

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 230, 232, 239, and 274**

**[Release Nos. 33-8998; IC-28584; 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:** Final rule.

**SUMMARY:** The Securities and Exchange Commission is adopting 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 amendments 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 adopting rule amendments that 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 are also required to send the statutory prospectus to the investor. These amendments 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. Finally, the Commission is adopting additional amendments that are intended to result in the disclosure of more useful information to investors who purchase shares of exchange-traded funds on national securities exchanges.

**DATES:** Effective date: March 31, 2009.

Compliance Date: See Part III.D. of this release for information on compliance dates.

**FOR FURTHER INFORMATION CONTACT:** Kieran G. Brown, Senior Counsel; Sanjay Lamba, Senior Counsel; Devin F. Sullivan, Attorney; or Mark T. Uyeda, Assistant Director, Office of Disclosure Regulation, at (202) 551-6784, or, with respect to exchange-traded funds, Adam B. Glazer, Senior Counsel, Office of Regulatory Policy, at (202) 551-6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-5720.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission (“Commission”) is adopting amendments to rules 159A,<sup>1</sup> 482,<sup>2</sup> 485,<sup>3</sup> 497,<sup>4</sup> and 498<sup>5</sup> under the Securities Act of 1933 (“Securities Act”) and rules 304<sup>6</sup> and 401<sup>7</sup> of Regulation S-T.<sup>8</sup> The Commission is also adopting amendments to Form N-1A,<sup>9</sup> 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;

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<sup>1</sup> 17 CFR 230.159A.

<sup>2</sup> 17 CFR 230.482.

<sup>3</sup> 17 CFR 230.485.

<sup>4</sup> 17 CFR 230.497.

<sup>5</sup> 17 CFR 230.498.

<sup>6</sup> 17 CFR 232.304.

<sup>7</sup> 17 CFR 232.401.

<sup>8</sup> 17 CFR 232.10 et seq.

<sup>9</sup> 17 CFR 239.15A and 274.11A.

Form N-4,<sup>10</sup> 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,<sup>11</sup> 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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<sup>10</sup> 17 CFR 239.17b and 274.11c.

<sup>11</sup> 17 CFR 239.23.

## Table of Contents

I.	EXECUTIVE SUMMARY .....	7
II.	BACKGROUND .....	8
III.	DISCUSSION.....	15
A.	Amendments to Form N-1A .....	15
1.	General Instructions to Form N-1A .....	17
2.	Exchange Ticker Symbols .....	26
3.	Information Required in Summary Section .....	27
a.	Elimination of Proposed Portfolio Holdings Requirement.....	27
b.	Order of Information.....	30
c.	Investment Objectives and Goals.....	32
d.	Fee Table.....	32
e.	Investments, Risks, and Performance .....	43
f.	Management.....	45
g.	Purchase and Sale of Fund Shares .....	47
h.	Tax Information .....	47
i.	Financial Intermediary Compensation.....	48
4.	Exchange-Traded Funds .....	51
a.	Purchasing and Redeeming Shares .....	52
b.	Total Return .....	54
c.	Premium/Discount Information .....	56
5.	Conforming and Technical Amendments to Form N-1A .....	59

B.	New Delivery Option for Mutual Funds.....	60
1.	Use of Summary Prospectus and Satisfaction of Statutory Prospectus Delivery Requirements.....	60
2.	Content of Summary Prospectus.....	70
a.	General.....	71
b.	Cover Page or Beginning of Summary Prospectus.....	74
c.	Updating Requirements .....	77
3.	Provision of Statutory Prospectus, SAI, and Shareholder Reports.....	81
a.	Documents Required to be Provided on the Internet .....	82
b.	Formatting Requirements for Information Provided on the Internet.....	84
c.	Technological Requirements for Online Information.....	86
d.	Ability to Retain Documents .....	91
e.	Safe Harbor for Temporary Noncompliance .....	92
f.	Requirement to Send Documents.....	93
4.	Incorporation by Reference.....	95
a.	Permissible Incorporation by Reference.....	95
b.	Effect of Incorporation by Reference .....	106
5.	Filing Requirements for the Summary Prospectus .....	110
C.	Technical and Conforming Amendments .....	113
D.	Compliance Date.....	114
IV.	PAPERWORK REDUCTION ACT.....	115
V.	COST/BENEFIT ANALYSIS .....	126
VI.	CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION .....	143

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS ..... 145

VIII. STATUTORY AUTHORITY ..... 152

TEXT OF FINAL RULE AND FORM AMENDMENTS..... 152

## I. EXECUTIVE SUMMARY

Today, the Commission is adopting an improved mutual fund disclosure framework that it originally proposed in November 2007.<sup>12</sup> This improved disclosure framework 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 improved disclosure framework is the provision to all investors of streamlined and user-friendly information that is key to an investment decision.

To implement the new disclosure framework, we are adopting amendments to Form N-1A that will 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. We are also adopting a new option for satisfying prospectus delivery obligations with respect to mutual fund securities under the Securities Act. Under the option, key information will be sent or given to investors in the form of a summary prospectus (“Summary Prospectus”), and the statutory prospectus will be provided on an Internet Web site.<sup>13</sup> Funds that select this option will also be required to send the statutory prospectus to the investor upon request.

In addition, the Commission is adopting amendments to Form N-1A relating to exchange-traded funds (“ETFs”) that we proposed in a separate release in March 2008.<sup>14</sup>

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<sup>12</sup> Investment Company Act Release No. 28064 (Nov. 21, 2007) [72 FR 67790 (Nov. 30, 2007)] (“Proposing Release”).

<sup>13</sup> A “statutory prospectus” is a prospectus that meets the requirements of Section 10(a) of the Securities Act [15 U.S.C. 77j(a)].

<sup>14</sup> See Investment Company Act Release No. 28193 (Mar. 11, 2008) [73 FR 14618 (Mar. 18, 2008)] (“ETF Proposing Release”).

These amendments are intended to result in the disclosure of more useful information to investors who purchase shares of exchange-traded funds on national securities exchanges.

## II. BACKGROUND

Millions of individual Americans invest in shares of open-end management investment companies (“mutual funds”),<sup>15</sup> relying on mutual funds for their retirement, their children’s education, and their other basic financial needs.<sup>16</sup> These investors face a difficult task in choosing among the more than 8,000 available mutual funds.<sup>17</sup> Fund prospectuses, which have been criticized by investor advocates, representatives of the fund industry, and others as being too long and complicated, often prove difficult for investors to use efficiently in comparing their many choices.<sup>18</sup> Current Commission rules

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<sup>15</sup> 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)].

<sup>16</sup> Investment Company Institute, 2008 Investment Company Fact Book, at 70 (2008) (“2008 ICI Fact Book”), available at [http://www.ici.org/pdf/2008\\_factbook.pdf](http://www.ici.org/pdf/2008_factbook.pdf) (88 million individual investors own mutual funds).

<sup>17</sup> Id. at 16 (in 2007, there were 8,752 mutual funds).

<sup>18</sup> See, e.g., Don Phillips, Managing Director, Morningstar, Inc., Transcript of U.S. Securities and Exchange Commission Interactive Data Roundtable, at 26 (June 12, 2006), available at <http://www.sec.gov/spotlight/xbri/xbriofficialtranscript0606.pdf> (“June 12 Roundtable Transcript”) (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 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](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”).

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.<sup>19</sup> Furthermore, recent investor surveys indicate that investors prefer to receive information in concise, user-friendly formats.<sup>20</sup>

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<sup>19</sup> See, e.g., 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 18 (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, 109<sup>th</sup> 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 18, 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

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.<sup>21</sup> 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.<sup>22</sup> There was consensus among the roundtable participants that the key information that investors need to make an investment decision includes information

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[http://www.finra.org/web/groups/rules\\_regs/documents/rules\\_regs/p013690.pdf](http://www.finra.org/web/groups/rules_regs/documents/rules_regs/p013690.pdf) (“NASD Mutual Fund Task Force Report”). The name of NASD has been changed to the Financial Industry Regulatory Authority, Inc. (“FINRA”).

<sup>20</sup> See ICI Investor Preferences Study, *supra* note 18, 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](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).

<sup>21</sup> See, e.g., Henry H. Hopkins, Vice President and Chief Legal Counsel, T. Rowe Price Group, Inc., June 12 Roundtable Transcript, *supra* note 18, at 31 (“[S]hareholders prefer receiving a concise summary of fund information before buying.”).

<sup>22</sup> See, e.g., 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’ Web site or upon request in paper).

about a mutual fund's investment objectives and strategies, risks, costs, and performance.<sup>23</sup>

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.<sup>24</sup> In recent years, access to the Internet has greatly expanded,<sup>25</sup> and significant strides have been made in the speed

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<sup>23</sup> See, e.g., Barbara Roper, Director of Investor Protection, Consumer Federation of America, *id.* 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.”).

<sup>24</sup> See, e.g., 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”).

<sup>25</sup> 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](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](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 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/fm-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

and quality of Internet connections.<sup>26</sup> 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.<sup>27</sup> More recently, we proposed rules that would require mutual funds to provide the risk/return summary section of their prospectuses, and companies to provide their financial statements, to the Commission in interactive data format.<sup>28</sup> In addition, we recently adopted rules that provide all shareholders with the ability to choose whether to receive proxy materials in paper or via the Internet.<sup>29</sup>

As suggested by the participants at the June 2006 roundtable, advances in technology also offer a promising means to address the length and complexity of mutual

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Close, THE NEW YORK TIMES (Mar. 31, 2006), available at: <http://www.nytimes.com/2006/03/31/us/31divide.html?ex=1301461200&en=6fd4e942aa04ad&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.”).

<sup>26</sup> 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](http://www.pewinternet.org/pdfs/PIP_Broadband%202007.pdf) (47% of all adult Americans had a broadband connection at home as of early 2007).

<sup>27</sup> See Investment Company Act Release No. 27884 (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).

