public and could serve as the Internet posting contemplated by the Proposal. However, since "fixing" EDGAR appears unlikely anytime soon, the approach proposed seems like a better alternative at this stage.

  One suggestion to enhance the usability of EDGAR is to have Summary Prospectuses filed under proposed Rule 497(k) filed on a unique EDGAR form type (perhaps an EDGAR form 498 or 497K or 497SP (for Summary Prospectus)). That way, they will be distinguishable at a glance from every other prospectus, SAI and sticker filed on EDGAR form 497. Indeed, it would be helpful if prospectuses, SAIs and stickers (supplements) each had their own EDGAR form type, since historically, all have been filed on form type 497 and are largely indistinguishable from one another in EDGAR search results without clicking through to look at the actual document.

- *What steps can the Commission take to enhance electronically provided documents? Should we require funds to tag any of the information in the Summary Prospectus or statutory prospectus using the eXtensible Business Reporting Language ("XBRL") taxonomy that was recently developed by the Investment Company Institute and is being used in the Commission's voluntary*

[43] Multiple links should be permitted because more detailed information about an item included in the Summary Prospectus may appear in more than one location in the prospectus and SAI. For example, moving from the proposed Item 4 investments information in the Summary Prospectus to the relevant counterpart information in the prospectus and SAI might require both a hyperlink to Item 10 in the statutory prospectus, as well as a hyperlink to Item 17 in the SAI.

[44] Or if they do change, that the hyperlinks in the original documents are updated.

data tagging program? Should the Commission make the submission of tagged risk/return summary information using the XBRL taxonomy mandatory in order for funds to rely upon the proposed rule amendments? If so, should funds be required to tag all of the risk/return summary information or should only certain information be required to be tagged, such as fees and expenses, past performance, and other numerical information? Are there are features, such as the ability to search documents for words and phrases, that we should require in documents that are provided electronically?

Comment: XBRL tagging should be voluntary (permitted) but not yet required. If XBRL is successful after a sufficiently lengthy and rigorous test period, then the Commission might consider making it mandatory. However, I would strongly urge the Commission not to mandate any additional technical requirements of that sort without careful testing and deliberation since there have already been too many different, expensive technical platforms and formats that have been mandated over the years (old EDGAR, Web-based EDGAR, CRD, IARD, and now XBRL, just to name a few), which have the tendency to become obsolete before they even hit their stride functionally.

I also oppose Commission mandates concerning search capabilities, since most browser and document software in wide use among investors today already has built into it the capability to search for words and phrases without the Commission mandating (or funds doing) anything.

- *Should we require that persons accessing the Web site at which the required documents are posted must be able to permanently retain, through downloading or otherwise, free of charge, an electronic version of such documents? Should we require that documents downloaded from the Internet Web site must retain links that enable a user to move readily within a single document, as proposed? Would this proposed requirement present any technological difficulties? Should we also require that downloaded documents retain links that enable a user to move readily between related passages of multiple documents? Would it be technologically feasible to meet such a requirement? What would the costs of complying with requirements that downloaded documents retain links, either within a single document or between related passages of multiple documents?*

  Comment: Yes, documents should be able to be downloaded electronically and retained, free of charge (at least free of charge imposed by the fund; obviously, funds should not be responsible for any charges stemming from a user's Internet access or long-term document storage, however). Also, see my comments above regarding links.

- *Are the requirements for sending the statutory prospectus, SAI and annual and semi-annual shareholder reports in paper and electronically appropriate? Should funds be required to send a paper or electronic copy of the fund's statutory prospectus, SAI, and most recent annual and semi-annual shareholder report to any person requesting such a copy within three business days after receiving a request for a copy? Would a longer or shorter period be appropriate? Will these requirements, together with the requirements for providing information on the Internet, as well as the proposed Summary Prospectus, enhance investors' ability to access, understand, and use the information that they receive?*

  Comment: As to these points, I support the Proposal as contemplated by the Proposing Release.

- *Should the requirements to send the statutory prospectus, SAI, and shareholder reports be a condition to reliance on the rule? Should failure to comply with these requirements result in a violation of Section 5(b)(2) of the Securities Act? Alternatively, should the failure to comply with these requirements be a violation of Commission rules that does not result in any inability to rely on the rule or a violation of Section 5(b)(2)?*

  Comment: Failure to comply with these requirements should only be a rule violation that does not result in a violation of or inability to rely on Section 5.

- *Should we require funds or other persons that use the proposed prospectus delivery regime to retain any additional records beyond those required by our current rules? Should we expressly*

require those persons to retain proof that the statutory prospectus, SAI, and annual and semi-annual reports were available on the Internet as required by the rule and records of the dates that documents were requested, along with the dates such documents were sent?

