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Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, and 274

[Release Nos. 33–8861; IC–28064; File No. S7–28–07]

RIN 3235–AJ44

Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing amendments to the form used by mutual funds to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933 in order to enhance the disclosures that are provided to mutual fund investors. The proposed amendments, if adopted, would require key information to appear in plain English in a standardized order at the front of the mutual fund statutory prospectus. The Commission is also proposing rule amendments that would permit a person to satisfy its mutual fund prospectus delivery obligations under Section 5(b)(2) of the Securities Act by sending or giving the key information directly to investors in the form of a summary prospectus and providing the statutory prospectus on an Internet Web site. Upon an investor's request, mutual funds would also be required to send the statutory prospectus to the investor. The proposals are intended to improve mutual fund disclosure by providing investors with key information in plain English in a clear and concise format, while enhancing the means of delivering more detailed information to investors.

DATES: Comments should be submitted on or before February 28, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–28–07 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–28–07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel; Sanjay Lamba, Senior Counsel; Tara R. Buckley, Branch Chief; or Brent J. Fields, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, at (202) 551–6784, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5720.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is proposing for comment amendments to rules 159A,[1] 482,[2] 485,[3] 497,[4] and 498[5] under the Securities Act of 1933 (''Securities Act'') and rules 304[6] and 401[7] of Regulation S–T.[8] The Commission is also proposing for comment amendments to Form N–1A,[9] the form used by open-end management investment companies to register under the Investment Company Act of 1940 (''Investment Company Act'') and to offer securities under the Securities Act; Form N–4,[10] the form used by insurance company separate accounts organized as unit investment trusts and offering variable annuity contracts to register under the Investment Company Act and to offer securities under the Securities Act; and Form N–14,[11] the form used by registered management investment companies and business development companies to register under the Securities Act securities to be issued in business combinations.

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I. Background

Millions of individual Americans invest in shares of open-end management investment companies (''mutual funds''),[12] relying on mutual funds for their retirement, their children's education, and their other basic financial needs.[13] These investors face a difficult task in choosing among the more than 8,000 available mutual funds.[14] Fund prospectuses, which have been criticized by investor advocates, representatives of the fund industry, and others as long and complicated, often prove difficult for investors to use efficiently in comparing their many choices.[15] Current Commission rules

[1] 17 CFR 230.159A.
[2] 17 CFR 230.482.
[3] 17 CFR 230.485.
[4] 17 CFR 230.497.
[5] 17 CFR 230.498.
[6] 17 CFR 232.304.
[7] 17 CFR 232.401.
[8] 17 CFR 232.10 *et seq.*
[9] 17 CFR 239.15A and 274.11A.
[10] 17 CFR 239.17b and 274.11c.
[11] 17 CFR 239.23.
[12] An open-end management investment company is an investment company, other than a unit investment trust or face-amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer. *See* Sections 4 and 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–4 and 80a–5(a)(1)].
[13] Investment Company Institute, *2007 Investment Company Fact Book*, at 57 (2007), available at: *http://www.icifactbook.org/pdf/2007_factbook.pdf* (96 million individuals own mutual funds).
[14] *Id.* at 10 (as of year-end 2006, there were 8,726 mutual funds).
[15] *See* William D. Lutz, Ph.D., Professor of English, Rutgers University, Transcript of U.S. Securities and Exchange Commission Interactive Data Roundtable, at 69 (June 12, 2006), available at: *http://www.sec.gov/spotlight/xbrl/xbrlofficialtranscript0606.pdf* (''June 12 Roundtable Transcript'') (stating that current mutual fund prospectus is ''unreadable''); Don Phillips, Managing Director, Morningstar, Inc., *id.* at 26 (stating that current prospectus is ''bombarding investors with way more information than they can handle and that they can intelligently assimilate''). A Webcast archive of the June 12 Interactive Data Roundtable is available at: *http://www.connectlive.com/events/secxbrl/. See also*

require mutual fund prospectuses to contain key information about investment objectives, risks, and expenses that, while important to investors, can be difficult for investors to extract. Prospectuses are often long, both because they contain a wealth of detailed information, which our rules require, and because prospectuses for multiple funds are often combined in a single document. Too frequently, the language of prospectuses is complex and legalistic, and the presentation formats make little use of graphic design techniques that would contribute to readability.

Numerous commentators have suggested that investment information that is key to an investment decision should be provided in a streamlined document with other more detailed information provided elsewhere.[16] Furthermore, recent investor surveys indicate that investors prefer to receive information in concise, user-friendly formats.[17]

Similar opinions were voiced at a roundtable held by the Commission in June 2006, at which representatives from investor groups, the mutual fund industry, analysts, and others discussed how the Commission could change the mutual fund disclosure framework so that investors would be provided with better information. Significant discussion at the roundtable concerned the importance of providing mutual fund investors with access to key fund data in a shorter, more easily understandable format.[18] The participants focused on the importance of providing mutual fund investors with shorter disclosure documents, containing key information, with more detailed disclosure documents available to investors and others who choose to review additional information.[19] There was consensus among the roundtable participants that the key information that investors need to make an investment decision includes information about a mutual fund's investment objectives and strategies, risks, costs, and performance.[20]

The roundtable participants also discussed the potential benefits of increased Internet availability of fund disclosure documents, which include, among other things, facilitating comparisons among funds and replacing ''one-size-fits-all'' disclosure with disclosure that each investor can tailor to his or her own needs.[21] In recent years, access to the Internet has greatly expanded, [22] and significant strides

Investment Company Institute, *Understanding Preferences for Mutual Fund Information*, at 8 (Aug. 2006), available at: *http://ici.org/pdf/rpt_06_inv_prefs_summary.pdf* (''*ICI Investor Preferences Study*'') (noting that sixty percent of recent fund investors describe mutual fund prospectuses as very or somewhat difficult to understand, and two-thirds say prospectuses contain too much information); Associated Press Online, *Experts: Investors Face Excess Information* (May 25, 2005) (''There is broad agreement * * * that prospectuses have too much information * * * to be useful.'' (quoting Mercer Bullard, President, Fund Democracy, Inc.)); Thomas P. Lemke and Gerald T. Lins, *The ''Gift'' of Disclosure: A Suggested Approach for Managed Investments*, The Investment Lawyer, at 19 (Jan. 2001) (stating that the fund prospectus ''typically contains more information than the average investor needs'').

[16] *See* Charles A. Jaffe, *Improving Disclosure of Funds Can Be Done*, The Fort Worth Star-Telegram (May 7, 2006) (''Bring back the profile prospectus, and make its use mandatory. * * * A two page-summary of [the] key points [in the profile]—at the front of the prospectus—would give investors the bare minimum of what they should know out of the paperwork.''); *Experts: Investors Face Excess Information, supra* note 15 (stating ''a possible middle ground in the disclosure debate is to rely more heavily on so-called profile documents which provide a two-page synopsis of a fund'' (attributing statement to Mercer Bullard, President, Fund Democracy, Inc.)); *Mutual Funds: A Review of the Regulatory Landscape*, Hearing Before the Subcomm. on Capital Markets, Insurance and Government Sponsored Enterprises of the Comm. on Financial Services, U.S. House of Representatives, 109th Cong. (May 10, 2005), at 24 (''To my mind, a new and enhanced mutual fund prospectus should have two core components. It should be short, addressing only the most important factors about which typical fund investors care in making investment decisions, and it should be supplemented by additional information available electronically, specifically through the Internet, unless an investor chooses to receive additional information through other means.'' (Testimony of Barry P. Barbash, then Partner, Shearman & Sterling LLP)); Thomas P. Lemke and Gerald T. Lins, *The ''Gift'' of Disclosure: A Suggested Approach for Managed Investments, supra* note 15, at 19 (information that is important to investors includes goals and investment policies, risks, costs, performance, and the identity and background of the manager).

In addition, a mutual fund task force organized by the National Association of Securities Dealers, Inc. (''NASD'') supported the use of a ''profile plus'' document, on the Internet, that would include, among other things, basic information about a fund's investment strategies, risks, and total costs, with hyperlinks to additional information in the prospectus. *See* NASD Mutual Fund Task Force, *Report of the Mutual Fund Task Force: Mutual Fund Distribution* (Mar. 2005), available at: *http://www.finra.org/web/groups/rules_regs/documents/rules_regs/p013690.pdf*.

[17] *See ICI Investor Preferences Study, supra* note 15, at 29 (''Nearly nine in 10 recent fund investors say they prefer a summary of the information they want to know before buying fund shares, either alone or along with a detailed document. * * * Just 13 percent prefer to receive only a detailed document.''); Barbara Roper and Stephen Brobeck, Consumer Federation of America, *Mutual Fund Purchase Practices*, at 13–14 (June 2006), available at: *http://www.consumerfed.org/pdfs/mutual_fund_survey_report.pdf* (survey respondents more likely to consult a fund summary document rather than a prospectus or other written materials).

[18] *See, e.g.*, Henry H. Hopkins, Vice President and Chief Legal Counsel, T. Rowe Price Group, Inc., June 12 Roundtable Transcript, *supra* note 15, at 31 (''[S]hareholders prefer receiving a concise summary of fund information before buying.''); William D. Lutz, Ph.D., Professor of English, Rutgers University, *id.* at 88 (stating that ''investors [should] be able to find quickly and easily the information they want'').

[19] *See* Don Phillips, Managing Director, Morningstar, Inc., *id.* at 27 (stating that mutual fund investors need two different documents, including a simplified print document and a tagged electronic document); Paul Schott Stevens, President and Chief Executive Officer, Investment Company Institute, *id.* at 72–73 (urging the Commission to consider permitting mutual funds to ''deliver a clear concise disclosure document * * * much like the profile prospectus'' with a statement that additional disclosure is available on the funds' website or upon request in paper); Elisse B. Walter, Senior Executive Vice President, NASD, *id.* at 41 (noting that the industry-recommended disclosure document, the ''profile plus,'' would include hyperlinks to the statutory prospectus, which would enable investors to ''choose for themselves the level of detail they want'').

[20] *See* Barbara Roper, Director of Investor Protection, Consumer Federation of America, June 12 Roundtable Transcript, *supra* note 15, at 20 (noting that there is ''agreement to the point of near unanimity about the basic factors that investors should consider when selecting a mutual fund. These closely track the content of the original fund profile with highest priority given to investment objectives and strategies, risks, costs, and past performance particularly as it relates to the volatility of past returns.''). *See also* Paul G. Haaga, Jr., Executive Vice President, Capital Research and Management Company, *id.* at 90 (stating that the Commission should ''specify some minimum amounts of information'' to provide investors with ''something along the lines of the [fund] profile''); Henry H. Hopkins, Vice President and Chief Legal Counsel, T. Rowe Price Group, Inc., *id.* at 31 (''The profile is an excellent well organized disclosure document whose content requirements were substantiated by SEC-sponsored focus groups and an industry pilot program.''); William D. Lutz, Ph.D., Professor of English, Rutgers University, *id.* at 88 (noting that the information that mutual fund investors want has not changed substantially since the adoption of the profile); Elisse B. Walter, Senior Executive Vice President, NASD, *id.* at 40–41 (noting that NASD's ''profile plus'' builds on the profile and includes key information about a fund's objectives, risks, fees, and performance, as well as information about dealer fees and conflicts of interest).

[21] *See* Paul Schott Stevens, President and Chief Executive Officer, Investment Company Institute, *id.* at 70–71 (stating that the Internet can serve as ''far more than a stand-in for paper documents * * * It can * * *put investors in control when it comes to information about their investments.''); Don Phillips, Managing Director, Morningstar, Inc., *id.* at 49 (discussing ''the ability to use the Internet as a tool for comparative shopping''); Elisse B. Walter, Senior Executive Vice President, NASD, *id.* at 41 (noting that the Internet ''doesn't force disclosure into one size fits all'').

[22] Recent surveys show that Internet use among adults is at an all time high with approximately three quarters of Americans having access to the Internet. *See A Typology of Information and Technology Users*, Pew Internet & American Life Project, at 2 (May 2007), available at: *http://www.pewinternet.org/pdfs/PIP_ICT_Typology.pdf; Internet Penetration and Impact,* Pew Internet & American Life Project, at 3 (Apr. 2006), available at: *http://www.pewinternet.org/pdfs/PIP_Internet_Impact.pdf*. Further, while some have noted a ''digital divide'' for certain groups, *see, e.g.*, Susannah Fox, *Digital Divisions*, Pew Internet & American Life Project, at 1 (Oct. 5, 2005) (noting that certain groups lag behind in Internet usage, including Americans age 65 and older, African-Americans, and those with less education), others have noted that this divide may be diminishing for

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have been made in the speed and quality of Internet connections.[23] The Commission has already harnessed the power of these technological advances to provide better access to information in a number of areas. Recently, for example, we created a program that permits issuers, on a voluntary basis, to submit to the Commission financial information and, in the case of mutual funds, key prospectus information, in an interactive data format that facilitates automated retrieval, analysis, and comparison of the information.[24] Earlier this year, we adopted rules that provide all shareholders with the ability to choose whether to receive proxy materials in paper or via the Internet.[25] As suggested by the participants at the roundtable, advances in technology also offer a promising means to address the length and complexity of mutual fund prospectuses by streamlining the key information that is provided to investors, ensuring that access to the full wealth of information about a fund is immediately and easily accessible, and providing the means to present all information about a fund online in an interactive format that facilitates comparisons of key information, such as expenses, across different funds and different share classes of the same fund.[26] Technology has the potential to replace the current one-size-fits-all mutual fund prospectus with an approach that allows investors, their financial intermediaries, third party analysts, and others to tailor the wealth of available information to their particular needs and circumstances.

We are proposing an improved mutual fund disclosure framework that is intended to provide investors with information that is easier to use and more readily accessible, while retaining the comprehensive quality of the information that is available today. The foundation of the proposal is the provision to all investors of streamlined and user-friendly information that is key to an investment decision. More detailed information would be provided both on the Internet and, upon an investor's request, in paper or by e-mail.

To implement this improved disclosure framework, we are proposing amendments to Form N–1A that would require every prospectus to include a summary section at the front of the prospectus, consisting of key information about the fund, including investment objectives and strategies, risks, costs, and performance. This key information has been identified by the participants in the roundtable, by investor research, and by a variety of commentators as information that is important to most investors in selecting mutual funds.[27] The key information would be required to be presented in plain English in a standardized order. Our intent is that this information would be presented succinctly, in three or four pages at the front of the prospectus.

We are also proposing a new option for satisfying prospectus delivery obligations with respect to mutual fund securities under the Securities Act. Under the proposed option, key information would be sent or given to investors in the form of a summary prospectus (''Summary Prospectus''), and the statutory prospectus would be provided on an Internet Web site.[28] Upon an investor's request, funds would also be required to send the statutory prospectus to the investor. Our intent in proposing this option is that funds take full advantage of the Internet's search and retrieval capabilities in order to enhance the provision of information to mutual fund investors.

Today's proposals have the potential to revolutionize the provision of information to the millions of mutual fund investors who rely on mutual funds for their most basic financial needs. The proposals are intended to help investors who are overwhelmed by the choices among thousands of available funds described in lengthy and legalistic documents to readily access key information that is important to an informed investment decision. At the same time, by harnessing the power of technology to deliver information in better, more usable formats, the proposals can help those investors, their intermediaries, third party analysts, the financial press, and others to locate and compare facts and data from the wealth of more detailed disclosures that are available.

II. Discussion

A. Proposed Amendments to Form N–1A

We are proposing amendments to Form N–1A that would require the statutory prospectus of every mutual fund to include a summary section at the front of the prospectus consisting of key information presented in plain English in a standardized order. This presentation is intended to address investors' preferences for concise, user-friendly information. The proposed summary section in a fund's prospectus would provide investors with key information about the fund that investors could use to evaluate and compare the fund. This summary would be located in a standardized, easily accessible place and would be available to all investors, regardless of whether the fund uses a Summary Prospectus and regardless of whether the investor is reviewing the prospectus in a paper or electronic format.

Our proposal builds upon the risk/return summary that is currently required at the front of every mutual fund prospectus.[29] The risk/return summary presents a mutual fund's investment objectives and strategies, risks, and costs, in a standardized order at the front of the prospectus. The risk/return summary has, to a significant extent, functioned effectively to convey this information to investors. As a result, the current risk/return summary serves as the centerpiece of the proposed prospectus summary section.

We are, however, proposing to modify the front portion of the prospectus in two significant ways in order to make it more useful to investors. First, we are proposing to require that brief additional information be included in

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those groups. *See, e.g., Mutual Fund Shareholders' Use of the Internet, 2006*, Investment Company Institute, Research Fundamentals, at 7 (Oct. 2006), available at: *http://www.ici.org/stats/res/1fm-v15n6.pdf* (''Recent increases in Internet access among older shareholders * * * have narrowed the generational gap considerably. Today, shareholders age 65 or older are more than twice as likely to have Internet access than in 2000.''); Michel Marriott, *Blacks Turn to Internet Highway, And Digital Divide Starts to Close*, The New York Times (Mar. 31, 2006), available at: *http://www.nytimes.com/2006/03/31/us/31divide.html?ex=1301461200&en=6fd4e942aaaa04ad&ei=5088* (''African-Americans are steadily gaining access to and ease with the Internet, signaling a remarkable closing of the 'digital divide' that many experts had worried would be a crippling disadvantage in achieving success.'').

[23] *See* John B. Horrigan, *Home Broadband Adoption 2007*, Pew Internet & American Life Project, at 1 (June 2007), available at: *http://www.pewinternet.org/pdfs/PIP_Broadband%202007.pdf* (47% of all adult Americans had a broadband connection at home as of early 2007).

[24] *See* Securities Act Release No. 8823 (July 11, 2007) [72 FR 39290 (July 17, 2007)] (adopting rule amendments to enable mutual funds voluntarily to submit supplemental tagged information contained in the risk/return summary section of their prospectuses); Securities Act Release No. 8529 (Feb. 3, 2005) [70 FR 6556 (Feb. 8, 2005)] (adopting rule amendments to enable registrants voluntarily to submit supplemental tagged financial information).

[25] Exchange Act Release No. 56135 (July 26, 2007) [72 FR 42222 (Aug. 1, 2007)].

[26] A mutual fund may issue more than one class of shares that represent interests in the same portfolio of securities with each class, among other things, having a different arrangement for shareholder services or the distribution of securities, or both. *See* rule 18f–3 under the Investment Company Act [17 CFR 270.18f–3].

[27] *See supra* notes 16 and 20.

[28] A ''statutory prospectus'' is a prospectus that meets the requirements of Section 10(a) of the Securities Act [15 U.S.C. 77j(a)].

[29] Items 2 and 3 of Form N–1A. *See* Investment Company Act Release No. 23064 (Mar. 13, 1998) [63 FR 13916, 13919–25 (Mar. 23, 1998)] (adopting risk/return summary requirement).

the summary section of the prospectus so that this section will function as a more comprehensive presentation. The information required in the summary section of the prospectus would be the same as that required in the new Summary Prospectus, and it is key information that is important to an investment decision. This approach differs from that used in the current risk/return summary. When the Commission adopted the risk/return summary, it simultaneously permitted funds to offer their shares pursuant to a ''profile'' that summarizes key information about the fund.[30] While the risk/return summary items were included in the profile, the profile also included additional information. We believe that the key information that is important to an investment decision is the same, whether an investor is reviewing the summary section of a statutory prospectus or a short-form disclosure document; and, for that reason, we are proposing to require the same information in the summary section of the statutory prospectus and in the Summary Prospectus. In each case, our intent is for funds to prepare a concise summary (on the order of three or four pages) that will provide comprehensive key information.

Second, we are proposing to require that the summary information be presented separately for each fund covered by a multiple fund prospectus and that the information for multiple funds not be integrated.[31] This requirement is intended to assist investors in finding important information regarding the particular fund in which they are interested. Currently, in presenting the risk/return summary information, multiple fund prospectuses may present all of the investment objectives, investment strategies, and risks for multiple funds, followed by the performance information for those funds, and, finally, the fee tables for those funds.[32] Unfortunately, in practice, this flexibility has too frequently resulted in lengthy presentations that are not summary in nature and from which an investor would have considerable difficulty extracting the information about the particular fund in which he or she is interested. In practice, multiple fund prospectuses have integrated information for as many as 40 funds, and we are concerned that it would be extremely difficult, if not impossible, to achieve our goal of short summaries on the order of three or four pages if those summaries were permitted to contain information about multiple funds.

The proposed requirement that summary information be separately presented for each fund in a multiple fund prospectus is intended to address the problem of lengthy, complex multiple fund prospectuses in the least intrusive manner possible. Multiple fund prospectuses contribute substantially to prospectus length and complexity, which act as barriers to investor understanding. Rather than eliminate altogether the ability to use multiple fund prospectuses, which could have more significant cost and other implications than our proposal, we concluded that it was preferable to propose to require a self-contained summary section for each fund.

The Commission is committed to encouraging statutory prospectuses that are simpler, clearer, and more useful to investors. The proposed prospectus summary section is intended to provide investors with streamlined disclosure of key mutual fund information at the front of the statutory prospectus, in a standardized order that facilitates comparisons across funds. We are proposing the following amendments to Form N–1A in order to implement the summary section.