<sup>28</sup> Investment Company Act Release No. 28298 (June 10, 2008) [73 FR 35442 (June 23, 2008)]; Securities Act Release No. 8924 (May 30, 2008) [73 FR 32794 (June 10, 2008)].

<sup>29</sup> Exchange Act Release No. 56135 (July 26, 2007) [72 FR 42222 (Aug. 1, 2007)].

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.<sup>30</sup> 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.

In November 2007, the Commission proposed an improved mutual fund disclosure framework that was intended to address the concerns that have been raised about mutual fund prospectuses and to make use of technological advances to enhance the provision of information to mutual fund investors. The Commission received approximately 155 comment submissions.<sup>31</sup> The commenters generally supported the proposals, with some commenters suggesting specific changes to the proposals. Commission staff also arranged for investor focus group testing of the proposed Summary Prospectus.<sup>32</sup> Today, the Commission is adopting the proposed amendments

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<sup>30</sup> 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].

<sup>31</sup> In response to the ETF Proposing Release, the Commission received seven comment submissions that addressed the proposed ETF amendments to Form N-1A.

<sup>32</sup> The Commission engaged a consultant to conduct focus group interviews and a telephone survey concerning investors' views and opinions about various disclosure documents filed by companies, including mutual funds. During this process, investors participating in focus groups were asked questions about a hypothetical Summary Prospectus. Investors participating in the telephone survey were asked questions relating to several disclosure documents, including mutual fund prospectuses. We have placed in the comment file (available at <http://www.sec.gov/comments/s7-28-07/s72807.shtml>) for the proposed rule the following documents from the investor testing that relate to mutual

with modifications to respond to the focus group testing and to address commenters' recommendations.

We are adopting amendments to Form N-1A that will 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 is required to be presented in plain English in a standardized order. Our intent is that this information will be presented succinctly, in three or four pages, at the front of the prospectus.

We are also adopting a new option for satisfying prospectus delivery obligations with respect to mutual fund securities under the Securities Act. Under the option, key information will be sent or given to investors in the form of a Summary Prospectus, and the statutory prospectus will be provided on an Internet Web site. Upon an investor's request, funds will also be required to send the statutory prospectus to the investor. Our intent in providing 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.

The disclosure framework that we are adopting has the potential to revolutionize the provision of information to the millions of investors who rely on mutual funds for their most basic financial needs. It is intended to help investors who are overwhelmed by the choices among thousands of available funds described in lengthy and legalistic

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fund prospectuses and the proposed Summary Prospectus: (1) the consultant's report concerning focus group testing of the hypothetical Summary Prospectus and related disclosures ("Focus Group Report"); (2) transcripts of focus groups relating to the hypothetical Summary Prospectus and related disclosures ("Focus Group Transcripts"); (3) disclosure examples used in these focus groups; and (4) an excerpt from the consultant's report concerning the telephone survey of individual investors ("Telephone Survey Report").

documents to access readily 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 useable formats, the disclosure framework 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.

### **III. DISCUSSION**

#### **A. Amendments to Form N-1A**

The Commission is adopting, with modifications to address commenters' suggestions, amendments to Form N-1A that will 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.<sup>33</sup> Commenters and investors participating in focus groups arranged by Commission staff generally supported the proposed summary presentation and agreed that it will address investors' preferences for concise, user-friendly information.<sup>34</sup> The summary section will provide investors with key information about the fund that investors can use to evaluate and compare the fund. This summary will be located in a standardized, easily accessible place and will be available to all investors, regardless of whether the fund uses a Summary Prospectus and whether the investor is reviewing the prospectus in a paper or electronic format.

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<sup>33</sup> The Commission is also adopting amendments to Form N-1A relating to exchange-traded funds. See discussion infra Part III.A.4.

<sup>34</sup> See, e.g., Letter of AARP (Feb. 28, 2008) (“AARP Letter”); Letter of Capital Research and Management Company (Feb. 28, 2008) (“Capital Research Letter”); Letter of Fund Democracy, Consumer Federation of America, and Consumer Action (Feb. 28, 2008) (“Fund Democracy et al. Letter”); Letter of Investment Company Institute (Feb. 28, 2008) (“ICI Letter”); Letter of Mutual Fund Directors Forum (Feb. 28, 2008) (“MFDF Letter”); Letter of Morningstar, Inc. (Feb. 27, 2008) (“Morningstar Letter”); Focus Group Report, supra note 32, at 5.

As in our proposal, the information required in the summary section of the prospectus will be the same as that required in the new Summary Prospectus, and it is key information that is important to an investment decision. We believe, and commenters generally agreed,<sup>35</sup> 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. For that reason, we are requiring the same information in the summary section of the statutory prospectus and in the Summary Prospectus. In each case, our intent is that funds prepare a concise summary (on the order of three or four pages) that will provide key information.

In addition, with the exception of some information that is common to multiple funds, we are requiring, as proposed, that the summary section be presented separately for each fund covered by a multiple fund prospectus and that the information for multiple funds not be integrated.<sup>36</sup> This requirement is intended to assist investors in finding important information regarding the particular fund in which they are interested. Multiple fund prospectuses contribute substantially to prospectus length and complexity, which act as barriers to understanding. We have concluded that requiring a self-contained summary section for each fund will significantly aid investors' ability to use multiple fund prospectuses effectively.

The Commission is committed to encouraging statutory prospectuses that are simpler, clearer, and more useful to investors. The prospectus summary section is

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<sup>35</sup> See, e.g., Letter of Bo Li (Feb. 28, 2008) (“Bo Li Letter”); Letter of Data Communiqué, Inc. (Feb. 27, 2008) (“Data Communiqué Letter”); Letter of Firehouse Communications LLC (Feb. 29, 2008) (“Firehouse Letter”); Letter of L. A. Schnase (Feb. 26, 2008) (“Schnase Letter”). But see Letter of Kathleen K. Clarke (Mar. 4, 2008) (“Clarke Letter”).

<sup>36</sup> General Instruction C.3.(c)(ii) of Form N-1A.

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 adopting the following amendments to Form N-1A in order to implement the summary section.

## **1. General Instructions to Form N-1A**

We are adopting, substantially as proposed, amendments to the General Instructions to Form N-1A to address the new summary section of the statutory prospectus. These amendments address plain English and organizational requirements.

### Plain English

We are amending, as proposed, 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.<sup>37</sup> 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.<sup>38</sup> The amended instruction will 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 useable summaries at the front of their prospectuses. The prospectus, in

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<sup>37</sup> General Instruction B.4.(c) of Form N-1A; rule 421(d) [17 CFR 230.421(d)].

Commenters generally supported the use of plain English in the summary section. See, e.g., AARP Letter, supra note 34; Letter of CFA Institute (Feb. 28, 2008) (“CFA Institute Letter”); Letter of Committee on Federal Regulation of Securities of the American Bar Association’s Section of Business Law (Mar. 17, 2008) (“ABA Letter”); Letter of Investment Company Institute and Securities Industry and Financial Markets Association (Feb. 28, 2008) (“ICI and SIFMA Letter”).

<sup>38</sup> Rule 421(d) lists 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.

its entirety, also will remain subject to the requirement that the information be presented in a clear, concise, and understandable manner.<sup>39</sup>

### Organizational Requirements

We are also adopting amendments to the organizational requirements of the General Instructions, with one modification to address commenters' suggestions. The amendments will 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.<sup>40</sup> Commenters generally supported standardizing the order and content of the summary section, agreeing that a standardized summary section will enhance investor understanding and the ability to compare funds.<sup>41</sup> 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.<sup>42</sup>

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<sup>39</sup> Pursuant to rule 421(b) [17 CFR 230.421(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. We note that these standards provide funds with flexibility, for example, in determining whether or not to use headings in a question-and-answer format.

<sup>40</sup> General Instruction C.3.(a) to Form N-1A.

<sup>41</sup> See, e.g., Letter of Evergreen Investments (Feb. 28, 2008) ("Evergreen Letter"); Letter of Financial Services Institute (Feb. 28, 2008) ("Financial Services Institute Letter").

<sup>42</sup> General Instruction C.3.(b) of Form N-1A. See, e.g., CFA Institute Letter, supra note 37; Letter of Great-West Retirement Services (Feb. 28, 2008) ("Great-West Letter"); ICI Letter, supra note 34; Letter of The Vanguard Group, Inc. (Feb. 28, 2008) ("Vanguard Letter") (supporting prohibition on including information in the summary section that is not required).

As noted above, we are, with one exception, requiring as proposed that a multiple fund prospectus present the summary information for each fund sequentially and not integrate the information for more than one fund.<sup>43</sup> That is, a multiple fund prospectus will 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 will not be permitted to present the investment objectives for several funds followed by the fee tables for several funds. A multiple fund prospectus will also be required to identify clearly the name of the particular fund at the beginning of the summary information for that fund.

Many commenters agreed that multiple fund prospectuses should present the summary information for each fund separately.<sup>44</sup> Some commenters stated that requiring a separate summary for each fund will better achieve the Commission’s goal of keeping summaries short which should help facilitate comparisons across funds.<sup>45</sup> Commenters also stated that multiple fund prospectuses often confuse investors and make reviewing key information for a single fund more difficult.<sup>46</sup>

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<sup>43</sup> General Instruction C.3.(c)(ii) of Form N-1A. See supra note 36 and accompanying text.

<sup>44</sup> See, e.g., CFA Institute Letter, supra note 37; Letter of Coalition of Mutual Fund Investors (Feb. 13, 2008) (“CMFI Letter”); Fund Democracy et al. Letter, supra note 34; Evergreen Letter, supra note 41; MFDF Letter, supra note 34; Letter of the National Association of Personal Financial Advisors (Feb. 28, 2008) (“NAPFA Letter”); Letter of Oppenheimer Funds (Feb. 28, 2008) (“Oppenheimer Letter”).

<sup>45</sup> See, e.g., Fund Democracy et al. Letter, supra note 34; Data Communiqué Letter, supra note 35. See also ICI Letter, supra note 34 (stating that some of its members believe that requiring a separate summary for each fund will better facilitate the Commission’s goals of keeping documents short and facilitating comparisons across funds).