Comment: No and no. Any additional books and records requirements should be considered only in context, in connection with a more comprehensive overhaul of the books and records requirements for funds (and advisers).

4. Incorporation by Reference

- *Does the proposed rule provide adequate means of providing investors with the information in the Summary Prospectus, statutory prospectus, SAI, and shareholder reports? Will these means result in more or less effective provision of information than our current rules require? Do these means of providing information adequately protect investors?*

  Comment: See my comments in prior sections that respond to these questions.

- *Should we permit a fund to incorporate by reference into the proposed Summary Prospectus any or all of the information contained in its statutory prospectus and SAI and any or all of the information from the fund's most recent shareholder report? Is there any other information that should be permitted to be incorporated by reference into the proposed Summary Prospectus?*

  Comment: All the proposed information should be permitted to be incorporated by reference, as discussed in my earlier comments.

- *Should we permit a fund to incorporate by reference into the proposed Summary Prospectus any of the information that is required to be included in the Summary Prospectus?*

  Comment: No. I believe the Proposal strikes an appropriate balance between information required to be included and the more detailed and supplemental information permitted to be incorporated.

- *Should we require materials that are incorporated by reference into the Summary prospectus to be available online in the manner described in Section II.B.3 above? Are there any additional conditions that we should impose on the ability to incorporate by reference into the Summary Prospectus? Should satisfaction of the requirement to send a paper or electronic copy of materials incorporated by reference be a condition to the ability to incorporate by reference or should we, as proposed, provide that failure to satisfy this requirement is a rule violation that does not affect the ability to incorporate by reference?*

  Comment: Generally on these points, I support the Proposal as contemplated by the Proposing Release.

- *Is the proposal relating to rule 159 appropriate?*

  Comment: I think it was unfortunate that Rule 159 was made applicable to funds when it was adopted in 2005 in the securities offering reforms aimed at non-fund companies. It would have been far better to have left that rule to a later and separate consideration of the unique issues that arise with offers and sales of fund shares. It appears as if Rule 159 was intended to address disclosure – or disclosure timing -- issues that the Commission perceived in connection with underwritten public offerings for non-fund issuers. In any event, Rule 159 did nothing in my view to improve the disclosure available to fund investors at any step in the investment process. Rather, it only served only to muddy the waters of liability. As simple as the Rule may sound -- based on what the Commission has characterized as an "unassailable" interpretation[45] -- it throws an ill-defined shadow

[45] See Securities Offering Reform, Release Nos. 33-8591; 34-52056; IC-26993; File No. S7-38-04 (July 19, 2005) at http://www.sec.gov/rules/final/33-8591.pdf.

over decades of anti-fraud case law and fund practice and raises unanswered questions of its interplay with other provisions of federal and state law.

I would urge the Commission to reconsider whether Rule 159 should even be applicable to funds. I believe it is unlikely that there has been a full airing of the perceived need for the Rule (if any) in the context of fund share sales or of the implications of the Rule for funds, given that the Rule was adopted as one small part of a mammoth reform proposal that was otherwise largely inapplicable to funds.[46]

If you nonetheless decline to reconsider and Rule 159 remains intact for funds, I believe it is imperative that Rule 498 (or some other provision) address with as much clarity as possible what the legal effect is under the anti-fraud provisions (including at a minimum Sections 12(a)(2) and 17(a)(2) as addressed in Rule 159) of incorporating the prospectus and other documents by reference into the Summary Prospectus.

To that end, I am in favor of proposed Rule 498(b)(3)(iii) to the extent that it stands for the proposition that providing a Summary Prospectus is the legal equivalent of providing the incorporated information for purposes of anti-fraud claims, or at least those under 12(a)(2) and 17(a)(2). I would also strongly urge the Commission to state expressly in the Adopting Release, as it has on prior occasions,[47] that documents incorporated by reference into a prospectus (or Summary Prospectus) become part of the prospectus (or Summary Prospectus) "as a matter of law." That would potentially help to clarify the status of incorporated materials under a host of legal provisions in addition to 12(a)(2) and 17(a)(2), such as Rule 10b-5 and state securities laws.

Lastly, I would note that, despite the various "facts and circumstances" recited in the Proposing Release which support the conclusion that incorporated documents are "conveyed" for purposes of 12(a)(2) and 17(a)(2),[48] significant uncertainty remains on the effect of incorporation by reference and related issues, for the reasons I outlined in my comments previously. In light of that, I urge the Commission to take all steps within its authority[49] to resolve that uncertainty in favor of funds acting in good faith in accordance with Commission rules in order to achieve industry-wide goals that benefit investors and funds alike.