1. General Instructions to Form N–1A

We are proposing amendments to the General Instructions to Form N–1A to address the proposed new summary section of the statutory prospectus. These proposed amendments address plain English and organizational requirements.

We propose to amend the General Instructions to state that the summary section of the prospectus must be provided in plain English under rule 421(d) under the Securities Act.[33] Rule 421(d) requires an issuer to use plain English principles in the organization, language, and design of the front and back cover pages, the summary, and the risk factors sections of its prospectus.[34] The amended instruction would serve as a reminder that the new prospectus summary section is subject to rule 421(d). The use of plain English principles in the new summary section will further our goal of encouraging funds to create usable summaries at the front of their prospectuses. The prospectus, in its entirety, also would remain subject to the requirement that the information be presented in a clear, concise, and understandable manner.[35]

We are also proposing amendments to the organizational requirements of the General Instructions. The proposals would require mutual funds to disclose the summary information in numerical order at the front of the prospectus and not to precede this information with any information other than the cover page or table of contents.[36] Information included in the summary section need not be repeated elsewhere in the prospectus. While a fund may continue to include information in the prospectus that is not required, a fund may not include any such additional information in the summary section of the prospectus.[37]

As noted above, we are also proposing that a multiple fund prospectus be required to present all of the summary information for each fund sequentially and not integrate the information for more than one fund.[38] That is, a multiple fund prospectus would be required to present all of the summary information for a particular fund together, followed by all of the summary information for each additional fund. For example, a multiple fund prospectus would not be permitted to present the investment objectives for several funds followed by the fee tables for several funds. A multiple fund prospectus would be required to clearly identify the name of the particular fund at the beginning of the summary information for the fund.

As is the case with the current risk/return summary, the proposed instructions would permit a fund with multiple share classes, each with its own cost structure, to present the summary information separately for each class, to integrate the information for multiple classes, or to use another presentation that is consistent with disclosing the summary information in a standard order at the beginning of the

[30] Investment Company Act Release No. 23065 (Mar. 13, 1998) [63 FR 13968 (Mar. 23, 1998)]. Our proposed amendments would eliminate the profile.

[31] Proposed General Instruction C.3.(c)(ii) of Form N–1A.

[32] General Instruction C.3.(c) of Form N–1A.

[33] Proposed General Instruction B.4.(c) of Form N–1A; 17 CFR 230.421(d).

[34] Rule 421(d) requires the use of the following plain English principles: (1) Short sentences; (2) definite, concrete, everyday words; (3) active voice; (4) tabular presentation or bullet lists for complex material, wherever possible; (5) no legal jargon or highly technical business terms; and (6) no multiple negatives.

[35] Pursuant to rule 421(b), the following standards must be used when preparing prospectuses: (1) Present information in clear, concise sections, paragraphs, and sentences; (2) use descriptive headings and subheadings; (3) avoid frequent reliance on glossaries or defined terms as the primary means of explaining information in the prospectus; and (4) avoid legal and highly technical business terminology. 17 CFR 230.421(b).

[36] Proposed General Instruction C.3.(a) to Form N–1A.

[37] Proposed General Instruction C.3.(b) of Form N–1A.

[38] Proposed General Instruction C.3.(c)(ii) of Form N–1A; *see supra* note and accompanying text.

prospectus.[39] Generally, this flexibility has resulted in effective presentations of class-specific cost and performance information that facilitate comparisons among classes.

Finally, we are proposing to eliminate the provisions of Form N–1A that permit a fund to omit detailed information about purchase and redemption procedures from the prospectus and to provide this information in a separate document that is incorporated into and delivered with the prospectus.[40] This option appears to be unnecessary in light of the proposed new Summary Prospectus which could be used, at a fund's option, along with any additional sales materials, including a document describing purchase and redemption procedures.[41] In addition, the option to provide a separate purchase and redemption document has been used infrequently since its adoption. We are also proposing to eliminate a similar provision in the requirements for the statement of additional information (''SAI'').[42] The proposed elimination of these provisions does not otherwise alter the information about purchase and redemption procedures that must appear in the fund's prospectus and SAI, and this information would continue to be required in those documents.

We request comment on the proposed amendments to the General Instructions, and in particular on the following issues:

- Are the proposed revisions to the General Instructions appropriate? Will they be helpful in encouraging prospectus summary sections that address investors' preferences for concise, user-friendly information?
- 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? Would any such formatting requirements further the goal of making the summary section a user-friendly presentation of information?
- Is it appropriate to prohibit a fund from including information in the summary section that is not required?
- Are the proposed requirements for the order of information appropriate? Will they contribute to more readable prospectuses and summary information that is easy to evaluate and compare?
- Is it helpful for the prospectus to have a separate summary section?
- Are the requirements with respect to multiple fund and multiple class prospectuses appropriate? Should we prohibit multiple fund or multiple class prospectuses altogether? Should we provide greater or lesser flexibility in the presentation of multiple fund or multiple class prospectuses? If we permit greater flexibility, how can we do so consistent with the goal of achieving concise, readable summaries? For example, if we permit integrated multiple fund summary presentations for some or all funds, should we also impose a maximum page limit on a summary section that integrates the information for multiple funds?
- Should we eliminate or otherwise modify the optional separate purchase and redemption document? What, if any, purpose will this option serve if we adopt the new Summary Prospectus?
- Are there alternatives we should consider that would achieve our goal of providing enhanced disclosures to investors in a more cost effective manner?

2. Information Required in Summary Section

The summary section of a mutual fund statutory prospectus would consist of the following information: (1) Investment objectives; (2) costs; (3) principal investment strategies, risks, and performance; (4) top ten portfolio holdings; (5) investment advisers and portfolio managers; (6) brief purchase and sale and tax information; and (7) financial intermediary compensation. This information is largely drawn from the current risk/return summary and fund profile.

Investment Objectives and Goals

Like the current risk/return summary, the proposed summary section would begin with disclosure of a fund's investment objectives or goals. A fund also would be permitted to identify its type or category (*e.g.*, that it is a money market fund or balanced fund).[43]

Fee Table

The fee table and example, which are drawn from the current risk/return summary and which disclose the costs of investing, would immediately follow the fund's investment objectives.[44] In order to address continuing concerns about investor understanding of mutual fund costs,[45] we are proposing several modifications to the current fee table that are intended to provide greater prominence to the cost disclosures and make the table more understandable.

We are proposing to move the fee table forward from its current location, which follows information about investment strategies, risks, and past performance. Contrary to our intent in including the fee table in the risk/return summary, this information has sometimes appeared fairly deep within the prospectus, particularly in multiple fund prospectuses covering a large number of funds. The proposed change to the location of the fee table, together with the proposed requirement that the summary section for each fund be provided separately, should serve to enhance the prominence of the cost information. The fee table and example are designed to help investors understand the costs of investing in a fund and to compare those costs with the costs of other funds. Placing the fee table and example at the front of the summary information reflects the importance of costs to an investment decision.[46]

We are proposing several additional amendments to the fee table that are intended to improve the disclosure that investors receive regarding fees and expenses of the fund. First, we are proposing that mutual funds that offer discounts on front-end sales charges for volume purchases (so-called ''breakpoint discounts'') include brief narrative disclosure alerting investors to the availability of those discounts.[47] Several years ago, the Commission and NASD staffs identified concerns regarding the extent to which mutual fund investors were receiving breakpoint discounts to which they were entitled. The Commission adopted enhanced prospectus disclosure requirements regarding breakpoint

[39] Proposed General Instruction C.3.(c)(ii) of Form N–1A.

[40] Instruction 6 to Item 1(b) of Form N–1A; Item 6(g) of Form N–1A; Investment Company Act Release No. 23064, *supra* note , 63 FR at 13932–33.

[41] *See infra* notes 87 through 90 and accompanying text.

[42] Instruction to Item 18(a) of Form N–1A; proposed Item 24(a) of Form N–1A (redesignating current Item 18(a) and eliminating Instruction).

[43] Proposed Item 2 of Form N–1A; Item 2(a) of Form N–1A; rule 498(c)(2)(i). *See* Investment Company Act Release No. 23064, *supra* note 29, 63 FR 13919–20 (adopting investment objectives or goals disclosure requirement in Item 2(a) of Form N–1A).

[44] Proposed Item 3 of Form N–1A; Item 3 of Form N–1A; rule 498(c)(2)(iv).

[45] *See* Barbara Roper, Director of Investor Protection, Consumer Federation of America, June 12 Roundtable Transcript, *supra* note 15, at 21; James J. Choi, David Laibson, & Brigitte C. Madrian, National Bureau of Economic Research, *Why Does the Law of One Price Fail? An Experiment on Index Mutual Funds,* at 6 (May 2006), available at: *http://www.nber.org/papers/w12261.pdf.*

[46] For example, a 1% increase in annual fees reduces an investor's return by approximately 18% over 20 years.

[47] Proposed Item 3 of Form N–1A; proposed Instruction 1(b) to proposed Item 3 of Form N–1A.

discounts at that time.[48] We believe that investor awareness of the availability of these discounts may be heightened further by requiring brief narrative disclosure about the availability of these discounts at the beginning of the fee table.

Second, we are proposing to revise the heading ''Annual Fund Operating Expenses'' in the fee table. Specifically, we propose to revise the parenthetical following the heading to read ''ongoing expenses that you pay each year as a percentage of the value of your investment'' in place of ''expenses that are deducted from Fund assets.'' In recent years, we have taken significant steps to address concerns that investors do not understand that they pay ongoing costs every year when they invest in mutual funds, including requiring disclosure of ongoing costs in shareholder reports.[49] Our proposed revision further addresses those concerns by making clear that the expenses in question are paid by investors as a percentage of the value of their investments in the fund.

Third, for funds other than money market funds, the proposal would require the addition of brief disclosure regarding portfolio turnover immediately following the fee table example.[50] A fund would be required to disclose its portfolio turnover rate for the most recent fiscal year, as a percentage of the average value of its portfolio. This numerical disclosure would be accompanied by a brief explanation of the effect of portfolio turnover on transaction costs and fund performance. The prospectus currently is required to include the portfolio turnover rate in the financial highlights table as well as narrative information about portfolio turnover,[51] and the effect of transaction costs is reflected in fund performance. Nonetheless, some concerns have been expressed in recent years regarding the degree to which investors understand the effect of portfolio turnover, and the resulting transaction costs, on fund expenses and performance.[52] Our proposal to require brief portfolio turnover disclosure in the summary section of the prospectus is intended to address these concerns.

Finally, we are proposing to amend the requirement that a fund disclose in its fee table gross operating expenses that do not reflect the effect of expense reimbursement or fee waiver arrangements, which result in reduced expenses being paid by the fund.[53] While gross operating expenses may provide investors with a more accurate understanding of the potential long-term costs of an investment in the fund, they may also overstate the actual, current expenses. In addition, gross operating expenses may overstate long-term expenses because any expense increase due to the termination of an expense reimbursement or fee waiver arrangement may be offset by reduced expenses that accompany economies of scale resulting from asset growth.

To address these issues, we are proposing to permit a fund to place two additional captions directly below the ''Total Annual Fund Operating Expenses'' caption in cases where there were expense reimbursement or fee waiver arrangements that reduced fund operating expenses and that will continue to reduce them for no less than one year from the effective date of the fund's registration statement.[54] One caption would show the amount of the expense reimbursement or fee waiver, and a second caption would show the fund's net expenses after subtracting the fee reimbursement or expense waiver from the total fund operating expenses. Funds that disclose these arrangements would also be required to disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, and briefly describe who can terminate the arrangement and under what circumstances. Further, in computing the fee table example, a fund would be permitted to reflect any expense reimbursement or fee waiver arrangements that reduced any fund operating expenses during the most recently completed calendar year and that will continue to reduce them for no less than one year from the effective date of the fund's registration statement.[55] This adjustment could be reflected only in the periods for which the expense reimbursement or fee waiver arrangement is expected to continue. For example, if such an arrangement were expected to continue for one year, then, in the computation of 10-year expenses in the fee table example, the arrangement could only be reflected in the first of the 10 years.

Investments, Risks, and Performance

Following the fee table and example, we are proposing that a fund disclose its principal investment strategies and risks,[56] in the same manner required in the current risk/return summary.[57] This would include the current risk/return bar chart and table illustrating the variability of returns and showing the fund's past performance.

Portfolio Holdings

The proposed summary section would next need to include a list of the 10 largest issues contained in the fund's portfolio, in descending order, together with the percentage of net assets represented by each.[58] Information concerning portfolio holdings may provide investors with a greater understanding of a fund's stated investment objectives and strategies and may assist investors in making more informed asset allocation decisions. It was suggested at our roundtable that it may be appropriate to include this information, which currently is not contained in the prospectus, in a short summary of key fund information.[59] In

[48] *See* Investment Company Act Release No. 26464 (June 7, 2004) [69 FR 33262 (June 14, 2004)].

[49] Item 22(d)(1) of Form N–1A; Investment Company Act Release No. 26372 (Feb. 27, 2004) [69 FR 11244 (Mar. 9, 2004)] (adopting disclosure of ongoing costs in shareholder reports). *See also General Accounting Office report on Mutual Fund Fees: Additional Disclosure Could Encourage Price Competition,* at 66–81 (June 2000), available at: *http://www.gao.gov/archive/2000/gg00126.pdf* (discussing lack of investor awareness of the fees they pay and investor focus on mutual fund sales charges rather than ongoing fees).

[50] Proposed Instruction 5 to proposed Item 3 of Form N–1A.

[51] Instruction 7 to Item 4(b)(1) of Form N–1A; Item 8(a) of Form N–1A; Item 11(e) of Form N–1A. The portfolio turnover rate that would be required to be disclosed in the summary section would be calculated in the same manner that is currently required in Form N–1A.

[52] *See* Investment Company Act Release No. 26313 (Dec. 18, 2003) [68 FR 74820 (Dec. 24, 2003)] (request for comment regarding ways to improve disclosure of transaction costs); Report of the Mutual Fund Task Force on Soft Dollars and Portfolio Transaction Costs (Nov. 11, 2004), available at: *http://www.finra.org/web/groups/rules_regs/documents/rules_regs/p012356.pdf.*

[53] Instructions 3(d)(i) and 5(a) to Item 3 of Form N–1A. In an expense reimbursement arrangement, the adviser reimburses the fund for expenses incurred. Under a fee waiver arrangement, the adviser agrees to waive a portion of its fees in order to limit fund expenses.

[54] Proposed Instructions 3(e) and 6(b) to proposed Item 3 of Form N–1A.

[55] Proposed Instruction 4(a) to proposed Item 3 of Form N–1A. We also propose a technical amendment to the instructions to the expense example to eliminate language permitting funds to reflect the impact of the amortization of initial organization expenses in the expense example numbers. *Id.* This language is unnecessary because initial organization expenses must be expensed as incurred and may no longer be capitalized. *See* American Institute of Certified Public Accountants, Statement of Position 98–5, *Reporting on the Costs of Start-Up Activities* (Apr. 3, 1998).

[56] Proposed Item 4 of Form N–1A. To conform to other changes we are proposing to Form N–1A, the Instructions to proposed Item 4 contain technical revisions that (1) amend cross-references to other Items in Form N–1A; and (2) eliminate language related to the presentation of performance information for more than one fund, given the proposed requirement that information for each fund be presented separately. Proposed Instructions 2(e) and 3 to proposed Item 4(b)(2) of Form N–1A.

[57] Items 2(b) and (c) of Form N–1A.

[58] Proposed Item 5 of Form N–1A.

[59] *See* Henry H. Hopkins, Vice President and Chief Legal Counsel, T. Rowe Price Group, Inc.,

Continued

addition, many funds and third party analysts include top 10 portfolio holdings in fund summaries distributed to investors and prominently on their Web sites, suggesting significant investor interest in this information. While complete portfolio holdings information currently is available in Commission filings on Form N–CSR and Form N–Q on a quarterly basis,[60] we believe that the top 10 holdings may be important information in the summary section of the prospectus, which is intended to bring together, in a single, readily accessible place, key information that is important to an investment decision.

Mutual funds would be required to provide their top 10 portfolio holdings as of the end of the most recent calendar quarter.[61] In determining their top 10 holdings, funds would be required to aggregate and treat as a single issue (1) all fully collateralized repurchase agreements; and (2) all securities of any one issuer (other than fully collateralized repurchase agreements).[62] The U.S. Treasury and each agency, instrumentality, or corporation, including each government-sponsored entity, that issues U.S. government securities would be treated as a separate issuer.[63]

We are proposing an exclusion to the requirement to list the top 10 holdings that is similar to an exclusion in the current requirements for quarterly disclosure of a fund's complete portfolio holdings.[64] Funds rely on this exclusion to guard against the premature release of certain positions that could lead to front-running and other predatory trading practices.[65] Currently, a fund's complete portfolio schedule filed with the Commission on Form N–CSR or Form N–Q may list an amount not exceeding five percent of the total value of the portfolio holdings in one amount as ''Miscellaneous securities,'' provided that securities so listed are not restricted, have been held for not more than one year prior to the date of the related balance sheet, and have not previously been reported by name to the shareholders, or set forth in any registration statement, application, or annual report or otherwise made available to the public.

Under the proposal, in listing the top 10 holdings, any securities that would be required to be listed separately or included in a group of securities that is listed in the aggregate as a single issue could be listed in one amount as ''Miscellaneous securities,'' provided that the securities so listed are eligible to be categorized by the fund as ''Miscellaneous securities'' in a complete portfolio schedule dated as of the end of the most recent calendar quarter. However, if any security that is included in ''Miscellaneous securities'' would otherwise be required to be included in a group of securities that is listed in the aggregate as a single issue in the top 10 portfolio holdings, the remaining securities of that group must nonetheless be listed in the top 10 portfolio holdings, even if the remaining securities alone would not otherwise be required to be listed in this manner (*e.g.*, because the combined value of the security listed in ''Miscellaneous securities'' and the remaining securities of the same issuer is sufficient to cause them to be among the 10 largest issues, but the value of the remaining securities alone is not sufficient to cause the remaining securities to be among the 10 largest issues). A brief footnote explaining the term ''Miscellaneous securities'' would be required.[66]

Management

The next item in the proposed prospectus summary section would be the name of each investment adviser and sub-adviser of the fund, followed by the name, title, and length of service of the fund's portfolio managers.[67] These items are similar to disclosures currently required in a fund profile, as well as in the fund's prospectus.[68]

As in the current profile, a fund would not be required to identify a sub-adviser whose sole responsibility is limited to day-to-day management of the fund's cash instruments unless the fund is a money market fund or other fund with a principal investment strategy of regularly holding cash instruments.[69] Also as in the current profile, a fund having three or more sub-advisers, each of which manages a portion of the fund's portfolio, would not be required to identify each sub-adviser, except that the fund would be required to identify any sub-adviser that is (or is reasonably expected to be) responsible for the management of a significant portion of the fund's net assets.[70] We believe that, as in the current profile, a significant portion of the fund's net assets for this purpose generally should be deemed to be 30% or more of the fund's net assets.[71] The portfolio managers required to be listed would be the same ones with respect to which information is currently required in the prospectus.[72]

Purchase and Sale of Fund Shares

The proposed summary section would next disclose the fund's minimum initial or subsequent investment requirements and the fact that the fund's shares are redeemable, and would identify the procedures for redeeming shares (*e.g.*, on any business day by written request, telephone, or wire transfer).[73] This disclosure would be the same as that required in the current rule 498 profile except that we are not proposing to include certain fee disclosures that are also covered by the fee table, including a fund's sales loads, breakpoints, and charges upon redemption.[74]

Tax Information

Our proposals would require a mutual fund to state, as applicable, that it intends to make distributions that may be taxed as ordinary income or capital gains or that the fund intends to distribute tax-exempt income. A fund that holds itself out as investing in securities generating tax-exempt income would be required to provide, as applicable, a general statement to the effect that a portion of the fund's

June 12 Roundtable Transcript, *supra* note 15, at 32 (suggesting that the current profile be amended to include the top 10 portfolio holdings).

[60] Form N–CSR [17 CFR 249.331; 17 CFR 274.128]; Form N–Q [17 CFR 249.332; 17 CFR 274.130].

[61] Proposed Instruction 1 to proposed Item 5 of Form N–1A.

[62] This proposed aggregration provision is the same as that currently applicable for purposes of determining whether the value of an issue exceeds one percent of net asset value in the summary portfolio schedule that may be included in a fund's report to shareholders. Schedule VI of Regulation S–X [17 CFR 210.12–12C] (Summary of Schedule of Investments in Securities of Unaffiliated Issuers).

[63] Proposed Instruction 2 to proposed Item 5 of Form N–1A.

[64] Note 1 to Schedule I of Regulation S–X [17 CFR 210.12–12] (Schedule of Investments in Securities of Unaffiliated Issuers); Note 5 to Schedule VI of Regulation S–X [17 CFR 210.12–12C] (Summary of Schedule of Investments in Securities of Unaffiliated Issuers).

[65] Investment Company Act Release No. 26372, *supra* note 49, 69 FR at 11250.

[66] Proposed Instruction 3 to proposed Item 5 of Form N–1A.

[67] Proposed Item 6 of Form N–1A.