<sup>46</sup> See, e.g., Data Communiqué Letter, supra note 35; CMFI Letter, supra note 44; Oppenheimer Letter, supra note 44.

A number of commenters, however, expressed reservations about the Commission's proposal to prohibit multiple fund summary sections, requesting that the Commission permit integrated summaries for multiple funds in at least some circumstances.<sup>47</sup> Some commenters suggested that integrated summary information would allow investors to better compare all funds within a fund family, or at least certain categories of funds within a fund family.<sup>48</sup> Categories of funds cited included international funds, asset allocation funds, and U.S. Treasury Funds.<sup>49</sup> In addition, some commenters argued that prohibiting multiple fund summaries would lead to unnecessary duplication of information and longer statutory prospectuses.<sup>50</sup>

A number of investors in our focus groups expressed the view that multiple fund presentations of mutual fund information could be helpful in facilitating useful comparisons among funds.<sup>51</sup> Some of these investors stated that multiple fund

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<sup>47</sup> See, e.g., Letter of AIM Investments (Feb. 27, 2008) ("AIM Letter") (favoring integrated summaries for target date, asset allocation or lifestyle funds, and variable annuity funds); Capital Research Letter, supra note 34 (favoring integrated summaries for target date and variable annuity funds).

<sup>48</sup> See, e.g., AIM Letter, supra note 47; Letter of American Century Investments (Feb. 28, 2008) ("American Century Letter"); Clarke Letter, supra note 35; ICI Letter, supra note 34; Letter of Putnam Investments (Feb. 28, 2008) ("Putnam Letter"); Letter of Russell Investments (Feb. 28, 2008) ("Russell Letter").

<sup>49</sup> See, e.g., Letter of T. Rowe Price Associates, Inc. (Feb. 28, 2008) ("T. Rowe Letter") (favoring integrated summaries for certain categories of funds and citing focus group research conducted by T. Rowe Price concerning integrated versus single-fund summaries).

<sup>50</sup> See, e.g., AIM Letter, supra note 47; American Century Letter, supra note 48; Letter of Dechert LLP (Mar. 3, 2008) ("Dechert Letter"); Putnam Letter, supra note 48; Russell Letter, supra note 48. See also ICI Letter, supra note 34 (members split, with some noting that an integrated summary may be more useful to investors in certain circumstances, in particular for groups of funds an investor may wish to compare, and others believing that a separate document for each fund would better accomplish goals of keeping the document short and facilitating comparisons across funds).

<sup>51</sup> See Focus Group Report, supra note 32, at 9.

presentations could be used as a screening tool to determine which funds to research in more detail.<sup>52</sup> Some investors in our focus groups, however, indicated that combining too many funds within a single summary can result in confusing complexity.<sup>53</sup> The investors in our focus groups did not express a consensus on a specific limit on the number of funds or page length that would be appropriate in multiple fund presentations.

While we believe that multiple fund presentations can, in limited circumstances, be useful in helping investors to compare funds, we have determined that prohibiting multiple fund summary sections is more consistent with the goal of achieving concise, readable summaries for investors. The requirement that summary information be separately presented for each fund in a multiple fund prospectus is intended to address the problem of lengthy and 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. We have concluded that permitting information for multiple funds to be integrated in the summary section would undermine our goal of providing mutual fund investors with concise and readable key information.

We note, however, that our rules do not restrict in any way the use of multiple fund presentations in advertising and sales materials, whether those materials are provided along with the Summary Prospectus or separately.<sup>54</sup> Funds have complete flexibility to prepare and present comparative information to investors regarding any

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<sup>52</sup> See Focus Group Transcripts, supra note 32, at 20.

<sup>53</sup> Id. at 19 (“I thought there were too many in the [multiple fund prospectus]. It just really makes your head spin when you have to read all that.”), 22, 46.

<sup>54</sup> See rule 482 under the Securities Act [17 CFR 230.482] and rule 34b-1 under the Investment Company Act [17 CFR 270.34b-1] (investment company advertising rules).

grouping of multiple funds that they believe is useful, and also to provide automated tools on their Web sites permitting investors to choose which funds to compare. As a result, we do not believe that the prohibition on multiple fund summaries in the statutory prospectus will impair in any significant manner funds' ability to provide useful, comparative information to investors.

We are adopting one exception to the requirement that multiple fund prospectuses not integrate the summary information for more than one fund in order to eliminate duplicative information and reduce prospectus length. Two commenters recommended that the Commission permit summary information that is identical for multiple funds to be presented once, at the end of all the individual summaries within a multiple fund statutory prospectus.<sup>55</sup> We agree with these commenters that permitting integration of information that is likely to be uniform for multiple funds will further our goal of concise, user-friendly summary sections. Therefore, a multiple fund prospectus will be permitted to integrate the information required by any of new Item 6 (purchase and sale of fund shares), Item 7 (tax information), and Item 8 (financial intermediary compensation) if it is identical for all funds covered in the prospectus.<sup>56</sup> This information is often uniform across multiple funds unlike, for example, information about investment objectives, costs, performance, or portfolio managers. If the information required by any of Items 6 through 8 is integrated, the integrated information will be required to immediately follow the separate individual fund summaries containing the other non-integrated information. In addition, a statement containing the following information will be required in each

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<sup>55</sup> See Capital Research Letter, supra note 34; ICI Letter, supra note 34.

<sup>56</sup> General Instruction C.3.(c)(iii) of Form N-1A. This exception will not be available to Summary Prospectuses delivered pursuant to new rule 498 because a Summary Prospectus may describe only one fund. See discussion infra Part III.B.2.a.

individual fund summary section in the location where the information that is integrated, and presented later, would have appeared.

“For important information about [purchase and sale of fund shares,] [tax information,] and [financial intermediary compensation], please turn to [identify section heading and page number of prospectus].”

As proposed, the instructions will 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 prospectus.<sup>57</sup> Commenters generally supported, or did not express a view with respect to, allowing multiple class summary sections; and some commenters noted that such sections would assist investors in choosing the class most appropriate for their circumstances.<sup>58</sup> We are not requiring the integration of information for multiple classes of a fund, which two commenters argued was important to facilitate cost comparisons.<sup>59</sup> We are retaining flexibility in this area because we believe that whether a multiple class presentation is helpful or overwhelming depends on the particular circumstances. We note, however, that our ongoing interactive data initiative is intended, among other things, to facilitate cost comparisons by investors across multiple classes of a single fund, as well as across different funds.<sup>60</sup>

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<sup>57</sup> General Instruction C.3.(c)(ii) of Form N-1A.

<sup>58</sup> See, e.g., Clarke Letter, supra note 35; Data Communiqué Letter, supra note 35; Great-West Letter, supra note 42; Oppenheimer Letter, supra note 44.

<sup>59</sup> See, e.g., Fund Democracy et al. Letter, supra note 34; Letter of Brock Hastie (Jan. 8, 2008) (“Hastie Letter”).

<sup>60</sup> See supra note 28 and accompanying text.

## Page Limits

As proposed, we are not imposing page limits on the summary section. We emphasize, however, that it is our intent that funds prepare a concise summary (on the order of three or four pages) that will provide key information. Commenters differed regarding whether the Commission should impose page limits on the summary.

Several commenters supported page limits. One commenter expressed concern that, in the absence of a page limit, the summary section would tend to expand over time, which would undermine its usefulness.<sup>61</sup> Another commenter noted that, absent page limits, lengths of summary sections would vary widely, hindering investors' ability to compare funds.<sup>62</sup>

While we share these commenters' concerns, especially with respect to the possibility of summary sections getting longer over time, we believe that these concerns are outweighed by the concerns of other commenters that page limits could constrain appropriate disclosure and lead funds to omit material information.<sup>63</sup> We also agree with a commenter who noted that the prohibition of multiple fund summary sections should help to limit their length.<sup>64</sup>

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<sup>61</sup> See Letter of Independent Directors Council (Feb. 15, 2008) ("IDC Letter").

<sup>62</sup> See Firehouse Letter, supra note 35. See also Letter of Jeffrey C. Keil (Jan. 9, 2008) ("Keil Letter") (suggesting that summaries might garner more investor attention if limited to two or three pages).

<sup>63</sup> See, e.g., Letter of Janus Capital Group (Feb. 28, 2008) ("Janus Letter"); CMFI Letter, supra note 44.

<sup>64</sup> See Data Communiqué Letter, supra note 35.

### Elimination of Separate Purchase and Redemption Document

As proposed, we are eliminating 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, as well as a similar provision in the requirements for the statement of additional information (“SAI”).<sup>65</sup> We have concluded that this option is unnecessary in light of the 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.<sup>66</sup> The 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 will continue to be required in those documents.

### Variable Contract and Retirement Plan Funds

Finally, we are modifying the proposal to permit funds that are used as investment options for retirement plans and variable insurance contracts to modify or omit certain information required in the new summary section. This modification addresses commenters’ concerns that certain information is not relevant to those funds.<sup>67</sup> Specifically, we are amending the General Instructions to Form N-1A to permit funds that are used as investment options for retirement plans and variable insurance contracts

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<sup>65</sup> Instruction 6 to current Item 1(b) of Form N-1A; current Item 6(g) of Form N-1A; Instruction to current Item 18(a) of Form N-1A.

<sup>66</sup> See discussion infra Part III.B.1. Most commenters did not address this proposed change. But see Clarke Letter, supra note 35 (supporting change); Schnase Letter, supra note 35 (opposing change).

<sup>67</sup> See Letter of EQ Advisors Trust/AXA Premier VIP Trust (Feb. 28, 2008) (“EQ/AXA Letter”); Letter of Committee of Annuity Insurers (Feb. 28, 2008) (“CAI Letter”).

to modify or omit the information required by new summary section Item 6 (purchase and sale of fund shares).<sup>68</sup> Existing Form N-1A permits funds that are used as investment options for retirement plans and variable insurance contracts to modify or omit certain information regarding the purchase and sale of fund shares that is not relevant in these contexts.<sup>69</sup> The amendment we are making extends the same treatment to the purchase and sale information in the new summary section.