Should conveyance of information incorporated in the Summary Prospectus be tied to the time of receipt of the Summary Prospectus, the time that the Summary Prospectus is sent or given, or some other time?

Comment: I would suggest tying "conveyance" to not later than the time the Summary Prospectus is "sent," "given" or "provided" rather than "received." In this way, funds taking all the right steps to meet their regulatory obligations would not bear the risk that some unforeseen event out of their control (failed postal mail delivery, failed computer email delivery, etc.) might thwart the investor's receipt of the Summary Prospectus and jeopardize whatever benefit the fund might otherwise be afforded under Rule 498(b)(3)(iii).

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[46] Id.

[47] See White v. Melton, 757 F. Supp. 267, 271 (SDNY 1991), citing the SEC at 48 Fed. Reg. at 37930.

[48] Proposing Release at http://www.sec.gov/rules/proposed/2007/33-8861.pdf at pp. 69-70.

[49] This would include, for example, asserting the Commission's authority under NSMIA to protect against state encroachment in the realm of setting anti-fraud disclosure standards for funds, as recently recommended by the ICI. See Letter dated December 7, 2007, from Paul Schott Stevens, President & CEO of the ICI to The Honorable Henry M. Paulson, Jr., Secretary, U.S. Department of the Treasury at http://www.ici.org/statements/cmltr/07_treas_reg_structure_com.html#P63_15931.

Does proposed rule 498 adequately ensure that information incorporated by reference into a Summary Prospectus will have been effectively conveyed to a person who receives the Summary Prospectus?

Comment: Yes, I believe that it should and does, for all the reasons I articulated above in my General Remarks and elsewhere.

Does the proposal relating to rule 159 provide sufficient clarity regarding the effect of incorporation by reference into a Summary Prospectus and the impact on liability of using a Summary Prospectus?

Comment: See my comments to the other questions under this section 4 addressing incorporation by reference.

5. Filing Requirements for the Summary Prospectus

- *Should we require pre-use filing of the Summary Prospectus? Should we require post-use filing?*

  Comment: Post-use filing only.[50] Moreover, I would urge the Commission to consider requiring funds to file only their initial and annual update of the Summary Prospectus and any versions used in the interim that contained "material" changes. In this regard, I would suggest adopting a "materiality" standard which avoids funds having to re-file Summary Prospectuses where the only change has been to update performance and similar data.[51] Moreover, if the Commission adopts the approach allowing funds to update performance and Top 10 holdings information via telephone and/or a website, rather than amending the Summary Prospectus itself, quarterly filing requirements would be pared back even further no matter what position the Commission adopted on performance updates constituting a "material" change.

  This would relieve funds of the rather meaningless exercise of having to file with the Commission Summary Prospectuses that for all intents and purposes are the same as previously filed versions and the same as the version included with the registration statement on Form N-1A. Investors are expressly not intended to rely on the EDGAR version of the Summary Prospectus in any event, so this suggestion would seem to have no effect on investor protection but would relieve funds of what would otherwise be a redundant filing requirement.

- *Should the Summary Prospectus be filed as part of the registration statement and be subject to the stop order and other administrative provisions of Section 8 of the Securities Act? Should the Summary Prospectus be subject to Section 11 liability? Would investors be adequately protected under the proposed rule, or should we provide additional investor protections?*

  Comment: Given that the Summary Prospectus is substantively identical to the summary section of the prospectus, it seems redundant and wasteful to have to actually include the form of Summary Prospectus in the N-1A and I would strongly support not having it in the N-1A. In addition, the Summary Prospectus should not be subject to Section 11 liability. Investors are more than adequately protected, particularly given that the substantively identical summary section is itself subject to Section 11 liability and given the authority the Commission has to issue orders against a fraudulent Summary Prospectus under Section 10(b) quite apart from Section 11.

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[50] In addition, I am assuming (and would ask the Commission to clarify in the Adopting Release if mistaken) that Summary Prospectuses, like fund profiles (which also have the status under Section 10(b) of summary prospectuses) would not have to be filed for review by FINRA, as do Rule 482 ads (which have the status under Section 10(b) of omitting prospectuses).

[51] This is similar to the approach FINRA takes with the filing of advertising material. See Question #5 at Advertising Regulation FAQ (Last Updated: 9/22/06) at http://www.finra.org/RulesRegulation/IssueCenter/Advertising/p011979.