[68] Item 5 of Form N–1A; rule 498(c)(2)(v). Additional disclosures regarding investment advisers and portfolio managers that are currently required in the prospectus would continue to be required, but not in the summary section. Proposed Item 11(a) of Form N–1A.

[69] Proposed Instruction 1 to proposed Item 6(a) of Form N–1A; rule 498(c)(2)(v)(B)(1). A fund would continue to be required to provide the name, address, and experience of all sub-advisers elsewhere in the prospectus. Proposed Item 11(a)(1)(i) of Form N–1A.

[70] Proposed Instruction 2 to proposed Item 6(a) of Form N–1A; rule 498(c)(2)(v)(B)(2).

[71] This proposed exception would be consistent with the requirements of the current profile. Rule 498(c)(2)(v)(B)(2).

[72] Item 5(a)(2) of Form N–1A.

[73] Proposed Item 7 of Form N–1A.

[74] *See* rules 498(c)(2)(vi) and (vii) (profile purchase and sale disclosures).

distributions may be subject to federal income tax.[75] This proposed disclosure is a streamlined version of the tax disclosure required in the current rule 498 profile.[76]

Financial Intermediary Compensation

The proposed summary section of the prospectus would conclude with the following statement, which could be modified provided that the modified statement contains comparable information.[77]

''*Payments to Broker-Dealers and Other Financial Intermediaries*

If you purchase the Fund through a broker-dealer or other financial intermediary (such as a bank), the Fund and its related companies may pay the intermediary for the sale of Fund shares and related services. These payments may influence the broker-dealer or other intermediary and your salesperson to recommend the Fund over another investment. Ask your salesperson or visit your financial intermediary's Web site for more information.''

This disclosure would be new to fund prospectuses and would identify the existence of compensation arrangements with selling broker-dealers or other financial intermediaries, alert investors to the potential conflicts of interest arising from these arrangements, and direct investors to their salesperson or the financial intermediary's Web site for further information. It is intended to address, in part, concerns that mutual fund investors lack adequate information about certain distribution-related costs that create conflicts for broker-dealers and their associated persons.[78]

We request comment generally on the information proposed to be included in the summary section of the statutory prospectus, and in particular on the following issues:

- Does the proposed summary section encourage prospectuses that are simpler, clearer, and more useful to investors? Would the proposed summary section help investors to better compare funds?
- Should each of the proposed items be included in the summary section? Should any additional disclosure items currently required in Form N–1A be included in the summary section? 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?
- How would the required narrative explanations of various items contribute to readability and length of the summary section? Should each of these explanations be required, permitted, or prohibited in the summary section? Should any of these explanations be required to appear in the prospectus, but outside the summary section?
- Is the proposed order of the information appropriate, or should it be modified? If so, how should it be modified?
- Should we also require a fund to disclose whether its objective may be changed without shareholder approval in the summary section?
- 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?
- 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?
- Should we consider any other revisions to headings in the fee table to make them more understandable to investors? For example, should the terms ''load'' or ''12b–1'' be eliminated? Do investors generally understand these terms, or are there clearer terms that we should require?
- How, if at all, should expense reimbursement and fee waiver arrangements be reflected in the fee table and expense example and accompanying disclosures?
- 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? 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.''[79] 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?
- Are there any revisions to the fee table example that would make it more useful for investors? For example, should the fee table example separately break out one-time charges, such as sales loads, and recurring expenses, such as management and 12b–1 fees? Should the required narrative explanation of the purpose of the fee table example be modified or eliminated?
- 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?[80] Should funds be required to provide an explanation of the effect of portfolio turnover on transaction costs and fund performance? 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?
- 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?
- Are there additional performance measures, such as past performance adjusted for the impact of inflation, that

[75] Proposed Item 8 of Form N–1A.

[76] *See* rule 498(c)(2)(viii). The current rule 498 profile also requires (1) a description of how frequently the fund intends to make distributions and what options for reinvestment of distributions are available to investors; (2) a statement that distributions may be taxable at different rates depending on the length of time that the fund holds its assets; and (3) that if a fund expects that its distributions primarily will consist of ordinary income or capital gains, disclosure to that effect be provided. This disclosure would continue to be required in the statutory prospectus. Proposed Items 12(d) and (f)(1)(i) (redesignating current Items 6(d) and (f)(1)(i)).

[77] Proposed Item 9 of Form N–1A.

[78] The Commission has recognized these concerns in a separate initiative in which the Commission proposed to require, among other things, disclosure of mutual fund distribution-related costs and conflicts of interest by selling broker-dealers and other financial intermediaries at the point of sale. Securities Act Release No. 8544 (Feb. 28, 2005) [70 FR 10521 (Mar. 4, 2005)]; Securities Act Release No. 8358 (Jan. 29, 2004) [69 FR 6438 (Feb. 10, 2004)]. One commenter to that proposal recommended use of a short-form disclosure document that would include, among other things, basic information about such potential conflicts of interest. Comment Letter of NASD, dated March 31, 2005, available at: *http://www.sec.gov/rules/proposed/s70604/nasd033005.pdf* (supporting the use of a ''profile plus'' document on the Internet). *See also supra* note 16.

[79] Instruction 3(c)(iii) to Item 3 of Form N–1A.

[80] *Cf.* Instruction 7 to Item 4 of Form N–1A.

should be required in the summary section?

• 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 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?

• 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?

• 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 of, or in addition to, top 10 portfolio holdings? [81]

• 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? Are there situations where this would result in the disclosure of no sub-advisers and, if so, would this be appropriate? Should we, as proposed, provide that a ''significant portion'' of a fund's net assets generally would be deemed to be 30% or more of a fund's net assets? Should a higher or lower percentage or some other measure or standard be used?

• 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?

• 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?

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

• 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?

• 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?

• 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?

3. Conforming and Technical Amendments to Form N–1A

The proposed amendments to Form N–1A would require adding new items to the form and revising and renumbering certain existing items. We are proposing conforming amendments to Form N–1A in order to update the table of contents and the various references to Form N–1A items contained within the form. We are also proposing technical amendments to Form N–1A to update the Commission's telephone number and address.[82]

B. New Delivery Option for Mutual Funds

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

The Commission is proposing to replace rule 498, the current voluntary profile rule, with a new rule that would permit the obligation under the Securities Act to deliver a statutory prospectus with respect to mutual fund securities to be satisfied by sending or giving a Summary Prospectus and providing the statutory prospectus online. In addition, the new rule would require a fund to send the statutory prospectus in paper or by e-mail upon request. The Summary Prospectus would be required to contain the key information that is included in the new summary section of the statutory prospectus in the same order that would be required in the statutory prospectus. As discussed above, the proposal is intended to take advantage of technological developments and the expanded use of the Internet in order to provide investors with information that is easier to use and more readily accessible, while retaining the comprehensive quality of the information that is available to investors today. The proposal provides for a layered approach to disclosure in which key information is sent or given to the investor and more detailed information is provided online and, upon request, is sent in paper or by e-mail.

The proposed new rule would provide that any obligation under Section 5(b)(2) of the Securities Act [83] to have a statutory prospectus precede or accompany the carrying or delivery of a mutual fund security in an offering registered on Form N–1A is satisfied if (1) a Summary Prospectus is sent or given no later than the time of the carrying or delivery of the fund security; [84] and, if any other materials accompany the Summary Prospectus,

[81] *Cf.* Item 22(d)(2) of Form N–1A; Investment Company Act Release No. 26372, *supra* note 49, 69 FR at 11251–52 (requiring similar disclosures in shareholder reports).

[82] Proposed Item 1(b)(3) of Form N–1A.

[83] 15 U.S.C. 77e(b)(2).

[84] A fund could rely upon existing Commission guidance, which typically requires affirmative consent from individual investors, to send or give a Summary Prospectus by electronic means. *See* Securities Act Release No. 7233 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)]; Securities Act Release No. 7856 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)].

the Summary Prospectus is given greater prominence than those materials and is not bound together with any of those materials;[85] (2) the Summary Prospectus that is sent or given satisfies the rule's requirements at the time of the carrying or delivery of the fund security; and (3) the conditions set forth in the rule, which require a fund to provide the statutory prospectus and other information on the Internet in the manner specified in the rule, are satisfied.[86] Section 5(b)(2) of the Securities Act makes it unlawful to deliver a security for purposes of sale or for delivery after sale ''unless accompanied or preceded'' by a statutory prospectus. Under the rule, delivery of the statutory prospectus for purposes of Section 5(b)(2) would be accomplished by sending or giving a Summary Prospectus and by providing the statutory prospectus and other required information online. Failure to comply with the rule's requirements for sending or giving a Summary Prospectus and providing the statutory prospectus and other information online would mean that the rule could not be relied on to meet the Section 5(b)(2) prospectus delivery obligation. Absent satisfaction of the Section 5(b)(2) obligation by other means, a Section 5(b)(2) violation would result. The rule would also require a fund to send the statutory prospectus upon request. This requirement would not be a condition to reliance on the rule, and failure to send the requested statutory prospectus would result in a violation of the rule (as opposed to a violation of Section 5(b)(2)).

The proposed rule also would provide that a communication relating to an offering registered on Form N–1A that is sent or given after the effective date of a mutual fund's registration statement (other than a prospectus permitted or required under Section 10 of the Securities Act) shall not be deemed a prospectus under Section 2(a)(10) of the Securities Act if (1) it is proved that prior to or at the same time with the communication a Summary Prospectus was sent or given to the person to whom the communication was made; and, if any other materials accompany the Summary Prospectus, the Summary Prospectus is given greater prominence than those materials and is not bound together with any of those materials; (2) the Summary Prospectus that was sent or given satisfies the rule's requirements at the time of the communication; and (3) the conditions set forth in the rule, which require a fund to provide the statutory prospectus and other information on the Internet in the manner specified in the rule, are satisfied.[87] This provision is similar to Section 2(a)(10)(a) of the Securities Act, which provides that a communication sent or given after the effective date of the registration statement (other than a prospectus permitted under subsection (b) of Section 10) shall not be deemed a prospectus if it is proved that prior to or at the same time with the communication a written prospectus meeting the requirements for a statutory prospectus at the time of the communication was sent or given to the person to whom the communication was made.[88] Pursuant to this provision, communications that would otherwise be considered ''prospectuses'' subject to the liability provisions of Section 12(a)(2) of the Securities Act are not deemed prospectuses and are not subject to Section 12(a)(2) if they are preceded or accompanied by the statutory prospectus.[89] Similarly, under our proposal, communications that are preceded or accompanied by a Summary Prospectus would not be deemed to be prospectuses and would not be subject to Section 12(a)(2) if all the conditions of the proposed rule are met. These communications would remain subject to the general antifraud provisions of the federal securities laws.[90]

The current proposal is intended to create a disclosure regime that is tailored to the unique needs of mutual fund investors in a manner that provides ready access to the information that investors need, want, and choose to review in connection with a mutual fund purchase decision. In crafting this proposal, the Commission has drawn upon recent initiatives that have harnessed technology in order to provide investors with better access to information.[91] The current proposal provides for a layered approach to disclosure in which key information is sent or given to the investor and more detailed information is provided online and, upon request, is sent in paper or by e-mail. This is intended to provide investors with better ability to choose the amount and type of information to review, as well as the format in which to review it (online or paper). In addition, the provision of a Summary Prospectus containing key information about the fund, coupled with online provision of more detailed information, should aid investors in comparing funds. The requirement that the Summary Prospectus be given greater prominence than, and not be bound together with, accompanying materials is intended to prevent the Summary Prospectus from being obscured by accompanying sales materials and highlight for investors the concise, balanced presentation of the Summary Prospectus. In short, we believe that the proposal has the potential to result in funds providing investors with more usable information than they receive today in a format that investors are more likely to use and understand. Under the proposal, an investor could choose to receive the statutory prospectus in the same paper format that would be provided today.

We request comment generally on the proposed prospectus delivery option for mutual funds and specifically on the following issues:

- 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?
- Are there other approaches that would provide mutual fund investors with key information in a user-friendly 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?
- Should mutual fund investors have the ability to opt out of the rule

[85] *Cf.* 17 CFR 240.17a–5(c)(5)(ii) (requiring a financial disclosure document to be ''given prominence in the materials delivered to customers of the broker or dealer'').

[86] Proposed rule 498(c).

[87] Proposed rule 498(d). This provision would be limited to a mutual fund Summary Prospectus that satisfies the terms of the proposed rule and would not apply in the case of any issuer other than a mutual fund.

[88] 15 U.S.C. 77b(a)(10)(a).

[89] 15 U.S.C. 77*l*(a)(2). Section 12(a)(2) of the Securities Act imposes liability for materially false or misleading statements in a prospectus or oral communication, subject to a reasonable care defense.

[90] *See, e.g.*, Section 17(a) of the Securities Act [15 U.S.C. 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [15 U.S.C. 78j(b)]; Section 34(b) of the Investment Company Act [15 U.S.C. 80a–33(b)].

[91] Exchange Act Release No. 56135, *supra* note 25, 72 FR 42222 (shareholder choice regarding proxy materials); Exchange Act Release No. 55146 (Jan. 22, 2007) [72 FR 4148 (Jan. 29, 2007)] (Internet availability of proxy materials); Securities Act Release No. 8591 (July 19, 2005) [70 FR 44722 (Aug. 3, 2005)] (securities offering reform).

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?

• 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? Are any clarifications of these requirements needed? Are the requirements workable in all situations? Should we permit a Summary Prospectus to be included within a newspaper or magazine? 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 e-mail, 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?

2. Content of Summary Prospectus

The proposed rule sets forth the content requirements that a Summary Prospectus must satisfy.[92] Similar to a current profile, a Summary Prospectus meeting the requirements of the rule would be deemed to be a prospectus that is authorized under Section 10(b) of the Securities Act and Section 24(g) of the Investment Company Act for the purposes of Section 5(b)(1) of the Securities Act.[93] A Summary Prospectus meeting these content requirements could be used to offer securities of the fund pursuant to Section 5(b)(1) even if the other conditions of the rule were not satisfied. The failure to satisfy these other conditions would, however, preclude the use of the Summary Prospectus for the other purposes described in proposed rule 498, including for purposes of satisfying, in part, a fund's obligation under Section 5(b)(2) to deliver a statutory prospectus. In these circumstances, the Section 5(b)(2) obligation to deliver a fund's statutory prospectus would have to be met by means other than the proposed rule or a Section 5(b)(2) violation would result.

General

The proposal generally would require the Summary Prospectus to include the same information as the summary section of the statutory prospectus in the same order as would be required in the statutory prospectus.[94] This key information about investment objectives, costs, and risks would form the body of the Summary Prospectus.

The Summary Prospectus would not be permitted to omit any of the required information or to include additional information except as described below. A document that omits information required in a Summary Prospectus or includes additional information not permitted by the rule would not be a Summary Prospectus under the proposed rule and could not be used under the proposed rule for any purpose, including meeting the obligation to deliver a fund's statutory prospectus.[95]

In addition, a Summary Prospectus would be permitted to describe only one fund, but could describe multiple classes of a single fund.[96] These restrictions are similar to restrictions with respect to the proposed summary section of the statutory prospectus.[97] Like those restrictions, they are intended to result in a presentation of key fund information that is concise and easy to read.

Cover Page or Beginning of Summary Prospectus

The proposed Summary Prospectus would be required to include the following information on the cover page or at the beginning of the Summary Prospectus:

• The fund's name and the share classes to which the Summary Prospectus relates;

• A statement identifying the document as a ''Summary Prospectus''; and

• The approximate date of the Summary Prospectus's first use.

In addition, the cover page or beginning of the Summary Prospectus would be required to include the following legend:

> ''Before you invest, you may want to review the Fund's prospectus, which contains more information about the Fund and its risks. You can find the Fund's prospectus and other information about the Fund online at [_____]. You can also get this information at no cost by calling [_____] or by sending an e-mail request to [_____].'' [98]

In addition, the legend could include a statement to the effect that the Summary Prospectus is intended for use in connection with a defined contribution plan that meets the requirements for qualification under Section 401(k) of the Internal Revenue Code, a tax-deferred arrangement under Section 403(b) or 457 of the Internal Revenue Code, or a variable contract as defined in Section 817(d) of the Internal Revenue Code and is not intended for use by other investors.[99]

The legend would be required to provide an Internet address, toll free (or collect) telephone number, and e-mail address that investors can use to obtain the statutory prospectus and other information.[100] The legend would also be permitted to indicate that the statutory prospectus and other information are available from a financial intermediary (such as a broker-dealer or bank) through which shares of the fund may be purchased or sold. The Internet address at which the statutory prospectus and other information are available would not be permitted to be the address of the Commission's Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'').[101] The address would be required to be specific enough to lead investors directly to the statutory prospectus and other required information, rather than to the home page or other section of the Web site on which the materials are posted.[102] The Web site could be a central site with prominent links to each required document.[103]

[92] Proposed rule 498(b). Proposed rule 498(a) would define terms used in the rule. The Appendix to this release contains a hypothetical Summary Prospectus, which is provided solely for illustrative purposes.

[93] Proposed rule 498(b); rule 498(a)(2) [17 CFR 230.498(a)(2)]. Section 10(b) of the Securities Act authorizes the Commission to adopt rules permitting the use of a prospectus for the purposes of Section 5(b)(1) that summarizes information contained in the statutory prospectus. Section 24(g) of the Investment Company Act authorizes the Commission to permit the use of a prospectus under Section 10(b) of the Securities Act to include information the substance of which is not included in the statutory prospectus. 15 U.S.C. 77j(b); 15 U.S.C. 77e(b)(1); 15 U.S.C. 80a–24(g).

[94] Proposed rule 498(b)(2)(i).

[95] A Summary Prospectus that omits certain information required by the proposed rule or includes additional information not permitted by the proposed rule could be deemed to be a prospectus under Section 10(b) of the Securities Act for purposes of Section 5(b)(1) of the Securities Act pursuant to rule 482 under the Securities Act [17 CFR 230.482] if the conditions of that rule are met.

[96] Proposed rule 498(b)(4).

[97] *See supra* introductory text to Section II.A. and Section II.A.1.

[98] Proposed rule 498(b)(1).

[99] Proposed rule 498(b)(1)(iv)(B).

[100] Proposed rule 498(b)(1)(iv)(A).

[101] *Cf.* rule 14a–16(b)(3) under the Exchange Act [17 CFR 240.14a–16(b)(3)] (similar requirement in rules relating to Internet availability of proxy materials).

[102] For a description of the information required to be available at the Web site and a discussion of the manner in which such information must be available, *see infra* Section II.B.3.

[103] *Cf.* Exchange Act Release No. 55146, *supra* note 91, 72 FR at 4153–54 n. 79 (use of central site with prominent links in electronic delivery of proxy materials).

Updating Requirements

The proposed Summary Prospectus rule, similar to the current voluntary profile rule, would require that average annual total returns and yield be provided as of the end of the most recent calendar quarter prior to the Summary Prospectus's first use.[104] This information would be required to be updated as of the end of each succeeding calendar quarter not later than one month after the completion of the quarter.[105]

The proposed Summary Prospectus rule also would require the top 10 portfolio holdings information to be provided as of the end of the most recent calendar quarter prior to the Summary Prospectus's first use or the immediately prior calendar quarter if the most recent calendar quarter ended less than one month prior to the Summary Prospectus's first use.[106] This is intended to ensure that there is a lag of at least one month between the end of a calendar quarter and disclosure of the top 10 holdings as of the end of that quarter. The portfolio holdings information would be required to be updated on the same schedule as the performance information, at the end of each succeeding calendar quarter not later than one month after the completion of the quarter. The one-month lag is intended to eliminate any potential harm to fund shareholders from predatory trading practices, such as trading ahead of funds or ''front-running,'' that could result from more immediate disclosure of fund portfolio holdings. In order to minimize the number of times that a fund would be required to update its Summary Prospectus, the proposed rule would also permit a one-month lag in the required quarterly update of performance information, so that both items could be updated on the same schedule.

The Commission is proposing to require quarterly updating of performance and portfolio holdings information in the Summary Prospectus because we believe that providing updated information in a concise, summary document may contribute significantly to the usefulness of the document to investors and their financial intermediaries. A fund could reflect the updated performance and portfolio holdings information in the Summary Prospectus by affixing a label or sticker, or by other reasonable means, and would not be required to reprint the Summary Prospectus each quarter.[107] This is intended to minimize the costs of quarterly updating while still resulting in an up-to-date and concise, unified presentation of key information. A fund would not be required to update the performance and portfolio holdings information in its statutory prospectus on a quarterly basis. The proposed rule would provide that the failure to include in a statutory prospectus or registration statement the quarterly updated performance and portfolio holdings information required to be included in a Summary Prospectus would not, solely by virtue of inclusion of the information in a Summary Prospectus, be considered an omission of material information required to be included in the statutory prospectus or registration statement.[108]

Notwithstanding the quarterly updating requirements, the proposed rule would provide that, for purposes of satisfying a fund's prospectus delivery obligations, a Summary Prospectus that satisfies the requirements of the rule at the time it is sent or given shall be deemed to continue to satisfy those requirements until the earlier of the date on which (1) the information in the Summary Prospectus is required to be updated for any purpose other than the required quarterly updates to the portfolio holdings and performance information; or (2) the fund is required to file an annual updating amendment to its registration statement for the purpose of updating its statutory prospectus to satisfy the requirements of Section 10(a)(3) of the Securities Act.[109] Thus, if a fund's Summary Prospectus had previously been provided to an investor, persons could continue to rely on the rule with respect to their prospectus delivery obligations to that investor without providing a new Summary Prospectus that merely reflects the quarterly updates to top 10 holdings and performance information. The previously provided Summary Prospectus would continue to be deemed current for purposes of the proposed rule until the fund is required to update the Summary Prospectus for some other purpose or is required to file an annual updating amendment to its registration statement. This would be true in the case of existing investors as well as new investors. Today, some funds choose to send an updated statutory prospectus to all of their existing shareholders once each year in order to meet their prospectus delivery obligations with respect to those shareholders who purchase additional shares of the fund during the coming year. Under the proposed rule, a fund could instead send an updated Summary Prospectus to its shareholders once each year, so long as the only changes to the Summary Prospectus during the year are the required quarterly updates to holdings and performance information and so long as the other conditions of the rule are satisfied.