## 2. Exchange Ticker Symbols

We requested comment on whether we should require or permit a fund to include its ticker symbol in the summary, or on the front or back cover page of the statutory prospectus or SAI or elsewhere. Many commenters suggested that the Commission should require or permit funds to disclose their exchange ticker symbols.<sup>70</sup> We agree with these commenters that requiring exchange ticker symbols to be included in fund disclosure documents would make it easier for investors to find information about particular funds and share classes of funds. Accordingly, we are requiring that a fund include its exchange ticker symbol on the cover pages of the statutory prospectus and SAI.<sup>71</sup> Specifically, a fund will be required to disclose the exchange ticker symbol of the

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<sup>68</sup> General Instruction C.3.(d)(i) of Form N-1A.

<sup>69</sup> General Instruction C.3.(d)(i) of existing Form N-1A. We note that Item 7 of the summary section, which requires tax information that may not be relevant in the context of retirement plans and variable insurance contracts, expressly states that the disclosures are only required to be made, as applicable.

<sup>70</sup> See, e.g., CMFI Letter, supra note 44; Data Communiqué Letter, supra note 35; Firehouse Letter, supra note 35; Hastie Letter, supra note 59; Letter of William E. Kent (Dec. 26, 2007) (“Kent Letter”); NAPFA Letter, supra note 44; Letter of Art Ticknor (Feb. 6, 2008) (“Ticknor Letter”).

<sup>71</sup> Item 1(a)(2) of Form N-1A; Item 14(a)(2) of Form N-1A. Exchange ticker symbols will also be required on the cover page, or at the beginning of, the Summary Prospectus. Rule 498(b)(1)(ii).

fund's shares or, if the prospectus or SAI relate to one or more classes of the fund's shares, adjacent to each such class, the exchange ticker symbol of that class.

### **3. Information Required in Summary Section**

We are adopting the required content of the summary section substantially as proposed, except that, having considered commenters' concerns and the views of investors expressed in focus groups, we have determined not to require disclosure of a fund's portfolio holdings. The summary section of a mutual fund statutory prospectus will consist of the following information: (1) investment objectives; (2) costs; (3) principal investment strategies, risks, and performance; (4) investment advisers and portfolio managers; (5) brief purchase and sale and tax information; and (6) financial intermediary compensation. These items will appear in the same order that we proposed. We have modified the requirements for some items to address comments and views expressed in the focus groups.

#### **a. Elimination of Proposed Portfolio Holdings Requirement**

The Commission has determined not to require the summary section to include the list of the fund's 10 largest holdings which we proposed.<sup>72</sup> As proposed, the top 10 holdings list would have been updated in the statutory prospectus on an annual basis and in the Summary Prospectus on a quarterly basis.<sup>73</sup>

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<sup>72</sup> Proposed Item 5 of Form N-1A.

<sup>73</sup> 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. See proposed rule 498(b)(2)(iii) (proposed Summary Prospectus quarterly updating requirement).

Commenters were split regarding whether the top 10 portfolio holdings should be required in the summary section. We are persuaded by the commenters who pointed out the limited utility of the proposed top 10 holdings list.<sup>74</sup> Commenters expressed the view that top 10 holdings information may mislead investors because the top 10 holdings may not accurately represent a fund's overall holdings<sup>75</sup> and because the top 10 holdings information may become stale.<sup>76</sup> Commenters also pointed out that portfolio holdings information is already widely available through other sources, such as shareholder reports and other Commission filings,<sup>77</sup> as well as fund Web sites and sales materials.<sup>78</sup>

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<sup>74</sup> See, e.g., AIM Letter, supra note 47; Letter of Cornell Securities Law Clinic (Feb. 28, 2008) (“Cornell Law Clinic Letter”); Evergreen Letter, supra note 41; Letter of Foreside Compliance Services, LLC (Feb. 28, 2008) (“Foreside Letter”); Oppenheimer Letter, supra note 44; Russell Letter, supra note 48.

Other commenters supported including the top 10 portfolio holdings in the summary section. See, e.g., CMFI Letter, supra note 44; Data Communiqué Letter, supra note 35; Firehouse Letter, supra note 35; Letter of Jill Gross (Feb. 28, 2008); Letter of Richard K. Hopkins (Feb. 15, 2008) (“Hopkins Letter”); Letter of Richard McCormick (Feb. 11, 2008) (“McCormick Letter”); Letter of William Mahavier (Feb. 10, 2008) (“Mahavier Letter”); Letter of Dan Meador (Feb. 12, 2008); NAPFA Letter, supra note 44; Letter of Bruce R. Bent (Feb. 28, 2008) (“Bent Letter”).

<sup>75</sup> See, e.g., Dechert Letter, supra note 50 (top 10 holdings information could mislead investors of a diversified fund where top 10 holdings represent a relatively small percentage of the fund's holdings); ICI Letter, supra note 34 (noting that a fund's top 10 holdings may be misleading for funds in a master-feeder structure, funds of funds, fixed income funds, index funds, money market funds, exchange-traded funds, and new funds); Letter of New York City Bar (Feb. 25, 2008) (“NYC Bar Letter”) (arguing that for certain types of funds, such as money market funds, fixed income funds, and index funds, top 10 holdings information may be misleading); Letter of Leslie L. Ogg (Feb. 1, 2008) (“Ogg Letter”) (noting that top 10 holdings information can be misleading for multi-manager funds, funds of funds, long-short funds, and funds using derivative instruments).

<sup>76</sup> See, e.g., AIM Letter, supra note 47; CAI Letter, supra note 67; Capital Research Letter, supra note 34; Clarke Letter, supra note 35; Dechert Letter, supra note 50; ICI Letter, supra note 34; IDC Letter, supra note 61; Janus Letter, supra note 63; NYC Bar Letter, supra note 75; Oppenheimer Letter, supra note 44; Russell Letter, supra note 48.

<sup>77</sup> Form N-CSR [17 CFR 249.331; 17 CFR 274.128] (form used by investment companies semi-annually to file certified shareholder reports); Form N-Q [17 CFR 249.332; 17 CFR 274.130] (form used by investment companies to file schedule of portfolio holdings for first and third quarters).

We continue to believe that information concerning a fund's 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. In light of the limited utility of top 10 holdings information, however, and the widespread availability of portfolio holdings information from other sources, we have determined not to require this information in the summary section. Some commenters and investors in our focus groups suggested that we instead require disclosure about the current allocation of a fund's portfolio by asset type, such as a pie chart that would graphically display this information.<sup>79</sup> We have determined not to require this information because we have concluded that it is subject to the same concerns about staleness as top 10 holdings information and because of the widespread availability of portfolio holdings information from other sources. Nonetheless, where a fund's asset allocation strategy is a principal investment strategy of the fund, the fund should clearly disclose this strategy,<sup>80</sup> and we would encourage the use of graphical representations as a potentially helpful communications tool.

In reaching our determination with respect to portfolio holdings information, we carefully considered the views of investors expressed in our focus groups. Many investors in the focus groups expressed significant interest in portfolio holdings information.<sup>81</sup> At the same time, like the commenters, a number of the investors

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<sup>78</sup> See, e.g., AIM Letter, supra note 47; EQ/AXA Letter, supra note 67; Evergreen Letter, supra note 41; Russell Letter, supra note 48; T. Rowe Letter, supra note 49.

<sup>79</sup> See, e.g., Cornell Law Clinic Letter, supra note 74; Oppenheimer Letter, supra note 44; Focus Group Report, supra note 32, at 6.

<sup>80</sup> Items 4(a) and 9 of Form N-1A (requiring disclosure of principal investment strategies).

<sup>81</sup> Focus Group Report, supra note 32, at 7; Focus Group Transcripts, supra note 32, at 12.

participating in our focus groups pointed out that top 10 portfolio holdings information changes frequently and can quickly become outdated, and some participants acknowledged that the top 10 holdings information can sometimes account for a relatively small portion of a fund's holdings.<sup>82</sup> We concluded that investors' interest in this information is outweighed by its potential to mislead and confuse in the context of the summary section of a prospectus. Because this information is widely available through other sources, we are persuaded that investors' interest in this information can be satisfied through these other sources.

**b. Order of Information**

We are adopting the order of the information required in the summary section, as proposed. This includes moving the fee table forward from its current location, which follows information about investment strategies, risks, and past performance. We continue to believe that the change to the location of the fee table will enhance the prominence of this information, which is important to address continuing concerns about investor understanding of mutual fund costs.<sup>83</sup> Several commenters agreed that relocation of the fee table will place fee information in a more prominent location and encourage investors to give greater attention to costs and cost comparisons.<sup>84</sup> While

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<sup>82</sup> Focus Group Report, supra note 32, at 7; Focus Group Transcripts, supra note 32, at 13-14, 78.

<sup>83</sup> See Barbara Roper, Director of Investor Protection, Consumer Federation of America, June 12 Roundtable Transcript, supra note 18, 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>.; Focus Group Transcripts, supra note 32, at 6 (“[The hypothetical summary prospectus] shows the fee right up there, what they charge, so that would appeal to me.”).

<sup>84</sup> See, e.g., Letter of Roy J. Biegel (Feb. 14, 2008) (“Biegel Letter”); CFA Institute Letter, supra note 37; Foreside Letter, supra note 74; Letter of Fund Democracy and Consumer

several commenters suggested alternative orders for the information in the summary section, there was no consensus by commenters regarding any alternative.<sup>85</sup>

A number of commenters, largely from the fund industry, opposed relocating the fee table. These commenters argued that moving the fee table forward inappropriately overemphasizes costs over other more important information and that the fee table should not come between investment objectives and principal investment strategies and risks.<sup>86</sup> Some of these commenters argued that the fee table should not be moved forward, because it is important for investors to first and foremost understand a fund and its risks, and that a fund's objectives, strategies, and risks provide necessary context for fees. Some commenters also argued that moving the fee table forward is unnecessary because the short length of the summary section will make the fee table sufficiently prominent.