Whether or not the requirement for Summary Prospectuses to be filed as part of the N-1A is ultimately adopted, I would ask the Commission to clarify in the Adopting Release whether funds are permitted to start using a Summary Prospectus prior to amending their registration statements to conform to the new N-1A requirements or, alternatively, whether they must either wait until they file their next required N-1A amendment or file a conforming interim amendment[52] before starting to use a Summary Prospectus. Reading through proposed Rule 498, it would seem as though funds could potentially meet all the conditions of that rule prior to making all the new conforming amendments to their N-1A, as long as the proper documents containing the proper hyperlinks were posted on a suitable website and so on. If that approach is permissible, it would also be helpful if the Commission would clarify how and when funds using that approach should get their initial Summary Prospectus filed as part of the N-1A should that requirement be included in the final rules.

III. GENERAL REQUEST FOR COMMENTS

In the category of other matters that might affect the Proposal, I have the following comments:

1) Address E-SIGN.

The Proposing Release alludes to the fact that under existing Commission guidance, funds must typically have affirmative consent from investors before delivering to them legally required documents via electronic means.[53] The Commission's prior guidance on when and how funds must go about obtaining and documenting that consent[54] was thrown into question when Congress enacted the Electronic Signatures in Global and National Commerce Act (E-SIGN Act) in 2000, which contains its own, different requirements for obtaining consent. The Commission said it would address at a later time how E-SIGN may have impacted its previous guidance,[55] but to my knowledge has never addressed this issue again, leaving it unclear how much, if any, of the Commission's earlier guidance is still valid and which standards should be followed.

Since electronic communications are now so important to the industry as a whole, and are particularly integral to the pending Proposal, I would urge the Commission to address in the Adopting Release -- or at the soonest possible time outside of the Adopting Release -- how its prior guidance on electronic communications should be interpreted in light of the E-SIGN Act.

2) Continue to Ramp Up Investor Education Efforts.

At the same time that the Proposal offers the prospect of better disclosure and more efficient delivery, it does not address the more difficult and seemingly intractable problem of investors who simply don't read disclosures no matter how well they are drafted, and investors who simply can't understand the disclosures they do read because they lack the basic background in financial matters to appreciate the concepts. Those problems will not be addressed by the Proposal, yet seem equally important – if not more important -- to the ultimate goal of protecting investors and ensuring the efficient functioning of our capital markets. The solution to those problems seems

[52] It would also be helpful if the Commission would address whether funds filing an N-1A amendment conforming to the new requirements can do so under Rule 485(b) if the only changes that would otherwise require them to file under Rule 485(a) are those made to conform to the new requirements.

[53] See Proposing Release at http://www.sec.gov/rules/proposed/2007/33-8861.pdf at footnote 84, citing Release No. 33-7233; 34-36345; IC-21399 (October 6, 1995) at http://www.sec.gov/rules/interp/33-7233.txt and Release Nos. 33-7856, 34-42728, IC-24426 (April 28, 2000) at http://www.sec.gov/rules/interp/34-42728.htm.

[54] Which includes the releases cited above in footnote 17 above, among others.

[55] See text surrounding footnote 52 in Release Nos. 33-7912, 34-43487, IC-24715 (October 27, 2000) at http://www.sec.gov/rules/final/33-7912.htm.

rooted in basic investor education, teaching investors how important it is to their financial future that they read and understand disclosure materials and giving them the background necessary to grasp the materials they do read and apply them appropriately to their own situations.

Therefore, I applaud the recent efforts undertaken by the industry, its trade organizations, the Commission's Office of Investor Education and Advocacy, FINRA, nonprofit organizations and others to enhance investor education,[56] and I urge them all to continue ramping up their efforts in light of the looming retirement of the Baby Boom generation and its myriad implications. If we expect Americans to plan for and fund their own financial future without undue dependence on governmental assistance, they will need to have the financial literacy necessary to do so successfully.

One concrete idea that the Commission should consider to promote investor education is requiring all funds to include a reference in every prospectus alerting investors to the educational materials available free of charge on the Commission's website, especially the publications at http://www.sec.gov/investor/pubs.shtml. This could be done logically and unobtrusively on the back cover of the statutory prospectus, where funds typically already make note of the availability of information on the SEC's website. This would be one small step to help "spread the word" about educational materials already available to investors on basic investment topics. As necessary, the Commission could also adopt provisions ensuring that funds would not bear liability for including such a standardized reference on their prospectus, or for the content of the referenced information. Funds that have them should also be permitted to refer to the availability of their own investor educational materials.

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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

[56] See Goodbye to Complacency: Financial Literacy Education in the U.S. 2000-2005, Lois A. Vitt, et al., Institute for Socio Financial Studies (AARP 2005) at http://assets.aarp.org/www.aarp.org_/articles/GAP/GoodbyetoComplacency.pdf, which discusses the proliferation and effectiveness (or lack of effectiveness) of the personal finance education initiatives undertaken in recent years to help Americans achieve financial competency.