We request comment generally on the proposed content and updating requirements of the Summary Prospectus and specifically on the following issues:

- 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? 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?
- 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?
- 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? Or would including multiple funds in a Summary Prospectus contribute to investors'

[104] Proposed rule 498(b)(2)(ii).

[105] *Cf.* rule 498(c)(2)(iii) (current voluntary profile rule requiring quarterly updating of return information as soon as practicable after the completion of each calendar quarter). The date of the performance information would be required to be included along with the performance information. The proposed rule would not require a fund to explain in the Summary Prospectus the reasons for any change in the securities market index used for comparison purposes in the performance presentation. *Cf.* Instruction 2(c) to proposed Item 4(b)(2) of Form N–1A (requiring this explanation in proposed summary section of prospectus). Proposed rule 498(b)(2)(ii).

[106] Proposed rule 498(b)(2)(iii).

[107] Proposed Instruction to proposed rule 498(b)(2)(ii) and (iii).

[108] Proposed rule 498(e)(2). *Cf.* rule 408(b) under the Securities Act [17 CFR 230.408(b)].

[109] Proposed rule 498(e)(1). Section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)] generally requires that when a prospectus is used more than nine months after the effective date of the registration statement, the information in the prospectus must be as of a date not more than sixteen months prior to such use. The effect of this provision is to require mutual funds to update their prospectuses annually to reflect current cost, performance, and other financial information.

ability to compare those funds? 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? 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?

• 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?

• 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? Should the legend include greater detail about the information that is available? Will the legend adequately inform investors of the various means for obtaining additional information about a fund? 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?

• 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)?

• 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?

• 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?

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

• 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? Have any such concerns resulted in practice for funds that currently use the voluntary profile, where performance information is required to be updated on a quarterly basis, but such information is not required to be updated quarterly in the statutory prospectus?

• 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?

• 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?

• 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, affect the usefulness and perceived usefulness of the Summary Prospectus to investors, as well as their willingness to read and use the Summary Prospectus?

• 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? 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?

3. Provision of Statutory Prospectus, SAI, and Shareholder Reports

In addition to sending or giving a Summary Prospectus, a person that decides to rely on the proposed rule to meet its statutory prospectus delivery obligations with respect to a mutual fund's securities would be required to provide the statutory prospectus itself on the Internet, together with other information, in the manner specified by the rule.[110] In order to maximize both the accessibility and usability of the information, the statutory prospectus would be required to be provided in two ways, by posting on an Internet website and by sending the information directly to any investor requesting a copy. Sending the information directly to any investor would not, however, be a condition of reliance on the rule.

Under the proposal, the statutory prospectus and other information would be required to be provided through the Internet as follows. The fund's current Summary Prospectus, statutory prospectus, SAI, and most recent annual and semi-annual reports to shareholders would be required to be accessible, free of charge, at the Web site address specified on the cover page or at the beginning of the Summary Prospectus.[111] These documents would be required to be accessible on or before the time that the Summary Prospectus is sent or given and current versions of the documents would be required to remain on the Web site through the date that is at least 90 days after (i) in the case of reliance on the proposed rule to satisfy the obligation to have a statutory prospectus precede or accompany the carrying or delivery of a mutual fund security, the date that the mutual fund security is carried or delivered, and (ii) in the case of reliance on the proposed rule to deem a communication with respect to a mutual fund security not to be a prospectus under Section 2(a)(10) of the Securities Act, the date that the communication is sent or given.[112] This requirement is designed to ensure continuous access to the information from the time the Summary Prospectus is sent or given until at least 90 days after the date of delivery of a security or communication in reliance on the proposed rule.

We are proposing to require that the information on the Internet be presented in a format that:

[110] Proposed rule 498(c)(3), (d)(3), and (f).

[111] The cost to access the Internet itself (*e.g.*, monthly subscription to an Internet service provider) and related costs, such as the cost of printer ink, would not be considered costs for purposes of determining whether information is accessible, free of charge.

[112] Proposed rule 498(f)(1).

• Is convenient for both reading online and printing on paper;[113]

• permits persons accessing the statutory prospectus or SAI to move directly back and forth between the table of contents in that document and each section of that document referenced in the table of contents;[114] and

• permits persons accessing the Summary Prospectus to move directly back and forth between each section of the Summary Prospectus and (A) any section of the statutory prospectus and SAI that provides additional detail concerning that section of the Summary Prospectus; or (B) tables of contents in the statutory prospectus and SAI that prominently display the sections within those documents that provide additional detail concerning information contained in the Summary Prospectus.[115]

The first requirement is designed to ensure that the information provided over the Internet will be user-friendly, both online and when printed. This imposes on the online information a standard of usability that is comparable to the readability of a paper document. The latter two requirements are intended to result in online information that is in a better and more usable format than the same information when provided in paper. The first of those two requirements would allow an investor or other user to move directly between the table of contents in the prospectus or SAI and the related sections of that document, by a single mouse click and without the need to flip through multiple pages of a paper document. The second requirement would allow an investor to move back and forth between related sections of the Summary Prospectus, statutory prospectus, and SAI, either directly through a single mouse click or indirectly by means of a table of contents in the prospectus or SAI, in which case two mouse clicks would be required.

In addition, persons accessing the Web site must be able to permanently retain, through downloading or otherwise, free of charge, an electronic version of the Summary Prospectus, statutory prospectus, SAI, and shareholder reports in a format that meets the first two requirements enumerated in the preceding paragraph.[116] That is, the format must be convenient for both reading online and printing on paper, and persons accessing the downloaded version of the statutory prospectus or SAI must be able to move directly back and forth between the table of contents in that document and each section of that document referenced in the table of contents. An electronic version that is retained by an investor would not be required to incorporate links between the Summary Prospectus, statutory prospectus, and SAI because we anticipate that there may be technical difficulties associated with keeping these links current.

Compliance with all of the conditions in the proposed rule regarding Internet posting would be required in order to meet prospectus delivery obligations under Section 5(b)(2) of the Securities Act. Failure to comply with any of the conditions would be a violation of Section 5(b)(2) unless the fund's statutory prospectus is delivered by means other than reliance on the rule. The Commission recognizes, however, that there may be times when, due to system outages or other technological issues, a fund is temporarily not in compliance with the Internet posting requirements of the rule, despite the fund's best efforts. For that reason, the proposed rule includes a safe harbor provision stating that the conditions regarding Internet availability of a fund's Summary Prospectus, statutory prospectus, SAI, and shareholder reports would be deemed to be met, notwithstanding the fact that those materials are not available for a time in the manner required, provided that the fund has reasonable procedures in place to ensure that those materials are available in the required manner. In addition, a fund would be required to take prompt action to ensure that those materials become available in the manner required, as soon as practicable following the earlier of the time at which the fund knows or reasonably should have known that the documents are not available in the manner required.[117]

The Commission believes that every investor in a fund taking advantage of the proposed prospectus delivery regime should be permitted to choose whether to review a fund's information on the Internet or whether to receive that information directly, either in paper or through an e-mail. For that reason, the proposed rule would require that a fund (or financial intermediary through which shares of the fund may be purchased or sold) send, at no cost to the requestor and by U.S. first class mail or other reasonably prompt means, a paper 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 paper copy. Similarly, a fund (or financial intermediary through which shares of the fund may be purchased or sold) would also be required to send, at no cost to the requestor and by e-mail, an 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 an electronic copy.[118] This requirement, which is intended to ensure that an investor has prompt access to the required information in the form that he or she prefers, is based on a similar, existing requirement with respect to requests for the SAI and shareholder reports.[119]

The requirement that a fund send a paper or electronic copy of the statutory prospectus, SAI, and most recent annual and semi-annual shareholder reports, as applicable, to a person requesting such a copy would not be a condition to reliance on the rule to satisfy a fund's delivery obligations under Section 5(b)(2) of the Securities Act or the provision that a communication shall not be deemed a prospectus under Section 2(a)(10) of the Securities Act. A person that complied with all other aspects of the proposed rule would not violate Section 5(b)(2) of the Securities Act if the fund failed to send the required paper or electronic copy of the statutory prospectus, SAI, or most recent shareholder reports. This failure would, however, constitute a violation of the Commission's rules.

We request comment generally on the proposal to require that persons relying on the proposed rule provide the fund's statutory prospectus and other information on the Internet and upon request and specifically on the following issues:

• 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?

• Should we require that the information on the Internet Web site be

[113] Proposed rule 498(f)(2)(i). *See also* 17 CFR 240.14a–16(c) (requiring materials to be presented in a format convenient for both reading online and printing in paper when delivering proxy materials electronically).

[114] Proposed rule 498(f)(2)(ii).

[115] Proposed rule 498(f)(2)(iii).

[116] Proposed rule 498(f)(3).

[117] Proposed rule 498(f)(4). This safe harbor would not be available to a fund that repeatedly fails to comply with the proposed rule's Internet posting requirements or that is not in compliance with the requirements over a prolonged period.

[118] Proposed rule 498(g).

[119] *See* Instruction 3 to Item 1 of Form N–1A (requiring the SAI and shareholder reports to be sent within three business days of receipt of a request).

in a format that is convenient for both reading online and printing on paper?

• 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?

• 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?

• 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 data tagging program? [120] 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 any features, such as the ability to search documents for words and phrases, that we should require in documents that are provided electronically?

• 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 be of complying with requirements that downloaded documents retain links, either within a single document or between related passages of multiple documents?

• Does the proposed rule appropriately address the possibility of inadvertent technological problems that may arise from time to time when information is provided electronically? Should funds having technological issues be required to disclose on the Web site that the information was not available for a time in the manner required and explain the reasons for the failure to comply? If so, how long should such information be required to be retained on the Web site? Should funds that are not able to comply for a prolonged period, perhaps a week or more, due to technological issues, or that are not able to comply repeatedly over a long period due to such reasons, be required to notify the Commission and/or investors?

• 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?

• 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 an inability to rely on the rule or a violation of Section 5(b)(2)?

• 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?

4. Incorporation by Reference

Permissible Incorporation by Reference

The proposed rule would permit a fund to incorporate by reference into the Summary Prospectus information contained in its statutory prospectus and SAI, as well as any information from its most recent shareholder report, subject to the conditions described below.[121] A fund would not be permitted to incorporate by reference into the Summary Prospectus information from any other source. In addition, a fund could not incorporate by reference any of the information described above that is required to be included in the Summary Prospectus.[122] Information could be incorporated by reference into the Summary Prospectus only by reference to the specific document that contains the information, and not by reference to another document that incorporates the information by reference.[123] Thus, if a fund's statutory prospectus incorporates the fund's SAI by reference, the Summary Prospectus could not incorporate information in the SAI simply by referencing the statutory prospectus but would be required to reference the SAI directly.[124]

Incorporation by reference of information from a fund's statutory prospectus, SAI, and shareholder report would be permitted only if the fund satisfies the conditions described in Section II.B.3, above, which prescribe the means by which the incorporated information is provided to investors.[125]

[120] Recently, the Commission adopted rule amendments to enable mutual funds to submit information from the risk/return summary section of their prospectuses using interactive data under the Commission's voluntary interactive data program. *See* Securities Act Release No. 8823, *supra* note 24.

[121] Proposed rule 498(b)(3)(i) and (ii).

[122] Proposed rule 498(b)(3)(ii)(B).

[123] Proposed rule 498(b)(3)(ii)(C).

[124] *Cf.* Item 10(d) of Reg. S–K [17 CFR 229.10(d)] (''Except where a registrant or issuer is expressly required to incorporate a document or documents by reference * * * reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information or financial statements to be incorporated by reference includes an incorporation by reference to another document.''). General Instruction D.2 of Form N–1A makes Item 10(d) of Regulation S–K applicable to incorporation by reference into a fund's statutory prospectus.

[125] Proposed rule 498(b)(3)(ii)(A) and (f). As discussed in Section II.B.3, this would not include

In addition, if a fund incorporates information by reference, the Summary Prospectus legend would be required to clearly identify the document from which the information is incorporated, including the date of the document, and explain that any information that is incorporated from the SAI or shareholder report may be obtained, free of charge, in the same manner as the statutory prospectus.[126] A fund that failed to comply with any of these conditions could not incorporate information by reference into its Summary Prospectus. A fund that provides the incorporated information to investors by complying with all of the conditions, including the conditions for providing the incorporated information through the Internet, would not also be required to send or give the incorporated information together with the Summary Prospectus.[127] While a fund would be required to send a paper or electronic copy of the incorporated information upon request, failure to do so would not preclude or nullify the incorporation by reference. It would, however, be a violation of Commission rules.

We are proposing to permit incorporation by reference in the Summary Prospectus in order to further our goal of creating a layered disclosure regime. The proposed rule requires provision to investors of all of the information in the Summary Prospectus, statutory prospectus, SAI, and shareholder reports. By using multiple means to provide this information and using technology to provide information in a layered format, the proposal is intended to facilitate investors' ability to effectively choose to review the particular information in which they are interested. Indeed, each investor in a fund taking advantage of the proposed prospectus delivery regime can also choose the particular means of receiving information because all of the information will be required to be promptly sent to any requesting investor in paper or electronically. We are proposing to permit incorporation by reference in the Summary Prospectus of the statutory prospectus, SAI, and information from the fund's most recent shareholder report because, under the proposal, these documents would be provided at the same time, though by different means.

Our determination to propose to permit incorporation of information into the Summary Prospectus is different from the determination we made with respect to the profile and is made in light of technological advances that have occurred during the intervening years. When the Commission adopted the profile almost 10 years ago, it did not permit incorporation by reference of the statutory prospectus into the profile and stated its belief that allowing this incorporation would be inconsistent with the purpose of the profile and not in the public interest. The Commission noted that the profile was designed to provide summary information about a fund in a self-contained format and that permitting incorporation by reference of the statutory prospectus would be inconsistent with the profile being a self-contained document.

By contrast, we do not intend the Summary Prospectus to be a self-contained document, but rather one element in a layered disclosure regime that results in the simultaneous provision of information to investors through multiple means. Indeed, we intend the Summary Prospectus to provide investors with better, more usable access to the information in the statutory prospectus, SAI, and shareholder reports than they have today. The expansion in Internet access and the strides in the speed and quality of Internet connections since the profile rule was adopted in 1998 have made this possible.[128] At the moment that an investor receives a Summary Prospectus, he or she is also able to immediately review the full statutory prospectus, SAI, and shareholder reports online. Perhaps even more significantly, an investor could make use of required links between the Summary Prospectus and the other documents in order to move quickly and easily between the documents to review particular information of interest to the investor without having to read through lengthy, unrelated information. In addition, under our proposal, an investor who chooses to review the incorporated information in paper or electronically would be sent a copy of this information, promptly upon request. As a result of these considerations, we believe that it is consistent with the purpose of the Summary Prospectus and in the public interest to permit incorporation by reference of the statutory prospectus, SAI, and shareholder reports into the Summary Prospectus, subject to the conditions to incorporation contained in the proposed rule.

Effect of Incorporation by Reference

Proposed rule 498 would provide that, for purposes of rule 159 under the Securities Act,[129] information is conveyed to a person not later than the time that a Summary Prospectus is received by the person if the information is incorporated by reference into the Summary Prospectus in accordance with proposed rule 498. This proposal addresses the question of when information that is incorporated into the Summary Prospectus under proposed rule 498 is conveyed for purposes of Sections 12(a)(2) and 17(a)(2) of the Securities Act.

Under Section 12(a)(2) of the Securities Act, sellers have liability to purchasers for offers or sales by means of a prospectus or oral communication that includes an untrue statement of material fact or omits to state a material fact that makes the statements made, based on the circumstances under which they were made, not misleading. Securities Act Section 17(a)(2) is a general antifraud provision which makes it unlawful for any person in the offer and sale of a security to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

As we have previously stated, we interpret Section 12(a)(2) and Section 17(a)(2) as meaning that, for purposes of assessing whether at the time of sale (including a contract of sale) a prospectus or oral communication or statement includes or represents a material misstatement or omits to state a material fact necessary in order to make the prospectus, oral communication, or statement, in light of the circumstances under which it was

the requirement to send or give a paper or electronic copy of the requested information upon request.

[126] Proposed rule 498(b)(1)(iv)(B) and (b)(3)(ii)(A).

[127] Proposed rule 498(b)(3)(i). *Cf.* Gen. Instr. D.1(b) of Form N–1A (permitting a fund to incorporate by reference any or all of the SAI into the statutory prospectus without delivering the SAI with the prospectus).

[128] In 1998, one study indicated that over one-third of Americans over the age of 16 used the Internet. Associated Press Online, *One-Third of Americans Use Internet* (Aug. 25, 1998). As noted above, more recent surveys show that Internet use among American adults is at an all time high, with approximately three quarters identifying themselves as Internet users. *See supra* note 22. Moreover, very few American homes had broadband connections in 1998. Robert J. Samuelson, *Broadband's Faded Promise,* The Washington Post, at A35 (Dec. 12, 2001) (noting that almost no American homes had broadband in 1998). In contrast, as of early 2007, nearly half of all adult Americans had a broadband connection at home. *See supra* note . *See also* Jesse Noyes, *Broadband signals death of dial-up,* The Boston Herald, at 028 (Aug. 7, 2005) (noting that dial-up speeds have remained constant at 56K since 1998 and cannot go higher, while broadband speeds have grown from 1 megabyte per second to 100 megabytes a second in the past six years).

[129] 17 CFR 230.159.

made, not misleading, information conveyed to the investor only after the time of sale (including a contract of sale) should not be taken into account.[130] In furtherance of this interpretation, we adopted rule 159 under Sections 12(a)(2) and 17(a)(2). Consistent with our interpretation, rule 159 provides that, for purposes of Section 12(a)(2) and 17(a)(2) only, and without affecting any other rights under those sections, for purposes of determining at the time of sale (including the time of the contract of sale) whether a prospectus, oral statement, or a statement [131] includes an untrue statement of material fact or omits to state a material fact necessary in order to make the statements, in light of the circumstances under which they were made, not misleading,[132] any information conveyed to the purchaser only after the time of sale will not be taken into account.

Proposed rule 498 provides that, for purposes of rule 159 (and therefore for purposes of Sections 12(a)(2) and 17(a)(2)), information is conveyed to a person not later than the time that a Summary Prospectus is received by the person if the information is incorporated by reference into the Summary Prospectus in accordance with the proposed rule. For purposes of Sections 12(a)(2) and 17(a)(2), whether or not information has been conveyed to an investor at or prior to the time of the contract of sale is a facts and circumstances determination.[133] We have designed the requirements of proposed rule 498 specifically so that the facts and circumstances surrounding receipt by a person of the Summary Prospectus will, in fact, result in the effective conveyance to that person of any information that is incorporated by reference into the Summary Prospectus in compliance with the conditions of the rule. For that reason, proposed rule 498 expressly states that, for purposes of rule 159, information incorporated into a Summary Prospectus is conveyed not later than the time that the Summary Prospectus is received.[134] The relevant facts and circumstances required by rule 498 include actual receipt of the Summary Prospectus; incorporation by reference of the information into the Summary Prospectus and clear disclosure of how the incorporated information may be obtained free of charge; and continuous Internet availability of the incorporated information in formats that permit permanent retention, are convenient for both reading online and in paper, and meet the document linking requirements of the rule.[135]

Proposed rule 498 addresses one particular set of facts and circumstances under rule 159 and does not address any other situations. For purposes of Sections 12(a)(2) and 17(a)(2), whether or not information has been conveyed to an investor at or prior to the time of the contract of sale remains a facts and circumstances determination. Proposed rule 498 does not address any facts and circumstances relating to operating companies or any other issuers that are not mutual funds, nor does it address any information other than information incorporated by reference into a mutual fund Summary Prospectus in accordance with the proposed rule.

The Commission believes that a person that provides investors with a mutual fund Summary Prospectus in good faith compliance with the proposed rule would be able to rely on Section 19(a) of the Securities Act [136] against a claim that the Summary Prospectus did not include information that is disclosed in the fund's statutory prospectus, whether or not the fund incorporates the statutory prospectus by reference into the Summary Prospectus.[137] Section 19(a) protects a defendant from liability for actions taken in good faith in conformity with any rule of the Commission.[138]

We request comment generally on the proposal to permit incorporation by reference into the Summary Prospectus and specifically on the following issues:

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

5. Filing Requirements for the Summary Prospectus

The Commission is proposing to require each Summary Prospectus to be filed with the Commission on EDGAR

[130] *See* Securities Act Release No. 8591, 70 FR at 44766, *supra* note 91.