We are not persuaded by these commenters. We continue to believe, along with a number of commenters, that placement of the fee table in a more prominent location will encourage investors to give greater attention to costs. The fee table and example are designed to help investors understand the costs of investing in a fund and compare those costs with the costs of other funds. Placing the fee table and example at the front of the

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Federation of America (Apr. 17, 2008); NAPFA Letter, supra note 44; Letter of Charles Sikorovsky (Feb. 29, 2008) (“Sikorovsky Letter”). See also Focus Group Transcripts, supra note 32, at 10 (investors expressed view that fund costs are important); Letter of Investment Company Institute (Mar. 14, 2008) (“ICI Survey”) (finding that 95% of respondents believed that fees are important).

<sup>85</sup> See, e.g., Letter of Ward C. Bourn (Feb. 27, 2008); Capital Research Letter, supra note 34; Evergreen Letter, supra note 41; Financial Services Institute Letter, supra note 41; Vanguard Letter, supra note 42.

<sup>86</sup> See, e.g., AIM Letter, supra note 47; Evergreen Letter, supra note 41; Letter of Fidelity Investments (Feb. 28, 2008) (“Fidelity Letter”); ICI Letter, supra note 34; Oppenheimer Letter, supra note 44; Russell Letter, supra note 48; T. Rowe Letter, supra note 49.

summary section reflects the importance of costs to an investment decision.<sup>87</sup> Moving the fee table forward also eliminates the possibility that the fee table could be obscured by other information.<sup>88</sup>

**c. Investment Objectives and Goals**

We are adopting, as proposed, the requirement that the summary section begin with disclosure of a fund’s investment objectives or goals, which commenters generally supported.<sup>89</sup> As proposed, a fund also will be permitted to identify its type or category (e.g., that it is a money market fund or balanced fund).<sup>90</sup>

**d. Fee Table**

We are adopting, with modifications to address commenters’ concerns and views expressed by investors in the focus groups, the fee table and example. The fee table and example disclose the costs of investing and immediately follow the fund’s investment objectives.<sup>91</sup>

Breakpoint Discounts

We are requiring, substantially as proposed, that mutual funds that offer discounts on front-end sales charges for volume purchases (so-called “breakpoint discounts”)

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<sup>87</sup> For example, a 1% increase in annual fees reduces an investor’s return by approximately 18% over 20 years.

<sup>88</sup> See Sikorovsky Letter, supra note 84 (stating that if an investment manager can in any way “hide” fees from an investor, the document has failed to fulfill its function).

<sup>89</sup> See, e.g., AARP Letter, supra note 34; Firehouse Letter, supra note 35; ICI and SIFMA Letter, supra note 37; Letter of Christine A. Nelson (Feb. 12, 2008); Schnase Letter, supra note 35. See also ICI Survey, supra note 84 (providing survey results that found investment objectives was one of the most important pieces of information to investors).

<sup>90</sup> Item 2 of Form N-1A.

<sup>91</sup> Item 3 of Form N-1A.

include brief narrative disclosure alerting investors to the availability of those discounts.<sup>92</sup> Commenters generally supported the disclosure about breakpoint discounts, although many commenters, as well as focus group investors, provided suggestions for revising the narrative proposed.<sup>93</sup> We are modifying the proposal in two ways to address these comments.

First, we are adding to the required narrative a description of where investors can find additional information regarding breakpoint discounts.<sup>94</sup> Specifically, the narrative will be required to state that further information is available from the investor's financial professional, as well as identify the section heading and page number of the fund's prospectus and SAI where more information can be found. This information is intended to address the views of both commenters and investors in the focus groups that it would be helpful for more detailed information about breakpoint discounts to be readily available to investors.<sup>95</sup>

Second, we are clarifying the instruction that the dollar level at which investors may qualify for breakpoint discounts that is required to be disclosed in the new item is the minimum level of investment required to qualify for a discount as disclosed in the

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<sup>92</sup> Item 3 of Form N-1A; Instruction 1(b) to Item 3 of Form N-1A.

<sup>93</sup> See, e.g., AIM Letter, supra note 47; CFA Institute Letter, supra note 37; Fund Democracy et al. Letter, supra note 34; Letter of Manuela A. De Leon (Feb. 7, 2008); ICI Letter, supra note 34; Keil Letter, supra note 62; NAPFA Letter, supra note 44; Oppenheimer Letter, supra note 44; Russell Letter, supra note 48; Focus Group Report, supra note 32, at 8.

<sup>94</sup> Item 3 of Form N-1A.

<sup>95</sup> See, e.g., CMFI Letter, supra note 44 (summary should indicate where additional information about breakpoint discounts is available); NAPFA Letter, supra note 44 (same); Focus Group Transcripts, supra note 32, at 17 (participant observes that "I'll go to the long-form and look that up and then make my decision.").

table required by current Item 7(a)(1) of Form N-1A.<sup>96</sup> This change makes clear that the required dollar threshold to be disclosed is the same as disclosure that is already required in Form N-1A. This change, together with the added narrative about additional information, addresses commenters' concerns that the breakpoints disclosure does not capture the complexity and variety of policies regarding breakpoint discounts.<sup>97</sup>

Parenthetical to “Annual Fund Operating Expenses”

We are adopting, substantially as proposed, revisions to the heading “Annual Fund Operating Expenses” in the fee table. Specifically, we are revising the parenthetical following the heading to read “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.”<sup>98</sup> In recent years, we have taken significant steps to address concerns that investors do not understand that they pay costs every year when they invest in mutual funds, including requiring disclosure of these costs in shareholder reports.<sup>99</sup> Our 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.

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<sup>96</sup> Instruction 1(b) to Item 3 of Form N-1A. Item 7 of Form N-1A is being renumbered as Item 12 in this rulemaking.

<sup>97</sup> See, e.g., AIM Letter, *supra* note 47; ICI Letter, *supra* note 34; Russell Letter, *supra* note 48; Letter of Securities Industry and Financial Markets Association (Feb. 28, 2008) (“SIFMA Letter”).

<sup>98</sup> Item 3 of Form N-1A.

<sup>99</sup> Item 27(d)(1) of Form N-1A; Investment Company Act Release No. 26372 (Feb. 27, 2004) [69 FR 11244 (Mar. 9, 2004)] (adopting disclosure of 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 recurring fees).

Many commenters supported the Commission’s proposed revision.<sup>100</sup> We have deleted the word “ongoing” from the beginning of the parenthetical language to address commenters’ concerns that this term incorrectly suggests that fund operating expenses are the same each year.<sup>101</sup> We are not modifying the parenthetical to address the views of some industry commenters that the statement incorrectly implies that shareholders directly pay fund expenses, when in fact expenses are paid out of fund assets.<sup>102</sup> The purpose of the revision is to make clear to investors that they, in fact, bear these expenses, and the proposed language conveys this fact. Our conclusion is supported by commenters representing investor groups.<sup>103</sup>

#### Portfolio Turnover Rate

We are adopting, with two modifications, the requirement that funds, other than money market funds, include brief disclosure regarding portfolio turnover immediately following the fee table example.<sup>104</sup> A fund will 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 will be accompanied by a brief explanation of the effect of portfolio turnover on transaction costs and fund performance. Some concerns

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<sup>100</sup> See, e.g., CFA Institute Letter, supra note 37; Clarke Letter, supra note 35; Fund Democracy et al. Letter, supra note 34.

<sup>101</sup> See, e.g., CFA Institute Letter, supra note 37; Clarke Letter, supra note 35; Fund Democracy et al. Letter, supra note 34; Evergreen Letter, supra note 41; Letter of Fenimore Asset Management (Feb. 28, 2008); Fidelity Letter, supra note 86; MFDF Letter, supra note 34; Oppenheimer Letter, supra note 44; T. Rowe Letter, supra note 49.

<sup>102</sup> See, e.g., Evergreen Letter, supra note 41; ICI Letter, supra note 34; Oppenheimer Letter, supra note 44; Putnam Letter, supra note 48; Russell Letter, supra note 48; T. Rowe Letter, supra note 49.

<sup>103</sup> See Fund Democracy et al. Letter, supra note 34.

<sup>104</sup> Instruction 5 to Item 3 of Form N-1A.

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.<sup>105</sup> The requirement to provide brief portfolio turnover disclosure in the summary section of the prospectus is intended to address these concerns, and the proposed disclosure received support from a significant number of commenters.<sup>106</sup> Because we believe that it is important to address investors' lack of understanding of the effect of portfolio turnover and transaction costs on fund expenses and performance, we disagree with commenters opposing the disclosure of portfolio turnover rate on the grounds that such information is too complicated or unnecessary for the summary section.<sup>107</sup>

We are modifying the proposed required explanation of the effect of portfolio turnover to require that the explanation also address the adverse tax consequences that may result from a higher portfolio turnover rate when fund shares are held in a taxable account. We agree with commenters who suggested that adverse tax consequences, as

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<sup>105</sup> 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](http://www.finra.org/web/groups/rules_regs/documents/rules_regs/p012356.pdf).

<sup>106</sup> See, e.g., Biegel Letter, supra note 84; CFA Institute Letter, supra note 37; CMFI Letter, supra note 44; Fund Democracy et al. Letter, supra note 34; IDC Letter, supra note 61; Mahavier Letter, supra note 74; NAPFA Letter, supra note 44; Schnase Letter, supra note 35; Vanguard Letter, supra note 42. See also ICI Letter, supra note 34 (stating that it does not oppose the disclosure).

<sup>107</sup> See, e.g., American Century Letter, supra note 48; Capital Research Letter, supra note 34; Clarke Letter, supra note 35; Evergreen Letter, supra note 41; Foreside Letter, supra note 74; McCormick Letter, supra note 74; Oppenheimer Letter, supra note 44; Russell Letter, supra note 48.

well as higher transaction costs, should be expressly addressed by the explanation.<sup>108</sup> We are also making a technical revision to the final sentence of the proposed required explanation.<sup>109</sup>

We have determined not to adopt two significant suggestions that were made by commenters: first, that we require the impact of transaction costs to be reflected in a fund's expense ratio in the fee table and, second, that we require disclosure of portfolio turnover rates over a period greater than one year. While we believe that both of these suggestions have considerable merit, we have concluded that it is not feasible to implement either at the present time as discussed further below.

