



MUTUAL FUND DIRECTORS FORUM

The FORUM for FUND INDEPENDENT DIRECTORS

February 28, 2008

Ms. Nancy Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

Re: Proposed Rulemaking Regarding the Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, File No. S7-28-07

Dear Ms. Morris:

The Mutual Fund Directors Forum (“the Forum”)¹ appreciates the opportunity to comment on the proposed rulemaking by the Securities and Exchange Commission (“Commission” or “SEC”) respecting the “Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies.”²

The Forum, an independent, non-profit organization for investment company independent directors, is dedicated to improving mutual fund governance by promoting the development of concerned and well-informed independent directors. Through continuing education and other services the Forum provides its members with opportunities to share ideas, experiences, and information concerning critical issues facing investment company independent directors today and serves as an independent vehicle through which Forum members can express their views on matters of concern.

¹ The Forum’s current membership includes five hundred seventy-five independent directors, representing seventy-nine independent director groups. Each member group selects a representative to serve on the Forum’s Steering Committee. This comment letter has been reviewed by the Steering Committee and approved by the Forum’s Board of Directors, although it does not necessarily represent the views of all members in every respect.

² Proposed Rulemaking: Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Securities Act Rel. No. 8861 (November 21, 2007) [72 FR 67790 (November 30, 2007)] (“Release”).

Comments

Independent fund directors have a special and unique interest in fund disclosure. First, and most obviously, a fund's directors sign the registration statement, including the prospectus, and thus must be satisfied that the prospectus disclosure complies with the relevant statutory requirements. Second, and even more importantly, as the one group that represents only fund shareholders and owes its fiduciary duties solely to those shareholders, independent directors have a substantial interest in ensuring that prospectuses and other required disclosure documents clearly and effectively communicate to fund investors the information that those investors need and want to know about their funds.

As proposed, the new rules would require that every fund prospectus begin with a summary (the "Summary Prospectus"). In order to highlight the most important elements of disclosure and allow investors to compare funds more easily, the proposed rule would require that certain key items be addressed in a fixed order. The proposed rule also states that timely delivery of the Summary Prospectus would satisfy a fund's prospectus delivery requirements so long as the full prospectus was made available to investors electronically (and in print format on request). Finally, in order to reduce investor confusion, the proposed rule would prohibit the "integration" of different funds in the Summary Prospectus, and instead require that, in a multiple fund prospectus, each Summary Prospectus be presented sequentially in complete form.³

In our view, simplicity and directness are the keys to effective disclosure. The new proposed Summary Prospectus and the associated new delivery option represent a remarkable step forward in improving disclosure to fund shareholders. Moreover, while cost should not be the most important factor in structuring required disclosure, fund shareholders do benefit by minimizing, to the extent feasible, the cost of disseminating disclosure information. If adopted, we believe that the Summary Prospectus proposal significantly advances these goals in a number of ways.

- **The proposal would improve the effectiveness of fund disclosure by highlighting for investors the most important information about a fund.** Perhaps the most significant problem with fund disclosure today is that the statutory prospectus, the key document provided to investors, is too long and too dense, and thus is rarely read and understood by fund investors. The proposed rule represents a crucial improvement. It would both identify the most important information that investors should understand with respect to their fund investments and mandate that that information be presented to investors in its entirety at the front of the statutory prospectus. Implemented correctly, the Summary Prospectus will improve investor understanding of the funds in which they invest. Moreover, because the Summary Prospectus will present information in a standardized fashion, it will similarly improve the ability of investors to compare different funds.

³ Proposed General Instruction C.3.(c)(ii) of Form N-1A.