[131] These include a prospectus or oral statement in the case of Section 12(a)(2), or a statement to which Section 17(a)(2) is applicable.

[132] Or, in the case of Section 17(a)(2), any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

[133] *See* Securities Act Release No. 8591, 70 FR at 44766, *supra* note 91. Such information could include information in the issuer's registration statement and prospectuses for the offering in question, the issuer's Exchange Act reports incorporated by reference therein, or information otherwise disseminated by means reasonably designed to convey such information to investors. Such information also could include information directly communicated to investors.

[134] Whether or not any or all of the incorporated information was conveyed to an investor *prior to* the time that the Summary Prospectus was received would be a facts and circumstances determination.

[135] *Cf.* Investment Company Act Release No. 13436 (Aug. 12, 1983) [48 FR 37928, 37930 (Aug. 22, 1983)] (discussing incorporation by reference of the SAI into the statutory prospectus); *see also White* v. *Melton,* 757 F. Supp. 267, 272 (S.D.N.Y. 1991) (addressing effect of incorporation by reference of the SAI into the statutory prospectus).

[136] 15 U.S.C. 77s(a).

[137] *Cf.* Investment Company Act Release No. 23065, *supra* note 30, 63 FR at 13972 (similar Commission statement in context of profile).

[138] *See also* Section 38(c) of the Investment Company Act [15 U.S.C. 80a–37(c)] (similar provision under Investment Company Act).

no later than the fifth business day after the date that it is first used.[139] We are not proposing to require that a fund file the Summary Prospectus before it is first used because the content of the Summary Prospectus would be essentially identical to the content of the summary section of the statutory prospectus, which is filed prior to its first use. We are proposing that the Summary Prospectus be filed after it is first used in order to ensure that the Commission's EDGAR system contains a copy of every Summary Prospectus that is actually being used. A Summary Prospectus that is filed on EDGAR will be publicly available; however, a fund could not rely on this availability to satisfy the requirements to post the document online discussed in Section II.B.3. above.

Section 10(b) of the Securities Act provides that a prospectus permitted under that section shall, unless provided otherwise by Commission rule, be filed as part of the registration statement but shall not be deemed part of the registration statement for the purposes of Section 11 of the Securities Act.[140] In accordance with Section 10(b), a Summary Prospectus would be filed as part of the registration statement, but would not be deemed a part of the registration statement for purposes of Section 11 of the Securities Act. A Summary Prospectus would be subject to the stop order and other administrative provisions of Section 8 of the Securities Act.[141] This is in addition to the Commission's power under Section 10(b) of the Securities Act to prevent or suspend the use of the Summary Prospectus, regardless of whether or not it has been filed.[142]

We request comment generally on the proposed filing requirements for the Summary Prospectus and specifically on the following issues:

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

C. Technical and Conforming Amendments

We are proposing the following conforming amendments to rule 482 under the Securities Act, the investment company advertising rule, to reflect the proposed Summary Prospectus and the proposed elimination of the voluntary profile.

- The scope section of rule 482 would be revised to clarify that the rule does not apply to a Summary Prospectus or to a communication that, pursuant to proposed rule 498, is not deemed a ''prospectus'' under section 2(a)(10) of the Securities Act.[143]
- For funds using the Summary Prospectus, the legend required in a rule 482 advertisement regarding the availability of the statutory prospectus would be required to include references to the Summary Prospectus.[144]
- The provision addressing the use of rule 482 advertisements together with a profile that includes an application to purchase shares is deleted as unnecessary.[145]

We are also proposing amendments to various cross-references to Form N–1A in our rules and forms to reflect changes that we are proposing to Form N–1A. These include cross-references in rule 485 under the Securities Act, rules 304 and 401 of Regulation S–T, Form N–4 under the Securities Act and the Investment Company Act, and Form N–14 under the Securities Act. We are also proposing to revise rule 159A under the Securities Act to refer to a Summary Prospectus rather than a profile.

We request comment generally on the proposed technical and conforming amendments.

D. Compliance Date

If the proposed amendments to Form N–1A are adopted, the Commission expects to provide for a transition period after the effective date in order to give funds sufficient time to prepare their registration statements under the amendments. If we adopt the proposed amendments to Form N–1A, we expect to require all initial registration statements on Form N–1A, and all post-effective amendments that are annual updates to effective registration statements on Form N–1A, filed six months or more after the effective date, to comply with the proposed amendments to Form N–1A. We expect that we would not permit a person to rely on rule 498 to satisfy its obligations to deliver a mutual fund's statutory prospectus unless the fund is also in compliance with the amendments to Form N–1A. The Commission requests comment on the proposed compliance date.

III. General Request for Comments

The Commission requests comment on the amendments proposed in this release, whether any further changes to our rules or forms are necessary or appropriate to implement the objectives of our proposed amendments, and on other matters that might affect the proposals contained in this release.

IV. Special Request for Comments From Investors

We are proposing changes that are intended to provide you, the investor, with concise information about mutual funds that is easier to use than the mutual fund prospectuses available today.

Under our proposals, every mutual fund prospectus would include a summary section, consisting of the following key information about the fund: (1) Investment objectives; (2) costs; (3) principal investment strategies, risks, and performance; (4) top 10 portfolio holdings; (5) identity of investment advisers and portfolio managers; (6) brief purchase, sale, and tax information; and (7) information about broker compensation and conflicts. Our intent is that this information would be presented in three or four pages at the front of the prospectus.

We are also proposing to permit mutual funds to send or give you the summary information while providing the prospectus online and, upon your request, sending you a paper copy of the prospectus. The proposal is intended to provide you with key information that is easier to use while using the power of the Internet to make the more detailed information in the prospectus available to you at all times. You would still be able to get the prospectus in paper by asking for it.

We want to know your views on our proposals and on the questions we have asked throughout this release. In

[139] Proposed rule 497(k). We are also proposing to delete the reference to the profile from rule 497(a) [17 CFR 230.497(a)].

[140] 15 U.S.C. 77j(b) and 77k. Congress provided a specific exception from liability under Section 11 of the Securities Act for summary prospectuses under Section 10(b) of the Securities Act in order to encourage the use of summary prospectuses. L. Loss & J. Seligman, *Securities Regulation,* § 2–b–5 (3d ed. 2006) (citing S. Rep. 1036, 83d Cong., 2d Sess. 17–18 (1954) and H.R. Rep. 1542, 83d Cong., 2d Sess. 26 (1954)). Information in the Summary Prospectus that is also contained in the statutory prospectus would be part of the registration statement for the purposes of Section 11 of the Securities Act as a result of its inclusion in the statutory prospectus.

[141] 15 U.S.C. 77h; H.R. Rep. 1542, 83d Cong., 2d Sess., 1954 U.S.C.C.A.N. 2973, 2982 (1954) (noting that the Commission's authority to suspend the use of a defective summary prospectus under Section 10(b) ''is intended to supplement the stop-order powers of the Commission under [S]ection 8'').

[142] 15 U.S.C. 77j(b).

[143] Proposed amendment to rule 482(a).

[144] Proposed rule 482(b)(1).

[145] Proposed rule 482(c).

addition, we want to know your views generally regarding the mutual fund prospectuses that you currently receive. What improvements would you suggest that would make it easier to read and understand mutual fund prospectuses? Would you find it useful to receive a short summary of the key information in a mutual fund prospectus, with the more detailed information readily available to you online and sent to you upon your request? Is the information that we propose to include in the summary section of the prospectus the information that you need to make an informed investment decision? If not, what information would you like to see in the summary?

V. Paperwork Reduction Act

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[146] We are submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[147] The titles for the collections of information are: (1) ''Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies;'' and (2) ''Summary Prospectus for Open-End Management Investment Companies.'' Form N–1A (OMB Control No. 3235–0307) under the Securities Act and the Investment Company Act[148] is used by mutual funds to register under the Investment Company Act and to offer their securities under the Securities Act. The Commission is proposing a new collection of information under proposed rule 498 under the Securities Act to be used by mutual funds that choose to send or give a Summary Prospectus to investors.[149] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

We are proposing an improved mutual fund disclosure framework that is intended to provide investors with information that is easier to use and more readily accessible, while retaining the comprehensive quality of the information that is available today. The foundation of the proposal is the provision to all investors of streamlined and user-friendly information that is key to an investment decision. More detailed information would be provided both on the Internet and, upon an investor's request, in paper or by e-mail.

The proposed amendments to Form N–1A, if adopted, would require every prospectus to include a summary section at the front of the prospectus, consisting of key information about the fund, including investment objectives and strategies, risks, costs, and performance. Proposed rule 498, if adopted, would provide a new option that would permit a person to satisfy its mutual fund prospectus delivery obligations under the Securities Act. Under the proposed option, key information would be sent or given to investors in the form of a Summary Prospectus, and the statutory prospectus would be provided on an Internet Web site. Upon an investor's request, funds would also be required to send the statutory prospectus to the investor.

We are also proposing technical and conforming amendments to rules 159A and 482 under the Securities Act that, if adopted, would reflect the proposed Summary Prospectus and the elimination of the voluntary profile, along with amendments that would update the cross references to Form N–1A contained in rule 485 under the Securities Act, rules 304 and 401 of Regulation S–T, Form N–4 under the Securities Act and the Investment Company Act, and Form N–14 under the Securities Act.[150] These technical and conforming amendments do not constitute a collection of information because we are not altering the legal requirements of these rules and forms.

Finally, proposed amendments to rule 497, if adopted, would provide the requirements for filing Summary Prospectuses with the Commission. These amendments would not constitute a separate collection of information under rule 497 because the burden required by these amendments is part of the collection of information under proposed rule 498.

Form N–1A

Form N–1A, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are open-end management investment companies registered or registering with the Commission. Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements are not confidential.

Much of the information that would be required in the summary section of the prospectus is currently required in a fund's prospectus. However, our proposal would require new information regarding a fund's portfolio holdings and the compensation received by financial intermediaries which would entail costs, including the costs of compiling and reviewing the information. Thus, we estimate that the proposed amendments would increase the hour burden per portfolio per filing of an initial registration statement or the initial creation of a post-effective amendment to a registration statement by 16 hours. We further estimate that subsequent post-effective amendments to a registration statement would require, on average, approximately 4 burden hours per portfolio to update and review the information. Because the PRA estimates represent the average burden over a three-year period, we estimate the average hour burden for one portfolio to comply with the proposed amendments to be approximately 8 hours.[151]

We received 2,397 initial registration statements and post-effective amendments on Form N–1A during our 2006 fiscal year covering approximately 8,726 portfolios. Thus, the incremental hour burden resulting from the proposed amendments relating to the proposed summary section disclosure would be 69,808 hours (8 hours x 8,726 portfolios). If the proposed amendments to Form N–1A are adopted, the total annual hour burden for all funds for preparation and filing of registration statements and post-effective amendments to Form N–1A would be 1,197,088 hours (69,808 hours + 1,127,280 hours).[152]

Rule 498

Proposed rule 498 would contain collection of information requirements. The likely respondents to this information collection are open-end management investment companies registered or registering with the Commission. Under proposed rule 498, use of the Summary Prospectus would be voluntary, but the rule's requirements regarding provision of the statutory prospectus would be

[146] 44 U.S.C. 3501 *et seq.*

[147] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[148] 17 CFR 239.15A; 17 CFR 274.11A.

[149] If proposed rule 498 is adopted, a request would be submitted to OMB to remove the collection of information for current rule 498.

[150] *See supra* notes 143 through 145 and accompanying text.

[151] (16 hours in the first year + 4 hours in the second year + 4 hours in the third year) ÷ 3 years = 8 hours.

[152] Currently, the approved annual hour burden for preparing and filing registration statements on Form N–1A is 1,127,280 hours based on the previous estimate of 2,602 responses, referencing a total of 7,025 portfolios. We currently have outstanding a request for extension of the previously approved collection for Form N–1A. If our request is granted, the annual hour burden will be adjusted accordingly.

mandatory for funds that elect to send or give a Summary Prospectus in reliance upon proposed rule 498. The information provided under proposed rule 498 would not be kept confidential.

Our preliminary estimate is that proposed rule 498 would not impose any substantial new information collection requirements with respect to the initial preparation of a Summary Prospectus beyond those discussed above in connection with the collection of information for Form N–1A. It, however, would impose a ½ hour burden annually associated with the compilation of the additional information required on a cover page or at the beginning of the Summary Prospectus. Proposed rule 498 also would impose hour burdens associated with the quarterly updating of the Summary Prospectus, as well as hour burdens associated with the posting of a fund's Summary Prospectus, statutory prospectus, SAI, and most recent report to shareholders on an Internet Web site. The Commission estimates the average hour burden for one portfolio to comply with the proposed quarterly updating requirements to be approximately 3 hours per quarter, or 9 hours annually for each of the three subsequent quarters.[153] The Commission also estimates that the average hour burden for one portfolio to comply with the proposed Internet Web site posting requirements would be 1 hour per quarter, or 4 hours annually. The Summary Prospectus is voluntary, so the percentage of funds that will choose to provide it is uncertain. Given this uncertainty, we have assumed that 75% of all funds would choose to send or give a Summary Prospectus.[154] Assuming 75% of all funds file a Summary Prospectus, the total annual hour burden for filing and updating Summary Prospectuses and posting the required disclosure documents to an Internet Web site pursuant to proposed rule 498 would be 88,351 hours ((½ hour + 9 hours + 4 hours) × (.75 × 8,726 portfolios)).

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comments to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) evaluate the accuracy of our estimate of the burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–28–07. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–28–07, and be submitted to the Securities and Exchange Commission, Public Reference Room, 100 F Street, NE., Washington, DC 20549–0609. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. We are proposing an improved mutual fund disclosure framework that is intended to provide investors with information that is easier to use and more readily accessible, while retaining the comprehensive quality of the information that is available today. The foundation of the proposal is the provision to all investors of streamlined and user-friendly information that is key to an investment decision. More detailed information would be provided both on the Internet and, upon an investor's request, in paper or by e-mail.

To implement this improved disclosure framework, we are proposing amendments to Form N–1A that would require every prospectus to include a summary section at the front of the prospectus, consisting of key information about the fund, including investment objectives and strategies, risks, costs, and performance. As discussed in the release, this key information has been identified by the participants in the June 2006 roundtable, by investor research, and by a variety of commentators as the information that is important to most investors in selecting mutual funds.[155] The key information would be required to be presented in plain English in a standardized order. Our intent is that this information would be presented succinctly, in three or four pages at the front of the prospectus.

We are also proposing a new option that would permit a person to satisfy its mutual fund prospectus delivery obligations under the Securities Act. Under the proposed option, key information would be sent or given to investors in the form of a Summary Prospectus, and the statutory prospectus would be provided on an Internet Web site. Upon an investor's request, funds would also be required to send the statutory prospectus to the investor. Our intent in proposing this option is that funds take full advantage of the Internet's search and retrieval capabilities in order to enhance the provision of information to mutual fund investors.

Today's proposal has the potential to revolutionize the provision of information to the millions of mutual fund investors who rely on mutual funds for their most basic financial needs. The proposal is intended to help investors who are overwhelmed by the choices among thousands of available funds described in lengthy and legalistic documents to readily access key information that is important to an informed investment decision. At the same time, by harnessing the power of technology to deliver information in better, more usable formats, the proposals can help those investors, their intermediaries, third party analysts, the financial press, and others to locate and compare facts and data from the wealth of more detailed disclosures that are available.

A. Benefits

Possible benefits of the proposed amendments include enhanced

[153] In addition to the annual filing of a registration statement on Form N–1A, quantified above, a fund that chooses to provide Summary Prospectuses would have to update those Summary Prospectuses for each of the subsequent 3 quarters of the year.

[154] We believe our estimate of 75% is reasonable given the potential benefits of our proposed amendments to funds. A recent study of industry participants found that 64% of respondents are very likely to consider using a short-form prospectus and that 31% are somewhat likely to consider using a short-form prospectus. *See* Forrester Consulting Study commissioned on behalf of NewRiver, Inc., *The Short-Form Prospectus*, at 5 (Oct. 2007), available at: *http://www1.newriver.com/news_events/news/new_research_finds_mutual_fund_providers_overwhelmingly_support_the_securities_and_exchange_commissions_proposed_shortform_prospectus_rule.php*. Study respondents included brokerage firms, banks, insurance companies, mutual fund families, and money management and financial advisory firms. *Id.* at 4.

[155] *See supra* notes 16 and 20.

disclosure of information needed to make informed investment decisions about mutual funds, more rapid dissemination of information over the Internet, and reduced printing and mailing costs.

Millions of individual Americans invest in shares of mutual funds, relying on mutual funds for their retirements, their children's educations, and their other basic financial needs.[156] These investors face a difficult task in choosing among the more than 8,000 available mutual funds.[157] Fund prospectuses, which have been criticized by investor advocates, representatives of the fund industry, and others as long and complicated, often prove difficult for investors to use efficiently in comparing their many choices. Current Commission rules require mutual fund prospectuses to contain key information about investment objectives, risks, and expenses that, while important to investors, can be difficult for investors to extract. Prospectuses are often long, both because they contain a wealth of detailed information and because prospectuses for multiple funds are often combined in a single document. Too frequently, the language of prospectuses is complex and legalistic, and the presentation formats make little use of graphic design techniques that would contribute to readability.

Our proposal would require investment information that is key to an investment decision to be provided in a streamlined document with other more detailed information provided elsewhere. The provision of this information to investors in concise, user-friendly formats, as proposed, would allow investors to compare information across funds and may assist them in making better informed portfolio allocation decisions in line with their investment goals.

Our proposal also would provide the additional benefits of increased Internet availability of fund information, by providing layered disclosure that allows investors to move back and forth between the information within the Summary Prospectus and more detailed information within other disclosure documents. These benefits include, among other things, facilitating comparisons among funds and replacing one-size-fits-all disclosure with disclosure that each investor can tailor to his or her own needs. In recent years, access to the Internet has greatly expanded,[158] and significant strides have been made in the speed and quality of Internet connections.[159] Advances in technology offer a promising means to address the length and complexity of mutual fund prospectuses by streamlining the key information that is provided to investors, ensuring that access to the full wealth of information about a fund is immediately and easily accessible, and providing the means to present all information about a fund online in a format that facilitates comparisons of key information, such as expenses, across different funds and different share classes of the same fund. Technology has the potential to replace the current one-size-fits-all mutual fund prospectus with an approach that allows investors, their financial intermediaries, third party analysts, and others to tailor the wealth of available information to their particular needs and circumstances.

Significant technological advances have increased both the market's demand for more timely disclosure and the ability of funds to capture, process, and disseminate information. The proposal would enable funds to take greater advantage of the Internet to more rapidly communicate and deliver information to investors. Accordingly, investor demand for information could be satisfied through relatively inexpensive mass dissemination of the information through electronic means. We anticipate that demand for the information in the statutory prospectus and SAI will increase as access to that information becomes easier through the use of layered disclosure that allows investors, their financial intermediaries, third party analysts, and others to tailor the wealth of available information to their particular needs and circumstances.

The Summary Prospectus proposal also would provide cost savings to funds. We believe that funds will benefit from being able to send or give a Summary Prospectus and not having to print and send statutory prospectuses to all investors and prospective investors. We expect that funds would experience cost savings with respect to both annual mailings to their current shareholders and mailings made in connection with a purchase of fund shares. We estimate that funds distribute 290,000,000 statutory prospectuses annually to their current shareholders and another 64,500,000 in connection with fund purchases.[160] We estimate that the cost savings for annual mailings would be approximately $114,187,500[161] and that the cost savings for purchase mailings would be approximately $75,465,000.[162] These cost savings would be reduced by the costs of sending the statutory prospectus to those investors who request it. We estimate that approximately 10% of 64,500,000 investors making purchases will request that a statutory prospectus be sent to them.[163] We estimate that the cost of sending statutory prospectuses to requesting investors would be

[156] *See supra* note 13.

[157] *See supra* note 14.

[158] *See supra* note 22.

[159] *See supra* note 23.

[160] Often, a fund will mail a statutory prospectus to each of its shareholders annually in addition to mailing a statutory prospectus in response to a purchase of fund shares. For purposes of this analysis, our best estimate of the number of statutory prospectuses mailed annually is based on the approximately 290,000,000 shareholder accounts in 2006. *See* Investment Company Institute, *2007 Investment Company Fact Book,* at 101, *supra* note 13 (noting 289,997,000 shareholder accounts at the end of 2006). We recognize that: some shareholders may currently receive their fund documents electronically; some households where more than one fund investor resides will only receive one copy of the statutory prospectus per household; some accounts may hold more than one fund; and not all funds send out statutory prospectuses annually. Therefore, the actual number of prospectuses mailed annually may be higher or lower than our estimate.

Our estimate of the number of statutory prospectuses sent out to fulfill a fund's prospectus delivery obligation upon purchase is based on information provided by Broadridge Financial Solutions (''Broadridge''). We evaluated the information provided and believe the data likely represent relevant information and costs. We solicit comment on our estimates that incorporate information provided by Broadridge.