Several commenters expressed the view that the Commission should require that transaction costs be reflected in a fund's expense ratio in the fee table and that this disclosure would be more meaningful to investors than the rate of portfolio turnover.<sup>110</sup> The comments on this rulemaking, however, do not provide an adequate basis for prescribing a specific and accurate methodology for reflecting transaction costs in a fund's expense ratio.<sup>111</sup> We do agree with the commenters that portfolio turnover rate is

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<sup>108</sup> See Fund Democracy *et al.* Letter, *supra* note 34; Letter from Representative Donald A. Manzullo (Feb. 26, 2008) ("Manzullo Letter").

<sup>109</sup> Item 3 of Form N-1A. We are deleting the reference to portfolio turnover rate as a percentage of the average value of the fund's "whole" portfolio in the explanation to reflect the fact that the rate is calculated without reference to securities whose maturities at the time of acquisition are one year or less. See Instruction 4(d)(ii) to current Item 8(a) of Form N-1A (describing how to calculate portfolio turnover rate; current Item 8 is being renumbered as Item 13).

<sup>110</sup> See, e.g., Fund Democracy *et al.* Letter, *supra* note 34; Letter from Representative George Miller, Senator Edward M. Kennedy, Representative Robert E. Andrews, Senator Tom Harkin, and Senator Herb Kohl (Mar. 13, 2008) ("Miller Letter").

<sup>111</sup> In addition, in 2003 the Commission issued a concept release that sought public comment on a number of issues related to the disclosure of mutual fund transaction costs. See Investment Company Act Release No. 26313, *supra* note 105, 68 FR at 74820. While

an imperfect measure of portfolio transaction costs. While a higher portfolio turnover rate tends to result in higher transaction costs and a lower portfolio turnover rate tends to result in lower transaction costs, there is not necessarily a direct correlation between portfolio turnover rate and portfolio transaction costs. Nonetheless, in the absence of a basis for prescribing a better measure, we believe that portfolio turnover rate, though imperfect, is an appropriate indicator of transaction costs for purposes of the summary section.

A number of commenters argued that disclosing a portfolio turnover rate over a one-year period would not yield a representative portfolio turnover rate because portfolio turnover rates vary significantly over time depending on a variety of factors, including the need to meet redemption requests, unexpected cash inflows due to sharp swings in markets, or the occurrence of a significant event not likely to repeat in future years, such as a fund merger or a new portfolio manager restructuring the fund's holdings.<sup>112</sup> These commenters suggested that the Commission address this concern by, for example, requiring funds to disclose year-by-year turnover rates for a longer period (e.g., 5-10 years) or an average turnover rate over a longer period of time (e.g., five years).<sup>113</sup> We believe that requiring year-by-year turnover rates for multiple years in the summary section would not further our goal of providing concise, user-friendly disclosure, particularly in light of the fact that there is not necessarily a direct correlation between

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most commenters who responded to the concept release felt that there should be greater transparency of mutual fund transaction costs, there was a wide range of opinions on what should be disclosed.

<sup>112</sup> See, e.g., CMFI Letter, supra note 44; Firehouse Letter, supra note 35; IDC Letter, supra note 61.

<sup>113</sup> See, e.g., CMFI Letter, supra note 44; Mahavier Letter, supra note 74.

portfolio turnover and transaction costs. We note that portfolio turnover rates for each of the past five years are already required elsewhere in the prospectus.<sup>114</sup> We do not believe that there is a sufficient basis in the comments to require disclosure of an average turnover rate over a longer period of time (e.g., five years). Doing so would require us to address a number of questions that have not been subject to adequate comment in this rulemaking, including devising a calculation methodology and addressing questions of comparability across funds that have been in existence for different periods of time.

#### Expense Reimbursement and Fee Waiver Arrangements

Finally, we are adopting, with modifications to address commenters' recommendations, the proposed amendments to 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.<sup>115</sup> The adopted amendments will permit a fund to place two additional captions directly below the "Total Annual Fund Operating Expenses" caption in cases where 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.<sup>116</sup> We have eliminated the proposed requirement that the reimbursement or

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<sup>114</sup> Item 13(a) of Form N-1A.

<sup>115</sup> Instruction 3(d)(i) and 6(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.

<sup>116</sup> Instruction 3(e) to Item 3 of Form N-1A. A fund may not include the additional captions if the expense reimbursement or fee waiver arrangement may be terminated without agreement of the fund's board of directors (e.g., unilaterally by the fund's investment adviser) during the one-year period. If a fee waiver or expense reimbursement arrangement, in fact, terminates less than a year after the effective date of a fund's registration statement, the fund generally would be required to supplement or "sticker" its

waiver arrangement has reduced operating expenses in the past, as suggested by two commenters, because this is irrelevant to the impact that the arrangements will have in the future.<sup>117</sup> The purpose of the permitted line items is to show investors how the arrangements will affect expenses in the future and not how they have affected expenses in the past.<sup>118</sup>

One caption will show the amount of the expense reimbursement or fee waiver, and a second caption will 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 will also be required to disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, including the expected termination date, and briefly describe who can terminate the arrangement and under what circumstances. We are adding an express requirement that the expected termination date of the arrangement be disclosed in order to address a commenter's concern that investors should be informed in cases where the commitment on a fee waiver becomes shorter than one year.<sup>119</sup>

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prospectus to reflect the termination. The "sticker" would be filed with the Commission in accordance with rule 497 under the Securities Act.

<sup>117</sup> Instruction 3(e) to Item 3. We are also making a similar change in the instructions to the fee table example. Instruction 4(a) to Item 3. See, e.g., Dechert Letter, supra note 50; Evergreen Letter, supra note 41.

<sup>118</sup> Because expense reimbursement and fee waiver arrangements of new funds will be disclosed in the same manner as existing funds as a result of the elimination of the proposed requirement described in the text, we are eliminating current Instruction 5(b) (renumbered as Instruction 6(b) in the Proposing Release) to Item 3 of Form N-1A, which pertains to new funds, rather than adopting the proposed revision to the Instruction.

<sup>119</sup> See, e.g., Fund Democracy et al. Letter, supra note 34.

In computing the fee table example, a fund will be permitted to reflect any expense reimbursement or fee waiver arrangements that will reduce any operating expenses for no less than one year from the effective date of the fund's registration statement.<sup>120</sup> This adjustment may 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.<sup>121</sup>

Commenters made several suggestions with respect to cost disclosure that we have determined not to implement at this time. First, a number of commenters suggested that the fee table in the summary section should simply disclose the total fees and expenses and should omit certain line item breakdowns of expenses that are currently required in the statutory prospectus.<sup>122</sup> Commenters argued that a more abbreviated presentation, such as a fund's total expense ratio, is preferable because they argued that

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<sup>120</sup> Instruction 4(a) to Item 3 of Form N-1A. We have modified this instruction from the proposal to eliminate the requirement that the arrangement has reduced fund operating expenses during the most recently completed calendar year. This modification is consistent with the modification that is described at notes 117 and 118 and the accompanying text.

We are also adopting, as proposed, 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).

<sup>121</sup> A fund may not reflect the arrangement in any period during which the arrangement may be terminated without agreement of the fund's board of directors (e.g., unilaterally by the fund's investment adviser).

<sup>122</sup> See, e.g., Capital Research Letter, supra note 34; Evergreen Letter, supra note 41; Fund Democracy et al. Letter, supra note 34.

the current breakdown of fees is not crucial information to an investor's investment decision.<sup>123</sup> We believe that this idea deserves further consideration, and we will consider it for possible future rulemaking.

Second, some commenters suggested that we consider alternative terms to describe sales loads or rule 12b-1 fees<sup>124</sup> because the terms are not easily understood by most investors.<sup>125</sup> We have concluded that it is more appropriate to consider these changes in the context of a full reconsideration of sales charges and rule 12b-1 rather than in the current rulemaking.<sup>126</sup>

Finally, some commenters suggested that the fee table require some form of comparison of the fund's fees to a relevant benchmark based on the fees of similar funds.<sup>127</sup> The Commission shares the commenters' view that the ability to compare fees across mutual funds is extremely important to investors. To facilitate this comparison, we have designed the summary section to provide investors with key information in a standardized order. We also note that the Commission's ongoing interactive data initiative is intended to provide investors and other users with the tools necessary to

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<sup>123</sup> See Fund Democracy *et al.* Letter, *supra* note 34.

<sup>124</sup> "Rule 12b-1 fees" or "12b-1 fees" are fees paid out of fund assets pursuant to a distribution plan adopted under rule 12b-1 under the Investment Company Act [17 CFR 270.12b-1].

<sup>125</sup> See, e.g., Miller Letter, *supra* note 110; CFA Institute Letter, *supra* note 37; Manzullo Letter, *supra* note 108; Letter of Investor Rights Clinic at Pace University School of Law (Feb. 28, 2008) ("Pace Letter").

<sup>126</sup> The Commission last year hosted a roundtable that brought together representatives from mutual funds, financial services companies, and investor advocacy groups to discuss issues relating to rule 12b-1. See Commission Roundtable on Rule 12b-1 (Jun. 19, 2007) available at <http://www.sec.gov/spotlight/rule12b-1.htm>. Following the roundtable, we sought public comment on these topics and have received almost 1,500 comment letters.

<sup>127</sup> See, e.g., AARP Letter, *supra* note 34; Fund Democracy *et al.* Letter, *supra* note 34; Letter of Gary M. Keenan (Feb. 14, 2008).

facilitate comparisons of fee information. The Commission recently proposed rules that would, if adopted, require mutual funds to file the information in their fee tables in an interactive data format that would facilitate automated analysis of the information and comparison to other funds.<sup>128</sup> The interactive data format would allow users of fee table information to download cost and performance information directly into spreadsheets and analyze it using commercial off-the-shelf software.