- **The proposal would also make effective use of new communications technologies to make important information about mutual funds more accessible.** In recent years, the Commission has recognized the importance of the different ways investors access information and the manner in which new technologies can make the information investors desire more accessible, understandable, and more easily analyzed; and has begun to reflect the effect of new information technologies in various of its initiatives. The proposed rulemaking represents another step towards integrating digital and Internet-based technologies with the Commission's overall approach to disclosure.
- **By requiring that each individual Summary Prospectus be presented in its entirety, the proposed rule would simplify fund disclosure and reduce the risk of investor confusion.** Under current rules, mutual fund complexes are able to satisfy their delivery obligations through use of integrated prospectuses – that is, prospectuses that present the investment objectives for a group of funds followed by the fee tables for those funds, and so forth. While doing so has obvious cost advantages, we agree with the suggestions in the proposing release that integrated prospectuses make it much more difficult and more confusing for an investor to review all of the key information related to a specific fund. We thus believe that the proposed requirement that each Summary Prospectus be presented in its entirety should be adopted.
- **The proposed Summary Prospectus would help investors better understand the costs associated with their fund investments.** Investors continue to be confused by the costs that they incur in order to invest in funds – indeed, some have suggested that many fund investors do not even realize that they pay fund advisers to manage the funds in which they have invested. The proposed requirement that all summaries include a clear, plain English statement describing fees as “expenses that you pay each year” represents a significant step forward in making plain to investors how they compensate those who manage funds on their behalf. Combined with the continued use of fee tables, the proposed Summary Prospectus represents continued improvement in this critical area: it continues to improve fund transparency; it increases investor understanding of the costs of investing in funds through the use of plain English; and, enables investors to more easily and effectively compare the costs of their fund investments with other funds and other investment opportunities.
- **The proposal would potentially result in significant savings for fund investors in the long run.** Important though disclosure is, it comes at a cost. Because that cost is borne largely by fund shareholders, it is critically important that the Commission focus on ways to increase the effectiveness of disclosure while at the same time minimizing its cost. This proposal helps achieve both of these goals. In particular, the proposal has the potential to reduce dramatically the costs funds bear in satisfying their prospectus delivery obligations. By giving funds the option to send the Summary Prospectus, either electronically or in paper, funds will no longer be required to print and mail the much lengthier statutory prospectus to all shareholders and prospective investors. These rule changes will permit funds to recognize meaningful savings.⁴ Once the proposal is

⁴ The proposal's Cost Benefit Analysis estimates that the industry-wide cost savings for annual mailings would be approximately \$182,106,000, or approximately \$27,826 per portfolio. [Release at 67810 - 67811].

adopted, we look forward to seeing these cost savings passed directly to shareholders in the form of lower administration and shareholder servicing costs.

The benefits outlined above provide strong reason for the Commission to adopt the proposed rules. In addition to our support for adoption of the proposal, we offer the following comments to assist the Commission in fine-tuning what is an important rule proposal.

- **The liability protections contemplated by the Proposing Release are vital to the success of the Summary Prospectus.** In the past, initiatives to shorten and simplify the document sent to investors to satisfy the statutory delivery requirement appear to have been hampered by concerns about liability associated with delivering a document different than the full statutory prospectus. We believe that the proposal to incorporate the full prospectus by reference into the delivery document, effectively addresses these liability concerns by rooting potential liability in the registration statement as a whole, not on the Summary Prospectus standing alone. This fundamental shift in the focus of prospectus liability to the totality of the information made available to investors should provide funds and fund directors with the necessary confidence to employ the Summary Prospectus as a delivery document.
- **For the Summary Prospectus to be effective, it must be a brief, standardized document focusing on information that is of key importance to investors.** While it is important that the regulatory system facilitate the dissemination of a wide range of information to investors (and to the intermediaries who analyze, recommend and sell fund shares), much of that information is not relevant to all investors and should remain in other disclosure documents. The Commission must keep this principle in mind, not only as it moves toward adoption of this proposal, but anytime in the future that it considers making changes to the form or content of mandated fund disclosure. As written, the proposed rules strike an appropriate balance between presenting key information to investors in a single, accessible document and ensuring that all relevant information is readily available to those who desire it.
- **The disclosure system, viewed as a whole, has the potential to provide investors with confusing and seemingly inconsistent information on fund performance.** In particular, the “Investments, Risks and Performance” section of the Summary Prospectus is intended to mirror the current risk/return summary section of the prospectus (Items 2(b) and (c) of Form N-1A). The proposal requires that the performance data in the Summary Prospectus be updated quarterly; however, no change was proposed to the frequency with which performance data in the statutory prospectus must be updated (current regulations require that this update be made at least annually). Consequently, the performance data presented in the Summary Prospectus and the statutory prospectus may differ at any given time.