[161] Our annual estimates are derived from information we received from Broadridge. Broadridge estimates that the average cost of a statutory prospectus printed in a full production run is $0.27 and that the average cost to mail a statutory prospectus by bulk mail is $0.255. The cost savings with respect to annual mailings were calculated by multiplying the costs of printing and mailing a statutory prospectus by the 290,000,000 statutory prospectuses mailed annually reduced to reflect our estimate that 75% of funds will elect to send Summary Prospectuses (($0.27 for the printing of a statutory prospectus + $0.255 for the mailing of a statutory prospectus) × 290,000,000 statutory prospectuses × 75% of funds).

[162] For purposes of our estimate, we used Broadridge's printing cost estimate of $0.35 that is blended to reflect full production printing runs and digital print on demand documents. This blended rate reflects the fact that a fund may run out of statutory prospectuses produced in a full production run and may have to print additional statutory prospectuses on demand. Broadridge also estimated that the average cost to mail a statutory prospectus by first class mail is $1.21. The cost savings with respect to purchase mailings were calculated by multiplying the costs of printing and mailing a statutory prospectus by 64,500,000 statutory prospectuses mailed in response to a fund purchase reduced to reflect our estimate that 75% of funds will elect to send Summary Prospectuses (($0.35 for the printing of a statutory prospectus + $1.21 for the mailing of a statutory prospectus) × 64,500,000 statutory prospectuses × 75% of funds).

[163] We believe that the actual number of investors who would request that a statutory prospectus be sent to them may actually be lower given that investors may also request delivery by e-mail and our understanding that currently only a small percentage of investors request that a copy of a fund's SAI be sent to them.

$7,546,500.[164] Therefore, we estimate the annual cost savings will be approximately $182,106,000,[165] or approximately $27,826 per portfolio.[166]

The full potential for savings may be reduced by several factors.[167] First, some mutual funds might not elect to send or give Summary Prospectuses pursuant to proposed rule 498. Second, to the extent that some shareholders do not have access to the Internet and request paper copies of prospectuses from the fund, the savings in printing and mailing costs would be reduced. Third, the requirement that funds supply requesting shareholders with paper copies within three business days may limit funds' ability to reduce printing costs by causing them to maintain inventories of paper copies. Technological advances, such as the ability to print documents on demand, however, may alleviate the need for such a paper inventory.

We expect that funds would face the highest level of uncertainty about the extent of investors' continued use of printed statutory prospectuses in the first year after adoption of the proposed amendments. We expect that, as funds gain familiarity with the continued use of printed prospectuses and as shareholders increasingly turn to the Internet for fund information, the number of requested paper copies will decline, as will funds' tendency to print more copies than ultimately are requested.

We request comment on these benefits and any other potential benefits. Specifically, we request comment on our data and analysis, including any data on the printing and mailing cost savings that may be realized as a result of our proposed amendments, if adopted. Are there any other factors that would reduce the costs to funds? We also request comment on the current number of paper copies of the SAI requested by investors and the number of paper copies of the statutory prospectus funds estimate that investors would request if our proposed amendments are adopted.

B. Costs

While our proposal would result in significant cost savings for funds, we believe that there will be costs associated with the proposal. These include the costs for funds to compile and review the new information required by our proposal and to post the required disclosure documents on an Internet Web site. These costs may include both internal costs (for attorneys and other non-legal staff, such as computer programmers, to prepare and review the required disclosure) and external costs (for printing and mailing of the Summary Prospectus). We estimate that the external costs for printing and mailing of the Summary Prospectus would be $104,542,500 [168] or approximately $15,974 per portfolio.[169] There may also be external costs connected with the review of the required disclosure by outside counsel; however, we expect those costs to be minimal given that most of the information required is already required in a fund's prospectus.

For purposes of the PRA, we have estimated that the proposed new disclosure requirements, assuming 75% of funds choose to send or give a Summary Prospectus, would add: (1) 69,808 hours to the annual burden of preparing Form N–1A; and (2) 88,351 hours to the annual burden of preparing and using a Summary Prospectus under proposed rule 498. We estimate that this additional burden would equal total internal costs of $39,935,148 annually [170] or approximately $6,102 per portfolio.[171]

Our proposal also may result in potential costs for individual fund investors. These include any paper and printing costs for those investors who choose to print posted materials. We estimate that approximately 5% of investors making fund purchases will print statutory prospectuses at home at an estimated cost of $2.03 per statutory prospectus.[172] Based on these assumptions, the proposal is estimated to produce annual home printing costs of $4,910,063.[173]

As these costs are difficult to quantify, we request comment on the magnitude of these potential costs and whether there are any other additional potential costs, including whether any such costs would affect different classes of investors differently. We also request comment on the nature and magnitude of our estimates of the costs of the additional disclosure that would be required if our proposal were adopted.

C. Request for Comments

We request comments on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VII. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act [174] and Section 2(b) of the

[164] For purposes of this estimate, we used the blended printing rate of $0.35 and the average first class mail rate of $1.21. The costs were calculated by multiplying the costs of printing and mailing a statutory prospectus by the 64,500,000 prospectuses sent out in response to fund purchases reduced to reflect our estimate that 75% of funds will elect to send Summary Prospectuses and 10% of investors will request a statutory prospectus be mailed to them (($0.35 for the printing of a statutory prospectus + $1.21 for the mailing of a statutory prospectus) × 64,500,000 statutory prospectuses × 75% of funds × 10% of requesting investors).

[165] (($114,187,500 cost savings for annual mailings + $75,465,000 cost savings for purchase mailings) − $7,546,500 cost of sending requested statutory prospectuses).

A recent study of industry participants estimated cost savings of approximately $300,000,000 per year. *See The Short-Form Prospectus*, *supra* note 154, at 6.

[166] $182,106,000 ÷ (8,726 portfolios × 75%).

[167] Our estimates above take into account these possible reductions in cost savings.

[168] Our estimate is derived from estimates provided to us by Broadridge. Broadridge estimates that the average cost to print a Summary Prospectus on demand is $0.11. We note that some funds may receive reduced bulk printing rates; however, Broadridge informed us that it believes that the majority of funds will print the Summary Prospectus on demand. With respect to mailing costs for a Summary Prospectus, Broadridge estimates that Summary Prospectuses sent out annually will be mailed at the bulk rate of $0.255 and that Summary Prospectuses sent out in connection with fund purchases will be mailed first class at a rate of $0.41. Our estimate, therefore, was derived as follows: (($0.11 for printing a Summary Prospectus on demand + $0.255 for bulk mail) × 290,000,000 Summary Prospectuses estimated to be sent out annually × 75% of funds) + (($0.11 for printing a Summary Prospectus on demand + $0.41 for first class mail) × 64,500,000 prospectuses estimated to be sent out in response to a fund purchase × 75% of funds).

[169] $104,542,500 ÷ (8,726 funds × 75%).

[170] This cost increase is estimated by multiplying the total annual hour burden (158,159 hours) by the estimated hourly wage rate of $252.50. The estimated wage figure is based on published rates for compliance attorneys and senior programmers, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding effective hourly rates of $261 and $244, respectively. *See* Securities Industry Association, Report on Management & Professional Earnings in the Securities Industry 2006 (Sept. 2006). The estimated wage rate is further based on the estimate that attorneys and programmers would divide time equally, resulting in a weighted wage rate of $252.50 (($261 × .50) + ($244 × .50)).

[171] $39,935,148 ÷ (8,726 funds × 75%).

[172] Our estimate of potential home printing costs depends on data provided by Lexecon and ADP in response to Exchange Act Release No. 55146, *supra* note. *See* letter from ADP. The Lexecon data was included in the ADP comment letter. To calculate home printing costs, we estimate that 100% of prospectuses are printed in black and white at a cost of $0.035 per page for ink and that the average prospectus length is approximately 45 pages at a cost of $0.010 per page for the paper (($0.035 for ink + $0.010 for paper) × 45 pages).

[173] (64,500,000 purchasers × 75% of funds × 5% of printing investors) × $2.03).

[174] 15 U.S.C. 80a–2(c).

Securities Act[175] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The proposed amendments are intended to provide enhanced disclosure regarding mutual funds. These changes may improve efficiency. The enhanced disclosure requirements may enable shareholders to make more informed investment decisions, which could promote efficiency. We anticipate that the proposed rules, if adopted, would increase efficiency at mutual funds by providing an alternative to the printing and mailing of paper copies of statutory prospectuses.

We anticipate that our proposal will improve investors' ability to make informed investment decisions and, therefore, lead to increased efficiency and competitiveness of the U.S. capital markets. Similarly, the ability of investors to directly locate the information they seek regarding a fund or funds through the use of the Internet may result in more fund investors or existing investors investing in more funds.

We anticipate that this increased market efficiency also may promote capital formation by improving the flow of information between funds and their investors. Specifically, we believe that the proposal will: (1) Facilitate greater availability of information to investors and the market with regard to all funds; (2) reflect the increased importance of electronic dissemination of information, including the use of the Internet; and (3) promote the capital formation process.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. We also request comment on any anti-competitive effects of the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views if possible.

VIII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with the Regulatory Flexibility Act.[176] It relates to the Commission's proposed amendments to Form N–1A under the Securities Act and the Investment Company Act and to proposed new rule 498 under the Securities Act.

A. Reasons for, and Objectives of, Proposed Amendments

We are proposing an improved mutual fund disclosure framework that is intended to provide investors with information that is easier to use and more readily accessible, while retaining the comprehensive quality of the information that is available today. The foundation of the proposal is the provision to all investors of streamlined and user-friendly information that is key to an investment decision. More detailed information would be provided both on the Internet and, upon an investor's request, in paper or by e-mail.

B. Legal Basis

The Commission is proposing amendments to Form N–1A pursuant to authority set forth in Sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)] and Sections 8, 24(a), 24(g), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–24(g), 80a–29, and 80a–37]. The Commission is proposing amendments to rule 498 under the Securities Act pursuant to authority set forth in Sections 5, 6, 7, 10, 19, and 28 of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, 77s, and 77z–3] and Sections 8, 24(a), 24(g), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–24(g), 80a–29, and 80a–37].

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[177] Approximately 131 mutual funds registered on Form N–1A meet this definition.[178]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments would require all funds, including funds that are small entities, to provide key information in a summary section of their statutory prospectuses. In addition, the proposed amendments provide a new option that would permit a person to satisfy its mutual fund prospectus delivery obligations under the Securities Act. Under the proposed option, key information would be sent or given to investors in the form of a Summary Prospectus, and the statutory prospectus would be provided on an Internet Web site. Upon an investor's request, funds would also be required to send the statutory prospectus to the investor. No funds would be required to send or give a Summary Prospectus. However, for purposes of the PRA, we estimate that 75% of all funds would choose to send or give a Summary Prospectus pursuant to proposed rule 498 both to enhance investor access to information about a fund and to take advantage of the cost savings that a fund may realize. If a fund elects the proposed new delivery regime for prospectuses, it would be required to prepare, file, and send or give a Summary Prospectus to investors. Moreover, a fund would be required to update its Summary Prospectus quarterly. The required disclosure in the Summary Prospectus is information that generally would be readily available to funds. A fund would be required to post the statutory prospectus along with other required documents to an Internet Web site and provide either a paper or an e-mail copy of its statutory prospectus to requesting shareholders.

For purposes of the Paperwork Reduction Act, we have estimated that the proposed new disclosure requirements would increase the hour burden of filings on Form N–1A by 69,808 hours annually and for proposed rule 498 by 88,351 hours annually. We estimate that this additional burden would increase total internal costs per fund, including funds that are small entities, by approximately $6,102 per portfolio annually.[179] Also for purposes of the Paperwork Reduction Act, we have estimated that the benefit of decreased printing and other costs would decrease total external costs per fund, including funds that are small entities, by approximately $27,826 per portfolio annually.[180]

The Commission solicits comment on these estimates and the anticipated effect the proposed amendments would have on small entities.

E. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that duplicate, overlap, or conflict with the proposed amendments.

[175] 15 U.S.C. 77b(b).

[176] 5 U.S.C. 603 *et seq.*

[177] 17 CFR 270.0–10.

[178] This estimate is based on analysis by the Division of Investment Management staff of publicly available data.

[179] These figures are based on an estimated hourly wage rate of $252.50. *See supra* note 170. We note that this estimate includes a one-time burden of 16 hours to create the summary section of the statutory prospectus.

[180] *See supra* note 166 and accompanying text.

F. Agency Action to Minimize the Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the proposed amendments, the Commission considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. We believe that the proposed amendments to Form N–1A would provide investors with enhanced disclosure regarding funds. This enhanced disclosure would allow investors to better assess their investment decisions. Different disclosure requirements for funds that are small entities may create the risk that investors in these funds would be less able to evaluate funds and less able to compare different funds, thereby lessening the ability of investors to make informed choices among funds. We believe it is important for the disclosure that would be required by the proposed amendments to Form N–1A to be provided to investors in all funds, not just funds that are not considered small entities.

Proposed rule 498, if adopted, would provide a new option that would permit a person to satisfy its mutual fund prospectus delivery obligations under the Securities Act. Under the proposed option, key information would be sent or given to investors in the form of a Summary Prospectus, and the statutory prospectus would be provided on an Internet Web site. Upon an investor's request, funds would also be required to send the statutory prospectus to the investor. Because the proposed rule is designed to provide investors with more accessible disclosure, an exemption from the proposed rule or separate requirements for small entities would not achieve the goal of more accessible disclosure for the investors in those funds.

We have endeavored through the proposed amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the proposed amendments to the same degree as other funds. We also have endeavored to clarify, consolidate, and simplify disclosure for all funds, including those that are small entities. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the context of prospectus disclosure requirements.

G. Request for Comments

The Commission encourages the submission of written comments with respect to any aspect of this analysis. Comment is specifically requested on the number of small entities that would be affected by the proposed amendments and the likely impact of the proposal on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

IX. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[181] a rule is ''major'' if it results or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

X. Statutory Authority

The Commission is proposing amendments to Form N–1A and Form N–4 pursuant to authority set forth in Sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)] and Sections 8, 24(a), 24(g), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–24(g), 80a–29, and 80a–37]. The Commission is proposing amendments to Form N–14 pursuant to authority set forth in Sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)]. The Commission is proposing amendments to rules 159A, 482, 485, 497, and 498 under the Securities Act and to rules 304 and 401 of Regulation S-T pursuant to authority set forth in Sections 5, 6, 7, 10, 19, and 28 of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, 77s, and 77z–3] and Sections 8, 24(a), 24(g), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–24(g), 80a–29, and 80a–37].

[181] Pub. L. 104–21, Title II, 110 Stat. 857 (1996).

List of Subjects

17 CFR Parts 230 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 232 and 239

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.159A [Amended]

2. Section 230.159A is amended by revising the word ''profile'' in paragraph (a)(2) to read ''summary prospectus''.

3. Section 230.482 is amended by:

a. Revising paragraph (a) before the note; and

b. Revising paragraphs (b)(1) and (c).

The revisions read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

(a) *Scope of rule.* This section applies to an advertisement or other sales material (*advertisement*) with respect to

securities of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (*1940 Act*), or a business development company, that is selling or proposing to sell its securities pursuant to a registration statement that has been filed under the Act. This section does not apply to an advertisement that is excepted from the definition of prospectus by section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) or § 230.498(d) or to a summary prospectus under § 230.498. An advertisement that complies with this section, which may include information the substance of which is not included in the prospectus specified in section 10(a) of the Act (15 U.S.C 77j(a)), will be deemed to be a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purposes of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)).

Note to paragraph (a): * * *

(b) * * *

(1) *Availability of additional information.* An advertisement must include a statement that advises an investor to consider the investment objectives, risks, and charges and expenses of the investment company carefully before investing; explains that the prospectus and, if available, the summary prospectus contain this and other information about the investment company; identifies a source from which an investor may obtain a prospectus and, if available, a summary prospectus; and states that the prospectus and, if available, the summary prospectus should be read carefully before investing.

* * * * *

(c) *Use of applications.* An advertisement that complies with this section may not contain or be accompanied by any application by which a prospective investor may invest in the investment company, except that a prospectus meeting the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) by which a unit investment trust offers variable annuity or variable life insurance contracts may contain a contract application although the prospectus includes, or is accompanied by, information about an investment company in which the unit investment trust invests that, pursuant to this section, is deemed a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)).

* * * * *

§ 230.485 [Amended]

4. Section 230.485 is amended by revising the reference ''Items 5 or 6(a)(2) of Form N–1A'' in paragraph (b)(1)(iv) to read ''Item 6(b) or 11(a)(2) of Form N–1A''.

5. Section 230.497 is amended by revising paragraphs (a) and (k).

The revisions read as follows:

§ 230.497 Filing of investment company prospectuses—number of copies.

(a) Five copies of every form of prospectus sent or given to any person prior to the effective date of the registration statement that varies from the form or forms of prospectus included in the registration statement filed pursuant to § 230.402(a) shall be filed as part of the registration statement not later than the date that form of prospectus is first sent or given to any person, except that an investment company advertisement under § 230.482 shall be filed under this paragraph (a) (but not as part of the registration statement) unless filed under paragraph (i) of this section.

* * * * *

(k) *Summary Prospectus filing requirements.* This paragraph (k), and not the other provisions of § 230.497, shall govern the filing of summary prospectuses under § 230.498. Each definitive form of a summary prospectus under § 230.498 shall be filed with the Commission no later than the fifth business day after the date that it is first used.

6. Revise § 230.498 to read as follows:

§ 230.498 Summary Prospectuses for open-end management investment companies.

(a) *Definitions.* For purposes of this section:

(1) *Class* means a class of shares issued by a Fund that has more than one class that represent interests in the same portfolio of securities under § 270.18f-3 of this chapter or under an order exempting the Fund from sections 18(f), 18(g), and 18(i) of the Investment Company Act (15 U.S.C. 80a–18(f), 80a–18(g), and 80a–18(i)).

(2) *Fund* means an open-end management investment company, or any Series of such a company, that has, or is included in, an effective registration statement on Form N–1A (§§ 239.15A and 274.11A of this chapter) and that has a current prospectus that satisfies the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)).

(3) *Series* means shares offered by a Fund that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with § 270.18f–2(a) of this chapter.

(4) *Statement of Additional Information* means the statement of additional information required by Part B of Form N–1A.

(5) *Statutory Prospectus* means a prospectus that satisfies the requirements of section 10(a) of the Act.

(6) *Summary Prospectus* means the summary prospectus described in paragraph (b) of this section.

(b) *General requirements for Summary Prospectus.* This paragraph describes the requirements for a Fund's Summary Prospectus. A Summary Prospectus that complies with this paragraph (b) will be deemed to be a prospectus that is authorized under section 10(b) of the Act (15 U.S.C. 77j(b)) and section 24(g) of the Investment Company Act (15 U.S.C. 80a–24(g)) for the purposes of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)).

(1) *Cover page or beginning of Summary Prospectus.* Include on the cover page of the Summary Prospectus or at the beginning of the Summary Prospectus:

(i) The Fund's name and the Class or Classes, if any, to which the Summary Prospectus relates.

(ii) A statement identifying the document as a ''Summary Prospectus.''

(iii) The approximate date of the Summary Prospectus's first use.

(iv) The following legend:

Before you invest, you may want to review the Fund's prospectus, which contains more information about the Fund and its risks. You can find the Fund's prospectus and other information about the Fund online at [_____]. You can also get this information at no cost by calling [_____] or by sending an e-mail request to [_____].

(A) The legend must provide an Internet address, other than the address of the Commission's electronic filing system; toll free (or collect) telephone number; and e-mail address that investors can use to obtain the Statutory Prospectus and other information. The Internet Web site address must be specific enough to lead investors directly to the Statutory Prospectus and other materials that are required to be accessible under paragraph (f)(1) of this section, rather than to the home page or other section of the Web site on which the materials are posted. The Web site could be a central site with prominent links to each document. The legend may indicate, if applicable, that the Statutory Prospectus and other information are available from a financial intermediary (such as a broker-dealer or bank) through which shares of the Fund may be purchased or sold.

(B) If a Fund incorporates any information by reference into the Summary Prospectus, the legend must

clearly identify the document from which the information is incorporated, including the date of the document; and, if information is incorporated from a source other than the Statutory Prospectus, the legend must explain that the incorporated information may be obtained, free of charge, in the same manner as the Statutory Prospectus. A Fund may modify the legend to include a statement to the effect that the Summary Prospectus is intended for use in connection with a defined contribution plan that meets the requirements for qualification under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), a tax-deferred arrangement under section 403(b) or 457 of the Internal Revenue Code (26 U.S.C. 403(b) and 457), or a variable contract as defined in section 817(d) of the Internal Revenue Code (26 U.S.C. 817(d)), as applicable, and is not intended for use by other investors.

(2) *Contents of the Summary Prospectus.* (i) Except as otherwise provided in this paragraph (b), provide the information required or permitted by Items 2 through 9 of Form N–1A, and only that information, in the order required by the form.

(ii) Provide in the table required by Item 4(b) of Form N–1A the Fund's average annual total returns and, if applicable, yield as of the end of the most recent calendar quarter prior to the Summary Prospectus's first use. Update the return information as of the end of each succeeding calendar quarter not later than one month after the completion of the quarter. Include the date of the return information in the table. A Summary Prospectus may omit the explanation and information required by Instruction 2(c) to Item 4(b)(2) of Form N–1A.