**e. Investments, Risks, and Performance**

Following the fee table and example, we are requiring, substantially as proposed, that a fund disclose its principal investment strategies and risks.<sup>129</sup> This includes the current bar chart and table illustrating the variability of returns and showing the fund's past performance.

We are modifying the narrative that is required to accompany the bar chart and performance table in one respect to address the views expressed by both focus group investors and commenters. A fund that makes updated performance information available on a Web site or at a toll-free (or collect) telephone number will be required to include a statement explaining this and providing the Web site address and/or telephone number.<sup>130</sup> A number of investors in focus groups expressed the view that the availability of updated performance information, particularly at a Web site, would be

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<sup>128</sup> See Investment Company Act Release No. 28298, supra note 28, 73 FR at 35442.

<sup>129</sup> Item 4 of Form N-1A. To conform to other changes we are adopting to Form N-1A, the Instructions to 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 requirement that information for each fund be presented separately. Instructions 2(e) and 3 to Item 4(b)(2) of Form N-1A.

<sup>130</sup> Item 4(b)(2)(i) of Form N-1A.

helpful.<sup>131</sup> In addition, many industry commenters noted that funds routinely make updated performance information available to investors either by Internet Web site or by telephone and suggested that the summary section direct investors to this information.<sup>132</sup> Particularly in light of our determination not to require quarterly updating of the Summary Prospectus, which is discussed below,<sup>133</sup> we believe that it will be helpful to investors for the summary section to indicate where updated performance information may be found.

We are not modifying the required bar chart and performance table to add additional comparative information as suggested by several commenters.<sup>134</sup> Currently, funds are required to include an appropriate broad-based securities market index in the performance table.<sup>135</sup> We have determined not to require additional comparative performance information at this time because we are concerned that it would tend to undermine our goal of a concise, user-friendly summary of key information by contributing to the length and complexity of the summary section. Further, as with cost

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<sup>131</sup> See Focus Group Report, supra note 32, at 11; see, e.g., Focus Group Transcripts, supra note 32, at 49, 78.

<sup>132</sup> See, e.g., AIM Letter, supra note 47; American Century Letter, supra note 48; Capital Research Letter, supra note 34; Fidelity Letter, supra note 86; ICI Letter, supra note 34; Janus Letter, supra note 63; Oppenheimer Letter, supra note 44; Putnam Letter, supra note 48; Russell Letter, supra note 48; T. Rowe Letter, supra note 49.

<sup>133</sup> See discussion infra Part III.B.2.c.

<sup>134</sup> See, e.g., Letter of Scott Hastings (Feb. 11, 2008) (suggesting comparative disclosure of the portfolio manager's stated benchmark); Morningstar Letter, supra note 34 (same).

<sup>135</sup> Current Item 2(c)(2)(iii) of Form N-1A; Instruction 5 to current Item 22(b)(7) of Form N-1A. A fund is also permitted to include information for one or more other indexes. Instruction 6 to current Item 22(b)(7) of Form N-1A. If an additional index is included, a fund is required to disclose information about the additional index in the narrative explanation accompanying the bar chart and table (e.g., by stating that the information shows how the fund's performance compares with the returns of an index of funds with similar investment objectives).

information,<sup>136</sup> we believe that it is preferable for investors and other users of the prospectus to be given the flexibility to make a variety of performance benchmark comparisons. Our ongoing interactive data initiative is intended to provide the tools necessary to facilitate dynamic comparisons of this type, and we note that the information in the bar chart and performance table is covered by our recently proposed rules that would, if adopted, require mutual funds to file information in an interactive data format.<sup>137</sup>

**f. Management**

We are adopting, as proposed, the requirement that the summary section include 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.<sup>138</sup> A fund will not be required to identify a sub-adviser whose sole responsibility is limited to day-to-day management of cash instruments unless the fund is a money market fund or other fund with a principal investment strategy of regularly holding cash instruments.<sup>139</sup> Also, a fund having three or more sub-advisers, each of which manages a portion of the fund's portfolio, will not be required to identify each sub-adviser, except that the fund will 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. For this purpose, a

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<sup>136</sup> See supra note 127 and accompanying text.

<sup>137</sup> See Investment Company Act Release No. 28298, supra note 28, 73 FR at 35442.

<sup>138</sup> Item 5 of Form N-1A. Additional disclosures regarding investment advisers and portfolio managers that are currently required in the prospectus will continue to be required, but not in the summary section. Item 10(a) of Form N-1A.

<sup>139</sup> Instruction 1 to Item 5(a) of Form N-1A. A fund will continue to be required to provide the name, address, and experience of all sub-advisers elsewhere in the prospectus. Item 10(a)(1)(i) of Form N-1A.

significant portion of a fund's net assets generally will be deemed to be 30% or more of the fund's net assets.<sup>140</sup> The portfolio managers required to be listed will be the same ones with respect to which information is currently required in the prospectus.<sup>141</sup>

Several commenters opposed requiring funds to disclose portfolio managers.<sup>142</sup> Two of these commenters argued that the identity and length of service of portfolio managers do not rise to the level of importance necessary to warrant inclusion in the summary.<sup>143</sup> However, the Commission continues to believe, along with other commenters,<sup>144</sup> that investors in a fund should be provided basic information about the individuals who significantly affect the fund's investment operations.

Some commenters noted that funds are often managed by teams and that disclosing the individuals making up such teams would make the summary section too long and would not add substantive disclosure.<sup>145</sup> We note that, as is currently the case, disclosure will be required only with respect to the members of a management team who are jointly and primarily responsible for the day-to-day management of the fund's

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<sup>140</sup> Instruction 2 to Item 5(a) of Form N-1A.

<sup>141</sup> Item 10(a)(2) of Form N-1A.

<sup>142</sup> See, e.g., Capital Research Letter, supra note 34; ICI Letter, supra note 34; Vanguard Letter, supra note 42.

<sup>143</sup> See ICI Letter, supra note 34; Russell Letter, supra note 48.

<sup>144</sup> See, e.g., AARP Letter, supra note 34; Evergreen Letter, supra note 41; Financial Services Institute Letter, supra note 41. See also Focus Group Transcripts, supra note 32, at 11; id. at 30-31 (importance of fund managers); ICI Survey, supra note 84, at 8 (61% of respondents believed that the name of the portfolio manager was very important or somewhat important).

<sup>145</sup> See, e.g., Capital Research Letter, supra note 34; Clarke Letter, supra note 35; Ogg Letter, supra note 75.

portfolio.<sup>146</sup> We agree with other commenters that investors have the same interest in the identity of the individuals who are primarily responsible for management, regardless of whether a fund is managed by an individual portfolio manager or a team.<sup>147</sup>

**g. Purchase and Sale of Fund Shares**

We are adopting, with modifications to address exchange-traded funds,<sup>148</sup> the proposed requirement that the summary section disclose the fund's minimum initial or subsequent investment requirements and the fact that the fund's shares are redeemable, and identify the procedures for redeeming shares (e.g., on any business day by written request, telephone, or wire transfer).<sup>149</sup> Commenters generally did not express a view with respect to this requirement.<sup>150</sup>

**h. Tax Information**

We are adopting, as proposed, the requirements for tax information in the summary section. A fund will be required to state, as applicable, that it intends to make distributions that may be taxed as ordinary income or capital gains or that the fund

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<sup>146</sup> Instruction 2 to Item 5(b) of Form N-1A. In addition, if more than five persons are jointly and primarily responsible for the day-to-day management of a fund's portfolio, the fund need only provide the required information for the five persons with the most significant responsibility.

<sup>147</sup> See Evergreen Letter, supra note 41; Keil Letter, supra note 62.

<sup>148</sup> See discussion infra Part III.A.4. We are also making a technical amendment to current Item 6(b) of Form N-1A (which is being renumbered as Item 11(b)) to remove the requirement to disclose a fund's minimum initial or subsequent investment requirements because we have added this requirement to Item 6(a) of the summary section.

<sup>149</sup> Item 6 of Form N-1A. We are modifying the proposal to permit funds that are used as investment options for retirement plans and variable insurance contracts to modify or omit this information. See supra note 68 and accompanying text.

<sup>150</sup> Three commenters supported the proposal. See Letter of Alison W. Beirlein (Feb. 26, 2008); Foreside Letter, supra note 74; Schnase Letter, supra note 35. Three commenters opposed the proposal. See Bent Letter, supra note 74; Clarke Letter, supra note 35; Letter of MFS Investment Management (Feb. 28, 2008) ("MFS Letter").

intends to distribute tax-exempt income. A fund that holds itself out as investing in securities generating tax-exempt income will be required to provide, as applicable, a general statement to the effect that a portion of the fund's distributions may be subject to federal income tax.<sup>151</sup> Commenters generally expressed no views on these requirements.<sup>152</sup>

**i. Financial Intermediary Compensation**

The Commission is adopting the proposed requirement that the summary section of the prospectus conclude with disclosure regarding financial intermediary compensation. Commenters generally supported this requirement,<sup>153</sup> and we are modifying the requirement in two ways to address views expressed during investor focus groups and the concerns of commenters. Specifically, we are requiring the following statement, which could be modified provided that the modified statement contains comparable information:<sup>154</sup>

“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 create a conflict of interest by influencing the broker-dealer or other intermediary and

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<sup>151</sup> Item 7 of Form N-1A.

<sup>152</sup> One commenter opposed mandating the tax information. See Clarke Letter, supra note 35.

<sup>153</sup> See, e.g., Data Communiqué Letter, supra note 35; Firehouse Letter, supra note 35; Fund Democracy et al. Letter, supra note 34; ICI Letter, supra note 34; Keil Letter, supra note 62; NAPFA Letter, supra note 44; Schnase Letter, supra note 35; SIFMA Letter, supra note 97; Letter of USAA Investment Management Company (Feb. 28, 2008) (“USAA Letter”); Vanguard Letter, supra note 42; Letter of Wachovia Securities, LLC (Aug. 29, 2008). But see Letter of Capital Research and Management Company (Aug. 29, 2008) (opposing the financial intermediary disclosure requirement).