In addition, Rule 482, which governs fund advertising, requires that all performance data contained in any mutual fund advertisement be as of the most recent practicable date. Rule 482 further states that performance quoted in an advertisement will be considered “current” if it is as of the most recent calendar quarter ended prior to submission of the

advertisement for publication. Rule 482 further requires an advertisement that includes performance data to provide a website or toll-free or collect telephone number where an investor can obtain performance information on the fund advertised that is current to the month ending seven business days prior to the date of use of the advertisement.⁵ Once again, this performance information may cover different time periods than either the Summary Prospectus or the statutory prospectus. Hence, if the proposal is adopted, at any given point in time, an investor could potentially be confronted with three sets of performance numbers for the same fund.⁶

Although this possibility for confusion is not so significant as to warrant any substantial change to the Summary Prospectus proposal, we do believe that the Commission should be aware of this potential, and should consider harmonizing performance-related disclosure rules in the future. At this point, the Commission should require that Summary Prospectuses contain information similar to that in fund advertisements directing investors and potential investors to any more current performance data available on the Internet.

- **The hypothetical Summary Prospectus prepared by the SEC staff provides examples of how brief, succinct disclosure might be used to better educate fund investors not just on what the costs of investing in funds are, but what activities are paid for through those fees.** For example, the hypothetical document divides disclosure of 12b-1 fees into “service” and “distribution” components, thus providing investors with some additional information on the uses of 12b-1 fees. In the future, whether as part of its review of Rule 12b-1, as part of its review of other regulatory provisions that govern the costs incurred by investors, or as part of its ongoing review of this and other disclosure-related regulations, we encourage the Commission to look for ways to provide investors not only with transparent disclosure of the amount of fees they pay, but qualitatively better information on how those fees are used to pay for particular services and activities.

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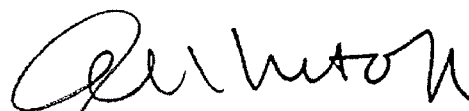
⁵ Rule 482(g), 17 CFR 230.482(g)

⁶ Also, the requirement that funds advertising performance as of the calendar quarter provide more current performance data by phone or Internet was added to Rule 482 to address concerns that advertisements containing performance information that was current as of the most recent quarter end before the advertisement was submitted for publication could confuse or mislead investors, particularly if the fund's performance had declined significantly since the period reflected in the advertisement. Adding this new requirement to Rule 482 was intended to ensure that investors who view advertisements highlighting a mutual fund's performance would be alerted to the fact that the fund's current performance may differ from that advertised and have ready access to performance data that is current to the most recent month-end. See Final Rule: Amendments to Investment Company Advertising Rules, SEC Release Nos. 33-8294, 34-48558, and IC-26195 (Sept. 29, 2003).

In sum, this proposal represents an important step forward in improving disclosure in a way that will make it more accessible and more understandable for investors. At the same time, the proposal holds the possibility of meaningful cost savings for funds and their shareholders. We therefore encourage the Commission to adopt and implement this proposal with modest changes to reflect our comments as quickly as possible.

We would welcome the opportunity to discuss our views with the Commission in greater detail. Please feel free to contact David B. Smith, our Executive Vice President, at 202-521-6731 at any time. Thank you again for the opportunity to comment on these proposals.

Sincerely,

A handwritten signature in black ink, appearing to read "Allan S. Mostoff". The signature is fluid and cursive, with the first name "Allan" being the most prominent part.

Allan S. Mostoff
President

cc: The Honorable Christopher Cox, Chairman
The Honorable Paul S. Atkins
The Honorable Kathleen L. Casey

Andrew J. Donohue, Director, Division of Investment Management
Susan Nash, Associate Director, Division of Investment Management