(iii) Provide the portfolio holdings information required by Item 5 of Form N–1A as of the end of the most recent calendar quarter prior to the Summary Prospectus's first use or the immediately prior calendar quarter if the most recent calendar quarter ended less than one month prior to the Summary Prospectus's first use. Update the portfolio holdings information as of the end of each succeeding calendar quarter not later than one month after the completion of the quarter.

Instruction to paragraphs (b)(2)(ii) and (iii). A Fund may reflect the updated performance and portfolio holdings information in the Summary Prospectus by affixing a label or sticker, or by other reasonable means.

(3) *Incorporation by reference.* (i) Except as provided by paragraph (b)(3)(ii) of this section, information may not be incorporated by reference into a Summary Prospectus. Information that is incorporated by reference into a Summary Prospectus in accordance with paragraph (b)(3)(ii) of this section need not be sent or given with the Summary Prospectus.

(ii) A Fund may incorporate by reference into a Summary Prospectus any or all of the information contained in the Fund's Statutory Prospectus and Statement of Additional Information, and any information from the most recent report to the Fund's shareholders under § 270.30e–1, provided that:

(A) The conditions of paragraphs (b)(1)(iv)(B) and (f) of this section are met;

(B) A Fund may not incorporate by reference into a Summary Prospectus information that paragraphs (b)(1) and (2) of this section require to be included in the Summary Prospectus; and

(C) Information that is permitted to be incorporated by reference into the Summary Prospectus may be incorporated by reference into the Summary Prospectus only by reference to the specific document that contains the information, not by reference to another document that incorporates such information by reference.

(iii) For purposes of § 230.159, information is conveyed to a person not later than the time that a Summary Prospectus is received by the person if the information is incorporated by reference into the Summary Prospectus in accordance with paragraph (b)(3)(ii) of this section.

(4) *Multiple Funds and Classes.* A Summary Prospectus may describe only one Fund, but may describe more than one Class of a Fund.

(c) *Transfer of the security.* Any obligation under section 5(b)(2) of the Act (15 U.S.C. 77e(b)(2)) to have a Statutory Prospectus precede or accompany the carrying or delivery of a Fund security in an offering registered on Form N–1A is satisfied if:

(1) A Summary Prospectus is sent or given no later than the time of the carrying or delivery of the Fund security; and, if any other materials accompany the Summary Prospectus, the Summary Prospectus is given greater prominence than those materials and is not bound together with any of those materials;

(2) The Summary Prospectus that is sent or given satisfies the requirements of paragraph (b) of this section at the time of the carrying or delivery of the Fund security; and

(3) The conditions set forth in paragraph (f) of this section are satisfied.

(d) *Sending communications.* A communication relating to an offering registered on Form N–1A sent or given after the effective date of a Fund's registration statement (other than a prospectus permitted or required under section 10 of the Act) shall not be deemed a prospectus under section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) if:

(1) It is proved that prior to or at the same time with such communication a Summary Prospectus was sent or given to the person to whom the communication was made; and, if any other materials accompany the Summary Prospectus, the Summary Prospectus is given greater prominence than those materials and is not bound together with any of those materials;

(2) The Summary Prospectus that was sent or given satisfies the requirements of paragraph (b) of this section at the time of such communication; and

(3) The conditions set forth in paragraph (f) of this section are satisfied.

(e) *Updated Summary Prospectuses.* (1) For purposes of paragraphs (c) and (d) of this section, a Summary Prospectus that satisfies the requirements of paragraph (b) of this section at the time it is sent or given shall be deemed to continue to satisfy those requirements until the earlier of the date on which:

(i) The information in the Summary Prospectus is required to be updated for any purpose other than compliance with paragraphs (b)(2)(ii) and (iii) of this section; or

(ii) The Fund is required to file an amendment to its registration statement for the purpose of updating its Statutory Prospectus to satisfy the requirements of section 10(a)(3) of the Act (15 U.S.C. 77j(a)(3)).

(2) Unless otherwise required to be included in the Statutory Prospectus or registration statement, the failure to include in a Statutory Prospectus or registration statement the updated return and portfolio holdings information required to be included in a Summary Prospectus by paragraphs (b)(2)(ii) and (b)(2)(iii) of this section will not, solely by virtue of inclusion of the information in a Summary Prospectus, be considered an omission of material information required to be included in the Statutory Prospectus or registration statement.

(f) *Availability of Fund's Statutory Prospectus and certain other Fund documents.* (1) The Fund's current Summary Prospectus, Statutory Prospectus, Statement of Additional Information, and most recent annual and semi-annual reports to shareholders under § 270.30e–1 are publicly accessible, free of charge, at the Web site address specified on the cover page or at the beginning of the Summary

Prospectus on or before the time that the Summary Prospectus is sent or given and current versions of those documents remain on the Web site through the date that is at least 90 days after:

(i) In the case of reliance on paragraph (c) of this section, the date that the Fund security is carried or delivered; or

(ii) In the case of reliance on paragraph (d) of this section, the date that the communication is sent or given.

(2) The materials that are accessible in accordance with paragraph (f)(1) of this section must be presented on the Web site in a format, or formats, that:

(i) Are convenient for both reading online and printing on paper;

(ii) Permit persons accessing the Statutory Prospectus or Statement of Additional Information to move directly back and forth between the table of contents in such document (including from the table of contents required by § 230.481(c)) and each section of the document referenced in the table of contents; and

(iii) Permit persons accessing the Summary Prospectus to move directly back and forth between each section of the Summary Prospectus and:

(A) Any section of the Statutory Prospectus and Statement of Additional Information that provides additional detail concerning that section of the Summary Prospectus, or

(B) Tables of contents in the Statutory Prospectus and Statement of Additional Information that prominently display the sections within the Statutory Prospectus and Statement of Additional Information that provide additional detail concerning that section of the Summary Prospectus.

(3) Persons accessing the materials specified in paragraph (f)(1) of this section must be able to permanently retain, free of charge, an electronic version of such materials in a format, or formats, that meet each of the requirements of paragraphs (f)(2)(i) and (ii) of this section.

(4) The conditions set forth in paragraphs (f)(1), (f)(2), and (f)(3) of this section shall be deemed to be met, notwithstanding the fact that the materials specified in paragraph (f)(1) of this section are not available for a time in the manner required by such paragraphs, provided that:

(i) The Fund has reasonable procedures in place to ensure that the specified materials are available in the manner required by paragraphs (f)(1), (f)(2), and (f)(3) of this section; and

(ii) The Fund takes prompt action to ensure that the specified documents become available in the manner required by paragraphs (f)(1), (f)(2), and (f)(3) of this section, as soon as practicable following the earlier of the time at which it knows or reasonably should have known that the documents are not available in the manner required by paragraphs (f)(1), (f)(2), and (f)(3) of this section.

(g) If paragraph (c) or (d) of this section is relied on with respect to a Fund, the Fund (or a financial intermediary through which shares of the Fund may be purchased or sold) must send, at no cost to the requestor and by U.S. first class mail or other reasonably prompt means, a paper copy of the Fund's Statutory Prospectus, Statement of Additional Information, and most recent annual and semi-annual reports to shareholders to any person requesting such a copy within three business days after receiving a request for a paper copy. If paragraph (c) or (d) of this section is relied on with respect to a Fund, the Fund (or a financial intermediary through which shares of the Fund may be purchased or sold) must send, at no cost to the requestor and by e-mail, an electronic copy of the Fund's Statutory Prospectus, Statement of Additional Information, and most recent annual and semi-annual reports to shareholders to any person requesting such a copy within three business days after receiving a request for an electronic copy. Compliance with this paragraph (g) is not a condition to the ability to rely on paragraph (c) or (d) of this section with respect to a Fund, and failure to comply with paragraph (g) does not negate the ability to rely on paragraph (c) or (d).

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

7. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201, *et seq.*; and 18 U.S.C. 1350.

* * * * *

§ 232.304 [Amended]

8. Section 232.304 is amended by revising the references ''Item 22 of Form N–1A'' in paragraphs (d) and (e) to read ''Item 28 of Form N–1A''.

§ 232.401 [Amended]

9. Section 232.401 is amended by:

a. Revising the reference ''Item 8(a) of Form N–1A'' in paragraph (b)(1)(iii) to read ''Item 14(a) of Form N–1A''; and

b. Revising the reference ''Items 2 and 3 of Form N–1A'' in paragraph (b)(1)(iv) to read ''Items 2, 3, and 4 of Form N–1A''.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

10. The general authority citation for Part 239 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll(d), 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

11. Form N–14 (referenced in § 239.23) is amended by:

a. Revising paragraph (a) in Item 5;

b. Revising the reference ''Items 10 through 22 of Form N–1A'' in Item 12(a) to read ''Items 15 through 28 of Form N–1A''; and

c. Revising the reference ''Items 10 through 13 and 15 through 22 of Form N–1A'' in Item 13(a) to read ''Items 15 through 18 and 20 through 28 of Form N–1A''.

The revision to paragraph (a) of Item 5 reads as follows:

Note: The text of Form N–14 does not, and these amendments will not, appear in the Code of Federal Regulations.

FORM N–14

* * * * *

Item 5. Information About the Registrant

* * * * *

(a) If the registrant is an open-end management investment company, furnish the information required by Items 2 through 9, 10(a), 10(b), and 11 through 14 of Form N–1A under the 1940 Act;

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

12. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

13. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. Revising the Table of Contents;

b. Revising the General Instructions as follows:

i. Revising the phrase ''(except Items 1, 2, 3, and 8), B, and C (except Items 23(e) and (i)-(k))'' in paragraph B.2.(b) to read ''(except Items 1, 2 , 3, 4, and 14), B, and C (except Items 29(e) and (i)-(k))'';

ii. Revising paragraphs B.4.(c), C.3.(a), C.3.(b), and C.3.(c);

iii. Revising the reference ''Items 6(b)–(d) and 7(a)(2)–(5)'' in paragraph

C.3.(d)(i) to read ''Items 12(b)–(d) and 13(a)(2)–(5)''; and

iv. Revising the reference ''Items 2(c)(2)(iii)(B) and (C) and 2(c)(2)(iv)'' in paragraph C.3.(d)(iii) to read ''Items 4(b)(2)(iii)(B) and (C) and 4(b)(2)(iv)'';

c. Revising Item 1 as follows:

i. Removing Instruction 6 to Item 1(b)(1);

ii. In Item 1(b)(3), revising the telephone number ''1–202–942–8090'' to read ''1–202–551–8090''; and

iii. In Item 1(b)(3), revising the zip code ''20549–0102'' to read ''20549–0213'';

d. Redesignating Items 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30 as Items 4, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, respectively;

e. Adding new Item 2;

f. Revising Item 3 as follows:

i. Adding a sentence after the sentence following the heading ''Fees and expenses of the Fund'';

ii. Revising the heading ''Annual Fund Operating Expenses (expenses that are deducted from Fund assets)'';

iii. Adding a new paragraph after the ''Example'' with the heading ''Portfolio Turnover'';

iv. Revising Instruction 1(b);

v. In Instruction 2(a)(i), revising the reference ''Item 7(a)'' to read ''Item 13(a)'';

vi. Revising Instruction 3(e);

vii. In Instruction 3(f)(iii), revising the references ''Item 8(a)'' to read ''Item 14(a)'';

viii. In Instruction 3(f)(vii), revising the reference ''Item 8'' to read ''Item 14'';

ix. Revising Instruction 4(a);

x. Redesignating Instruction 5 as Instruction 6 and adding new Instruction 5; and

xi. In newly redesignated Instruction 6, revising paragraph (b);

g. Revising newly redesignated Item 4 as follows:

i. Removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b);

ii. In newly redesignated Item 4(a), revising the reference ''Item 4(b)'' to read ''Item 10(b)'';

iii. In newly redesignated Item 4(b)(1)(i), revising the reference ''Item 4(c)'' to read ''Item 10(c)'';

iv. In the Instruction to newly redesignated Item 4(b)(1)(iii), revising the reference ''Items 2(c)(1)(ii) and (iii)'' to read ''Items 4(b)(1)(ii) and (iii)'';

v. In newly redesignated Item 4(b)(2)(i), revising the reference ''paragraphs (c)(2)(ii) and (iii)'' to read ''paragraphs (b)(2)(ii) and (iii)'';

vi. In newly redesignated Item 4(b)(2)(iii), revising the reference ''Item 22(b)(7)'' to read ''Item 28(b)(7)'';

vii. In newly redesignated Item 4(b)(2)(iv), revising the reference ''paragraph 2(c)(2)(iii)'' to read ''paragraph 4(b)(2)(iii)'';

viii. In Instruction 1(a) to newly redesignated Item 4(b)(2), revising the reference ''Item 8(a)'' to read ''Item 14(a)'';

ix. In Instruction 1(b) to newly redesignated Item 4(b)(2), revising the reference ''paragraph (c)(2)(i)'' to read ''paragraph (b)(2)(i)'';

x. In Instruction 2(a) to newly redesignated Item 4(b)(2), revising the references ''Item 21(a)'', ''Item 21(b)(1)'', and ''Items 21(b)(2) and (3)'' to read ''Item 27(a)'', ''Item 27(b)(1)'', and ''Items 27(b)(2) and (3)'', respectively;

xi. In Instruction 2(b) to newly redesignated Item 4(b)(2), revising the reference ''Item 22(b)(7)'' to read ''Item 28(b)(7)'';

xii. In Instruction 2(d) to newly redesignated Item 4(b)(2), revising the references ''Item 21(b)(2)'' and ''Item 21'' to read ''Item 27(b)(2)'' and ''Item 27'', respectively;

xiii. In newly redesignated Item 4(b)(2), revising Instructions 2(e), 3(a), 3(b), and 3(c); and

xiv. In Instruction 4 to newly redesignated Item 4(b)(2), revising the reference ''Item 22(b)(7)'' to read ''Item 28(b)(7)'';

h. Adding new Items 5, 6, 7, 8, and 9;

i. In Instruction 5 to newly redesignated Item 10(b)(1), revising the reference ''Item 11(c)(1)'' to read ''Item 17(c)(1)'';

j. Revising newly redesignated Item 11 as follows:

i. Revising paragraph (a)(1)(i);

ii. Revising paragraph (a)(2); and

iii. Removing the Instructions to newly redesignated Item 11(a)(2);

k. In newly redesignated Item 12, removing paragraph (g);

l. Revising newly redesignated Item 13 as follows:

i. In Instruction 1 to newly redesignated Item 13(a)(2), revising the reference ''Item 7'' to read ''Item 13'';

ii. In Instruction 2 to newly redesignated Item 13(a)(2), revising the references ''Item 7'' and ''Items 12(d) and 17(b)'' to read ''Item 13'' and ''Items 18(d) and 23(b)'', respectively;

iii. In newly redesignated Item 13(a)(5), revising the reference ''Item 17(a)'' to read ''Item 23(a)''; and

iv. In the Instruction to newly redesignated Item 13(a)(5), revising the reference ''Item 7'' to read ''Item 13'';

m. Revising newly redesignated Item 17 as follows:

i. In newly redesignated Item 17(d), revising the reference ''Item 4(b)'' to read ''Item 10(b)'';

ii. In newly redesignated Item 17(e), revising the reference ''Item 8'' to read ''Item 14''; and

iii. In Instruction 1 to newly redesignated Item 17(f)(2), revising the reference ''Item 11(f)(2)'' to read ''Item 17(f)(2)'';

n. In newly redesignated Item 18, revising the reference ''Item 12'' to read ''Item 18'';

o. In newly redesignated Items 21(a), 21(b), and 21(c), revising the reference ''Item 5(a)(2)'' to read ''Item 6(b)'';

p. Revising newly redesignated Item 24 as follows:

i. Removing the Instruction to newly redesignated Item 24(a);

ii. In Instruction 4 to newly redesignated Item 24(c), revising the reference ''Item 22'' to read ''Item 28''; and

iii. In Instruction 1 to newly redesignated Item 24(e), revising the reference ''Item 17(e)'' to read ''Item 23(e)'';

q. In Instruction 1 to newly redesignated Item 26(c), revising the references ''Item 7(b)(2)'', ''Item 14(d)'', and ''Item 30'' to read ''Item 13(b)(2)'', ''Item 20(d)'', and ''Item 36'', respectively;

r. Revising newly redesignated Item 28 as follows:

i. In newly redesignated Item 28(a), revising the reference ''Item 17(c)'' to read ''Item 23(c)'';

ii. In newly redesignated Item 28(b)(2), revising the reference ''Item 8(a)'' to read ''Item 14(a)'';

iii. In newly redesignated Item 28(b)(5), revising the reference ''Item 12(a)(1)'' to read ''Item 18(a)(1)'';

iv. In newly redesignated Item 28(b)(7)(ii)(B), revising the reference ''Item 21(b)(1)'' to read ''Item 27(b)(1)'';

v. In Instruction 10 to newly redesignated Item 28(b)(7), revising the reference ''Instruction 5 to Item 3'' to read ''Instruction 6 to Item 3'';

vi. In the Instruction to newly redesignated Item 28(c)(1), revising the references ''Item 22(b)(1)'' and ''Item 22(c)(1)'' to read ''Item 28(b)(1)'' and ''Item 28(c)(1)'', respectively;

vii. In newly redesignated Item 28(c)(2), revising the reference ''Item 8(a)'' to read ''Item 14(a)'';

viii. In Instruction 1(c) to newly redesignated Item 28(d)(1), revising the reference ''Item 8(a)'' to read ''Item 14(a)'';

ix. In Instruction 2(a)(ii) to newly redesignated Item 28(d)(1), revising the reference ''Item 22(d)(1)'' to read ''Item 28(d)(1)''; and

x. In the Instruction to newly redesignated Item 28(d)(4), revising the

reference ''Item 12(f)'' to read ''Item 18(f)'';

s. In newly redesignated Item 29(k), revising the reference ''Item 22'' to read ''Item 28'';

t. Revising newly redesignated Item 33 as follows:

i. In newly redesignated Item 33(b), revising the reference ''Item 20'' to read ''Item 26'';

ii. In Instruction 2 to newly redesignated Item 33(c), revising the reference ''Item 20(c)'' to read ''Item 26(c)''; and

u. In Instruction 1 to newly redesignated Item 35, revising the reference ''Item 14'' to read ''Item 20''.

The additions and revisions are to read as follows:

Note: The text of Form N–1A does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–1A

* * * * *

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Item 14. Financial Highlights Information
Part B: Information Required in a Statement of Additional Information
Item 15. Cover Page and Table of Contents
Item 16. Fund History
Item 17. Description of the Fund and Its Investments and Risks
Item 18. Management of the Fund
Item 19. Control Persons and Principal Holders of Securities
Item 20. Investment Advisory and Other Services
Item 21. Portfolio Managers
Item 22. Brokerage Allocation and Other Practices
Item 23. Capital Stock and Other Securities
Item 24. Purchase, Redemption, and Pricing of Shares
Item 25. Taxation of the Fund
Item 26. Underwriters
Item 27. Calculation of Performance Data
Item 28 Financial Statements
Part C: Other Information
Item 29. Exhibits
Item 30. Persons Controlled by or Under Common Control with the Fund
Item 31. Indemnification
Item 32. Business and Other Connections of the Investment Adviser
Item 33. Principal Underwriters
Item 34. Location of Accounts and Records
Item 35. Management Services
Item 36. Undertakings
Signatures

General Instructions

* * * * *

B. Filing and Use of Form N–1A

* * * * *

4. * * *

(c) The plain English requirements of rule 421 under the Securities Act [17 CFR 230.421] apply to prospectus disclosure in Part A of Form N–1A. The information required by Items 2 through 9 must be provided in plain English under rule 421(d) under the Securities Act.

* * * * *

C. Preparation of the Registration Statement

* * * * *

3. * * *

(a) *Organization of Information.* Organize the information in the prospectus and SAI to make it easy for investors to understand. Notwithstanding rule 421(a) under the Securities Act regarding the order of information required in a prospectus, disclose the information required by Items 2 through 9 in numerical order at the front of the prospectus. Do not precede these Items with any other Item except the Cover Page (Item 1) or a table of contents meeting the requirements of rule 481(c) under the Securities Act. Information that is included in response to Items 2 through 9 need not be repeated elsewhere in the prospectus. Disclose the information required by Item 13 (Distribution Arrangements) in one place in the prospectus.

(b) *Other Information.* A Fund may include, except in response to Items 2 through 9, information in the prospectus or the SAI that is not otherwise required. For example, a Fund may include charts, graphs, or tables so long as the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of the information that is required to be included. Items 2 through 9 may not include disclosure other than that required or permitted by those Items.

(c) *Use of Form N–1A by More Than One Registrant, Series or Class.* Form N–1A may be used by one or more Registrants, Series, or Classes.

(i) When disclosure is provided for more than one Fund or Class, the disclosure should be presented in a format designed to communicate the information effectively. Except as required by paragraph (c)(ii) for Items 2 through 9, Funds may order or group the response to any Item in any manner that organizes the information into readable and comprehensible segments and is consistent with the intent of the prospectus to provide clear and concise information about the Funds or Classes. Funds are encouraged to use, as appropriate, tables, side-by-side comparisons, captions, bullet points, or other organizational techniques when presenting disclosure for multiple Funds or Classes.

(ii) Paragraph (a) requires Funds to disclose the information required by Items 2 through 9 in numerical order at the front of the prospectus and not to precede Items 2 through 9 with other information. A prospectus that contains information about more than one Fund must present all of the information required by Items 2 through 9 for each Fund sequentially and may not integrate the information for more than one Fund together. That is, a prospectus must present all of the information for a particular Fund that is required by Items 2 through 9 together, followed by all of the information for each additional Fund, and may not, for example, present all of the Item 2 (Risk/Return Summary: Investment Objectives/Goals) information for several Funds followed by all of the Item 3 (Risk/Return Summary: Fee Table) information for several Funds. If a prospectus contains information about multiple Funds, clearly identify the name of the relevant Fund at the beginning of the information for the Fund that is required by Items 2 through 9. A Multiple Class Fund may present the information required by Items 2 through 9 separately for each Class or may integrate the information for multiple Classes, although the order of the information must be as prescribed in Items 2 through 9. For example, the prospectus may present all of the Item 2 (Risk/Return Summary: Investment Objectives/Goals) information for several Classes followed by all of the Item 3 (Risk/Return Summary: Fee Table) information for the Classes, or may present Items 2 and 3 for each of several Classes sequentially. Other presentations of multiple Class information also would be acceptable if they are consistent with the Form's

intent to disclose the information required by Items 2 through 9 in a standard order at the beginning of the prospectus. For a Multiple Class Fund, clearly identify the relevant Classes at the beginning of the Items 2 through 9 information for those Classes.

* * * * *

Part A: Information Required in a Prospectus

* * * * *

Item 2. Risk/Return Summary: Investment Objectives/Goals

Disclose the Fund's investment objectives or goals. A Fund also may identify its type or category (*e.g.*, that it is a Money Market Fund or a balanced fund).

Item 3. Risk/Return Summary: Fee Table

* * * * *

Fees and expenses of the Fund

* * * You may qualify for sales charge discounts if you and your family invest, or agree to invest in the future, at least $[_____] in [name of fund family] funds.

* * * * *

Annual Fund Operating Expenses (ongoing expenses that you pay each year as a percentage of the value of your investment)

* * * * *

Example

* * * * *

Portfolio Turnover

The Fund pays transaction costs, such as commissions, when it buys and sells securities (or ''turns over'' its portfolio). A higher portfolio turnover may indicate higher transaction costs. These costs, which are not reflected in annual fund operating expenses or in the example, affect the Fund's performance. During the most recent fiscal year, the Fund's portfolio turnover rate was __% of the average value of its whole portfolio.

Instructions

1. *General.*

(a) * * *

(b) Include the narrative explanations in the order indicated. A Fund may modify the narrative explanations if the explanation contains comparable information to that shown. The narrative explanation regarding sales charge discounts is only required by a Fund that offers such discounts and should specify the minimum level of investment required to qualify for a discount.

* * * * *

3. *Annual Fund Operating Expenses.*

(a) * * *

(e) If there were expense reimbursement or fee waiver arrangements that reduced any Fund operating expenses and will continue to reduce them for no less than one year from the effective date of the Fund's registration statement, a Fund may add two captions to the table: one caption showing the amount of the expense reimbursement or fee waiver, and a second caption showing the Fund's net expenses after subtracting the fee reimbursement or expense waiver from the total fund operating expenses. The Fund should place these additional captions directly below the ''Total Annual Fund Operating Expenses'' caption of the table and should use appropriate descriptive captions, such as ''Fee Waiver [and/or Expense Reimbursement]'' and ''Total Annual Fund Operating Expenses After Fee Waiver [and/or Expense Reimbursement],'' respectively. If the Fund provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, and briefly describe who can terminate the arrangement and under what circumstances.

* * * * *

4. *Example.*

(a) Assume that the percentage amounts listed under ''Total Annual Fund Operating Expenses'' remain the same in each year of the 1-, 3-, 5-, and 10-year periods, except that an adjustment may be made to reflect any expense reimbursement or fee waiver arrangements that reduced any Fund operating expenses during the most recently completed calendar year and that will continue to reduce them for no less than one year from the effective date of the Fund's registration statement. An adjustment to reflect any expense reimbursement or fee waiver arrangement may be reflected only in the period(s) for which the expense reimbursement or fee waiver arrangement is expected to continue.

* * * * *

5. *Portfolio Turnover.* Disclose the portfolio turnover rate provided in response to Item 14(a) for the most recent fiscal year (or for such shorter period as the Fund has been in operation). Disclose the period for which the information is provided if less than a full fiscal year. A Fund that is a Money Market Fund may omit the portfolio turnover information required by this Item.

6. *New Funds.* * * *

(a) * * *

(b) If there are expense reimbursement or fee waiver arrangements that will reduce any Fund operating expenses for no less than one year from the effective date of the Fund's registration statement, a New Fund may add two captions to the table: one caption showing the amount of the expense reimbursement or fee waiver, and a second caption showing the New Fund's net expenses after subtracting the fee reimbursement or expense waiver from the total fund operating expenses. The New Fund should place these additional captions directly below the ''Total Annual Fund Operating Expenses'' caption of the table and should use appropriate descriptive captions, such as ''Fee Waiver [and/or Expense Reimbursement]'' and ''Total Annual Fund Operating Expenses After Fee Waiver [and/or Expense Reimbursement],'' respectively. If the New Fund provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, and briefly describe who can terminate the arrangement and under what circumstances.

* * * * *

Item 4. Risk/Return Summary: Investments, Risks, and Performance

* * * * *

(2) *Risk/Return Bar Chart and Table.*

* * * * *

Instructions

* * * * *

2. *Table.*

* * * * *

(e) Returns required by paragraphs 4(b)(2)(iii)(A), (B), and (C) for a Fund or Series must be adjacent to one another and appear in that order. The returns for a broad-based securities market index, as required by paragraph 4(b)(2)(iii), must precede or follow all of the returns for a Fund or Series rather than be interspersed with the returns of the Fund or Series.

3. *Multiple Class Funds.*

(a) When a Multiple Class Fund presents information for more than one Class together in response to Item 4(b)(2), provide annual total returns in the bar chart for only one of those Classes. The Fund can select which Class to include (*e.g.*, the oldest Class, the Class with the greatest net assets) if the Fund:

(i) Selects the Class with 10 or more years of annual returns if other Classes have fewer than 10 years of annual returns;

(ii) Selects the Class with the longest period of annual returns when the

Classes all have fewer than 10 years of returns; and

(iii) If the Fund provides annual total returns in the bar chart for a Class that is different from the Class selected for the most immediately preceding period, explain in a footnote to the bar chart the reasons for the selection of a different Class.

(b) When a Multiple Class Fund offers a new Class in a prospectus and separately presents information for the new Class in response to Item 4(b)(2), include the bar chart with annual total returns for any other existing Class for the first year that the Class is offered. Explain in a footnote that the returns are for a Class that is not presented that would have substantially similar annual returns because the shares are invested in the same portfolio of securities and the annual returns would differ only to the extent that the Classes do not have the same expenses. Include return information for the other Class reflected in the bar chart in the performance table.

(c) When a Multiple Class Fund presents information for more than one Class together in response to Item 4(b)(2):

(i) Provide the returns required by paragraph 4(b)(2)(iii)(A) of this Item for each of the Classes;

(ii) Provide the returns required by paragraphs 4(b)(2)(iii)(B) and (C) of this Item for only one of those Classes. The Fund may select the Class for which it provides the returns required by paragraphs 4(b)(2)(iii)(B) and (C) of this Item, provided that the Fund:

* * * * *

Item 5. Portfolio Holdings

Provide a list of the ten largest issues contained in the Fund's portfolio, in descending order, together with the percentage of net assets represented by each. Include the date as of which the holdings are provided adjacent to the holdings information.

Instructions.

1. Provide the required information as of the end of the most recent calendar quarter.

2. For purposes of the list, aggregate and treat as a single issue, respectively, (a) all fully collateralized repurchase agreements; and (b) all securities of any one issuer (other than fully collateralized repurchase agreements). The U.S. Treasury and each agency, instrumentality, or corporation, including each government-sponsored entity, that issues U.S. government securities is a separate issuer.

3. Any securities that would be required to be listed separately or included in a group of securities that is listed in the aggregate as a single issue may be listed in one amount as ''Miscellaneous securities,'' provided the securities so listed are eligible to be categorized as ''Miscellaneous securities'' in accordance with *Schedule I—Investments in securities of unaffiliated issuers* [17 CFR 210.12–12] as of the end of the most recent calendar quarter. However, if any security that is included in ''Miscellaneous securities'' would otherwise be required to be included in a group of securities that is listed in the aggregate as a single issue, the remaining securities of that group must nonetheless be listed as required, even if the remaining securities alone would not otherwise be required to be listed in this manner (*e.g.*, because the combined value of the security listed in ''Miscellaneous securities'' and the remaining securities of the same issuer is sufficient to cause them to be among the 10 largest issues, but the value of the remaining securities alone is not sufficient to cause such remaining securities to be among the 10 largest issues). If any securities are listed as ''Miscellaneous securities,'' briefly explain in a footnote what that term represents.

Item 6. Management

(a) *Investment Adviser(s).* Provide the name of each investment adviser of the Fund, including sub-advisers.

Instructions:

1. A Fund need not identify a sub-adviser whose sole responsibility for the Fund is limited to day-to-day management of the Fund's holdings of cash and cash equivalent instruments, unless the Fund is a Money Market Fund or other Fund with a principal investment strategy of regularly holding cash and cash equivalent instruments.

2. A Fund having three or more sub-advisers, each of which manages a portion of the Fund's portfolio, need not identify each such sub-adviser, except that the Fund must identify any sub-adviser that is (or is reasonably expected to be) responsible for the management of a significant portion of the Fund's net assets. For purposes of this paragraph, a significant portion of a Fund's net assets generally will be deemed to be 30% or more of the fund's net assets.

(b) *Portfolio Manager(s).* State the name, title, and length of service of the person or persons employed by or associated with the Fund or an investment adviser of the Fund who are primarily responsible for the day-to-day management of the Fund's portfolio (''Portfolio Manager'').

Instructions:

1. This requirement does not apply to a Money Market Fund.

2. If a committee, team, or other group of persons associated with the Fund or an investment adviser of the Fund is jointly and primarily responsible for the day-to-day management of the Fund's portfolio, information in response to this Item is required for each member of such committee, team, or other group. If more than five persons are jointly and primarily responsible for the day-to-day management of the Fund's portfolio, the Fund need only provide information for the five persons with the most significant responsibility for the day-to-day management of the Fund's portfolio.

Item 7. Purchase and Sale of Fund Shares

(a) *Purchase of Fund Shares.* Disclose the Fund's minimum initial or subsequent investment requirements.

(b) *Sale of Fund Shares.* Also disclose that the Fund's shares are redeemable and briefly identify the procedures for redeeming shares (*e.g.*, on any business day by written request, telephone, or wire transfer).

Item 8. Tax Information

State, as applicable, that the Fund intends to make distributions that may be taxed as ordinary income or capital gains or that the Fund intends to distribute tax-exempt income. For a Fund that holds itself out as investing in securities generating tax-exempt income, provide, as applicable, a general statement to the effect that a portion of the Fund's distributions may be subject to federal income tax.

Item 9. Financial Intermediary Compensation

Include the following statement. A Fund may modify the statement if the modified statement contains comparable information.

Payments to Broker-Dealers and Other Financial Intermediaries.

If you purchase the Fund through a broker-dealer or other financial intermediary (such as a bank), the Fund and its related companies may pay the intermediary for the sale of Fund shares and related services. These payments may influence the broker-dealer or other intermediary and your salesperson to recommend the Fund over another investment. Ask your salesperson or visit your financial intermediary's Web site for more information.

* * * * *

Item 11. Management, Organization, and Capital Structure

(a) *Management.*

(1) *Investment Adviser.*

(i) Provide the name and address of each investment adviser of the Fund, including sub-advisers. Describe the investment adviser's experience as an investment adviser and the advisory services that it provides to the Fund.

* * * * *

(2) *Portfolio Manager.* For each Portfolio Manager identified in response to Item 6(b), state the Portfolio Manager's business experience during the past 5 years. Include a statement, adjacent to the foregoing disclosure, that the SAI provides additional information about the Portfolio Manager's(s') compensation, other accounts managed by the Portfolio Manager(s), and the Portfolio Manager's(s') ownership of securities in the Fund. If a Portfolio Manager is a member of a committee, team, or other group of persons associated with the Fund or an investment adviser of the Fund that is jointly and primarily responsible for the day-to-day management of the Fund's portfolio, provide a brief description of the person's role on the committee, team, or other group (*e.g.*, lead member), including a description of any limitations on the person's role and the relationship between the person's role and the roles of other persons who have responsibility for the day-to-day management of the Fund's portfolio.

* * * * *

14. Form N–4 (referenced in §§ 239.17b and 274.11c) is amended by revising the reference ''Item 22(b)(ii) of Form N–1A'' to read ''Item 28(b)(ii) of Form N–1A'' and by revising the reference ''Item 22(b)(ii) equation'' to read ''Item 28(b)(ii) equation'' in Instruction 3 to Item 21(b)(ii).

Note: The text of Form N–4 does not, and these amendments will not, appear in the Code of Federal Regulations.

By the Commission.

Dated: November 21, 2007.

Nancy M. Morris,

Secretary.

Appendix

Note: This Appendix will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

Hypothetical Summary Prospectus – Prepared By SEC Staff – For Illustrative Purposes Only

THE XYZ BALANCED FUND

(Class A and Class B Shares)

SUMMARY PROSPECTUS

November 1, 2007

Before you invest, you may want to review the Fund's prospectus, which contains more information about the Fund and its risks. You can find the Fund's prospectus and other information about the Fund, including the statement of additional information and most recent reports to shareholders, online at [Web address]. You can also get this information at no cost by calling 1-800-000-0000 or by sending an e-mail request to [e-mail address]. The Fund's prospectus and statement of additional information, both dated April 27, 2007, and most recent report to shareholders, dated June 30, 2007, are all incorporated by reference into this Summary Prospectus.

Investment Objective: Income and capital growth consistent with reasonable risks.

Fees and Expenses of the Fund: The tables below describe the fees and expenses that you may pay if you buy and hold shares of the Fund. You may qualify for sales charge discounts if you and your family invest, or agree to invest in the future, at least $25,000 in XYZ Funds.

Shareholder Fees (fees paid directly from your investment)	Class A	Class B
Maximum Sales Charge (Load) Imposed on Purchases (as percentage of offering price)	5.75%	None
Maximum Deferred Sales Charge (Load) (as percentage of the lower of original purchase price or sale proceeds)	None	5.00%

Annual Fund Operating Expenses (ongoing expenses that you pay each year as a percentage of the value of your investment)	Class A	Class B
Management Fees	0.66%	0.66%
Distribution (12b-1) Fees	0.00%	0.75%
Service (12b-1) Fees	0.23%	0.23%
Other Expenses	0.28%	0.46%
Total Annual Fund Operating Expenses	1.17%	2.10%

Example

The Example below is intended to help you compare the cost of investing in the Fund with the cost of investing in other mutual funds. The Example assumes that you invest $10,000 in the Fund for the time periods indicated. The Example also assumes that your investment has a 5% return each year and that the Fund's operating expenses remain the same. Although your actual costs may be higher or lower, based on these assumptions your costs would be:

	1 year	3 years	5 years	10 years
Class A (whether or not shares are redeemed)	$687	$925	$1,182	$1,914
Class B (if shares are redeemed)	$713	$958	$1,329	$1,974
Class B (if shares are not redeemed)	$213	$658	$1,129	$1,974

Hypothetical Summary Prospectus – Prepared By SEC Staff – For Illustrative Purposes Only

Portfolio Turnover

The Fund pays transaction costs, such as commissions, when it buys and sells securities (or "turns over" its portfolio). A higher portfolio turnover may indicate higher transaction costs. These costs, which are not reflected in annual fund operating expenses or in the example, affect the Fund's performance. During the most recent fiscal year, the Fund's portfolio turnover rate was 63% of the average value of its whole portfolio.

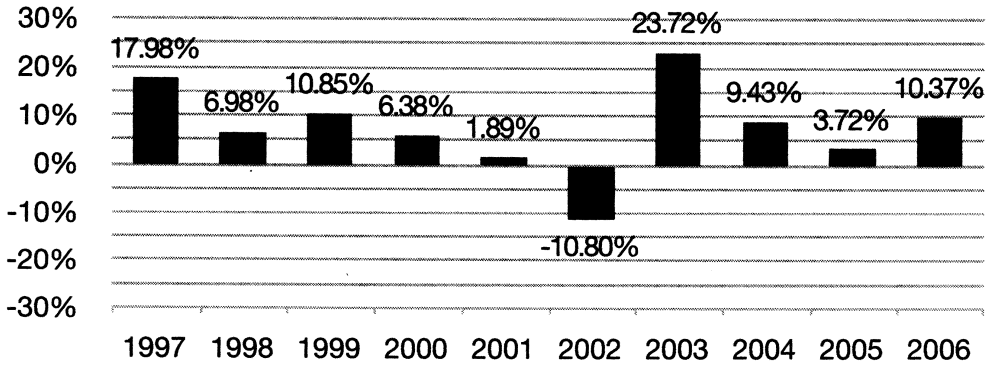
Principal Investment Strategies: The Fund invests mainly in common stocks, bonds, and notes of U.S. and foreign companies. . . . . .

Principal Risks:

- You could lose money by investing in the Fund.
- Risk Number Two – . . . . . .
- Risk Number Three – . . . . . .
- Risk Number Four – . . . . . .
- Risk Number Five – . . . . . .

Annual Total Return: The following bar chart and table provide some indication of the risks of investing in the Fund. The bar chart shows changes in the Fund's performance from year to year for Class A shares. The table shows how the Fund's average annual returns for 1, 5, and 10 years compared with those of a broad measure of market performance. The Fund's past performance (before and after taxes) is not necessarily an indication of how the Fund will perform in the future.

Sales charges are not reflected in the bar chart, and if those charges were included, returns would be less than those shown.



Best Quarter (ended 6/30/03): 12.08%. Worst Quarter (ended 9/30/01): -11.06%. The year-to-date return as of the most recent calendar quarter, which ended September 30, 2007, was 7.03%.

Hypothetical Summary Prospectus – Prepared By SEC Staff – For Illustrative Purposes Only

Average Annual Total Returns for Periods Ended December 31, 2006	1 Year	5 Years	10 Years
Class A (Return Before Taxes)	4.04%	5.72%	7.26%
Class A (Return After Taxes on Distributions)	2.48	4.52	5.05
Class A (Return After Taxes on Distributions and Sale of Fund Shares)	2.30	4.34	4.90
Class B (Return Before Taxes)	4.38	5.62	7.12
S&P 500 Index (reflects no deduction for fees, expenses or taxes)	15.79%	6.19%	8.42%

The after-tax returns are shown only for Class A shares and are calculated using the historical highest individual federal marginal income tax rates and do not reflect the impact of state and local taxes. Actual after-tax returns depend on an investor's tax situation and may differ from those shown. After-tax returns are not relevant to investors who hold their Fund shares through tax-deferred arrangements, such as 401(k) plans or individual retirement accounts.

Top Ten Portfolio Holdings (percent of total net assets) as of September 30, 2007			
Rank	**Security**	**Rank**	**Security**
1	XYZ, Inc. (3.0%)	6	The DEF Co. (1.3%)
2	The ABC Co. (2.3%)	7	The NOP Corp. (1.3%)
3	XYZ Growth, Inc. (1.7%)	8	HIJ Co. (1.1%)
4	The TUV Corp. (1.6%)	9	ABC Corp. (1.0%)
5	QRS Co. (1.4%)	10	OPQ, Inc. (0.9%)

Investment Adviser: XYZ Management Company, LLC

Portfolio Manager: John E. Smith, CFA, Vice President and Equity Portfolio Manager of XYZ Management Company, LLC. Mr. Smith has managed the Fund since 2005.

Purchase and Sale of Fund Shares: You may purchase or redeem shares of the Fund on any business day online or through our Web site at [Web address], by mail (XYZ Funds, Box 1000, Anytown, USA 10000), or by telephone at 800-000-0000. Shares may be purchased by electronic bank transfer, by check, or by wire. You may receive redemption proceeds by electronic bank transfer or by check. You generally buy and redeem shares at the Fund's next-determined net asset value (NAV) after XYZ receives your request in good order. NAVs are determined only on days when the NYSE is open for regular trading. The minimum initial purchase is $2,500. The minimum subsequent investment is $100 (or $50 under an automatic investment plan).

Dividends, Capital Gains, and Taxes: The Fund's distributions are taxable, and will be taxed as ordinary income or capital gains, unless you are investing through a tax-deferred arrangement, such as a 401(k) plan or an individual retirement account.

Payments to Broker-Dealers and Other Financial Intermediaries: If you purchase the Fund through a broker-dealer or other financial intermediary (such as a bank), the Fund and its related companies may pay the intermediary for the sale of Fund shares and related services. These payments may influence the broker-dealer or other intermediary and your salesperson to recommend the Fund over another investment. Ask your salesperson or visit your financial intermediary's Web site for more information.

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