<sup>154</sup> Item 8 of Form N-1A.

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 will be new to fund prospectuses and is intended to 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.<sup>155</sup>

We have added a provision permitting a fund to omit the financial intermediary disclosure if neither the fund nor any of its related companies pay financial intermediaries for the sale of fund shares or related services.<sup>156</sup> This addresses the concerns of a number of commenters who expressed the view that the Commission should not require the narrative disclosure from funds to which the disclosure does not apply.<sup>157</sup> According to

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<sup>155</sup> 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 “profile plus” disclosure document that would include, among other things, basic information about such potential conflicts of interest. See Letter of NASD (Mar. 31, 2005) available at <http://www.sec.gov/rules/proposed/s70604/nasd033005.pdf>. We intend to consider additional steps to enhance investor access to information prior to making an investment decision. See *infra* notes 200 and 201 and accompanying text.

<sup>156</sup> Item 8 of Form N-1A.

<sup>157</sup> See, e.g., CAI Letter, *supra* note 67; ICI Letter, *supra* note 34; Oppenheimer Letter, *supra* note 44; T. Rowe Letter, *supra* note 49; USAA Letter, *supra* note 153; Vanguard Letter, *supra* note 42. We note that Item 8 permits a fund to modify the narrative statement provided that the modified statement contains comparable information. For example, a fund that is offered as an underlying investment option for a variable annuity contract could modify the narrative statement to reflect payments made to the sponsoring insurance company for distribution and other services.

one commenter, such funds include, for example, no-load funds and funds sold directly to investors.<sup>158</sup>

We have also modified the proposed statement to clarify that payments to a broker-dealer or other financial intermediary may create a conflict of interest by influencing the broker-dealer or other intermediary to recommend a fund over another investment. This modification, made in response to investor comments from our focus groups, is intended to increase awareness of potential conflicts of interest.<sup>159</sup> We are, therefore, revising the narrative to expressly notify investors that a conflict of interest may exist with respect to the broker-dealer's recommendation.

We have determined not to add a requirement that the disclosure include standardized language enumerating the types of compensation that may be provided to financial intermediaries, as suggested by one commenter.<sup>160</sup> Rather, we are adopting a statement that will alert investors generally to the payment of compensation and the potential conflicts arising from that payment. An investor could then obtain further detail from his or her salesperson or the intermediary's Web site. As discussed further below, we intend to consider additional steps in the future that would further enhance investors'

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<sup>158</sup> See ICI Letter, supra note 34. We note, however, that no-load funds and directly-sold funds will be required to include the narrative disclosure in certain circumstances. For example, the disclosure will be required if a no-load fund pays servicing fees to a fund supermarket.

<sup>159</sup> See Focus Group Report, supra note 32, at 8 (stating that participants felt that new investors may not be aware of the potential conflict of interest); Focus Group Transcripts, supra note 32, at 16, 41.

<sup>160</sup> See NAPFA Letter, supra note 44 (requesting standardized language describing possible forms of compensation, such as surrender fees, payment for shelf space, commissions paid for fund transactions, principal mark-ups and mark-downs, fees derived from bid-ask spreads, and payments for marketing support and/or education of registered representatives).

access to information about broker and intermediary compensation and conflicts of interest.

#### **4. Exchange-Traded Funds**

In March of this year, the Commission proposed several amendments to Form N-1A to accommodate the use of the form by ETFs.<sup>161</sup> Most ETFs are organized and registered as open-end funds. Unlike traditional mutual funds, however, they sell and redeem individual shares (“ETF shares”) only in large aggregations called “creation units” to certain financial institutions. ETFs register offerings and sales of ETF shares under the Securities Act and list their shares for trading under the Securities Exchange Act of 1934 (“Exchange Act”).<sup>162</sup> As with any listed security, investors trade ETF shares at market prices.

The proposed amendments for ETF prospectuses were designed to meet the needs of investors (including retail investors) who purchase ETF shares in secondary market transactions rather than financial institutions that purchase creation units directly from the ETF. The proposed amendments for ETF prospectuses also addressed the need to modify the summary section of ETF prospectuses to include the amended ETF disclosures. Today, we are adopting the proposed amendments for ETF prospectuses with changes to

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<sup>161</sup> See ETF Proposing Release, supra note 14, 73 FR at 14618.

<sup>162</sup> For a description of how ETFs operate, see id. at 14620-21. ETFs currently operate pursuant to exemptive orders granted by the Commission. The final amendments define an ETF as a fund or class of a fund, the shares of which are traded on a national securities exchange, and that has formed and operates pursuant to an exemptive order granted by the Commission or in reliance on an exemptive rule adopted by the Commission. General Instruction A of Form N-1A. The final ETF definition in Form N-1A eliminates from the proposed definition the cross-reference to proposed rule 6c-11, which, if adopted, would codify many of the exemptive orders granted to ETFs. See ETF Proposing Release, supra note 14, 73 FR at 14621-30. We have made this technical change to the ETF definition because the Commission has not adopted proposed rule 6c-11.

respond to issues raised by commenters on the summary prospectus proposing release and the ETF proposing release.<sup>163</sup>

**a. Purchasing and Redeeming Shares**

We are amending Form N-1A to eliminate the requirement that ETF prospectuses disclose information on how to buy and redeem shares directly from the ETF because it is not relevant to investors who are secondary market purchasers of ETF shares.<sup>164</sup> We proposed to require ETF prospectuses to state the number of shares contained in a creation unit (i.e., the aggregate number of shares an ETF will issue or that is necessary to redeem from the ETF), that individual shares can only be bought and sold on the secondary market through a broker-dealer, and that shareholders may pay more than net asset value (“NAV”) when they buy ETF shares and receive less than NAV when they sell shares because shares are bought and sold at current market prices.<sup>165</sup> We also proposed to amend the fee table disclosure in Form N-1A to exclude fees and expenses for purchases or redemptions of creation units and instead to modify the narrative explanation preceding the example in the fee table to state that investors in ETF shares may pay brokerage commissions that are not reflected in the example.<sup>166</sup> Commenters

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<sup>163</sup> The amendments we proposed in the ETF Proposing Release incorporated most of the comments from Barclays Global Fund Advisors (“BGFA”) in response to the Proposing Release. See Letter of BGFA (Feb. 28, 2008) (“BGFA Letter”). BGFA also requested guidance on how disclosure requirements in future exemptive orders will be integrated into the summary section of the prospectus. We are unable to provide guidance in this release because we do not know what additional disclosure requirements, if any, would be required for ETFs that form and operate pursuant to future exemptive orders. Additional disclosure requirements, if any, will be included in those exemptive orders.

<sup>164</sup> Item 6(c)(ii) of Form N-1A.

<sup>165</sup> See proposed Item 6(h)(3) and (4) of current Form N-1A; proposed Instruction 3 to Item 6(h) of current Form N-1A.

<sup>166</sup> Proposed Instruction 1(e)(i) to current Item 3 of Form N-1A. One commenter to the ETF Proposing Release requested that we require ETFs to include spread costs in the fee table.

who addressed the proposed amendments generally supported this approach.<sup>167</sup> We are adopting the amendments largely as proposed, with minor changes to conform to the final amendments to the summary section.<sup>168</sup> ETFs still will be required to include disclosure on how creation units are offered to the public in the SAI.<sup>169</sup>

Consistent with our proposal, the alternative disclosures in Items 3 and 6 of Form N-1A will not be available to ETFs with creation units of less than 25,000 shares.<sup>170</sup> Although only certain financial institutions purchase and redeem creation units directly from an ETF, individual or retail investors may be more likely to transact in creation units through one of these financial institutions if the creation unit size is less than 25,000

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See Letter of BGFA (May 16, 2008) (File No. S7-07-08) (“BGFA Letter on ETF Proposing Release”). This information is required to be disclosed pursuant to rule 11Ac1-5(b) of the Exchange Act [17 CFR 240.11Ac1-5(b)] and is publicly available to investors and the market, which considers the effect of spreads. We did not follow the commenter’s suggestion because we believe that disclosure regarding additional spreads in an ETF prospectus, particularly in the summary section, would not be meaningful to most investors and may be confusing.

<sup>167</sup> See, e.g., BGFA Letter on ETF Proposing Release, supra note 166, Letter of Investment Company Institute (May 19, 2008) (File No. S7-07-08) (“ICI Letter on ETF Proposing Release”).

<sup>168</sup> Item 6(c)(i) of Form N-1A; Instruction 1(e)(i) to Item 3 of Form N-1A. Item 6(c)(i)(B) requires disclosure that ETF shares may trade at a price greater than NAV (premium) or less than NAV (discount). The final amendments, like the proposed amendments, also will require each ETF to identify the exchange ticker symbol(s) and principal U.S. market(s) on which the shares are traded. Item 1(a)(2) of Form N-1A; rule 498(b)(1)(ii) 17 CFR 230.498(b)(1)(ii). We also are adopting a conforming amendment to the expense example in ETF annual and semi-annual reports. Instruction 1(e)(i) to Item 27(d) of Form N-1A.

<sup>169</sup> Item 23(a) of Form N-1A. Consistent with our proposal, we are not amending this disclosure to include information on creation unit redemption, which Item 11 requires and which we are eliminating for ETFs. See Item 11(g) of Form N-1A.

<sup>170</sup> Instruction 1(e)(ii) to Item 3 of Form N-1A; Item 6(c)(ii) of Form N-1A. We also are adopting a conforming amendment to the expense example in ETF annual and semi-annual reports. Instruction 1(e)(ii) to Item 27(d) of Form N-1A.

shares.<sup>171</sup> Because there is greater potential for retail investors to transact (indirectly) in creation units as they decrease in size, we are requiring any ETF that sells and redeems its shares in creation units of 25,000 or less to include in its prospectus information on how to purchase and redeem creation units and the costs associated with those transactions.<sup>172</sup>

**b. Total Return**

At the suggestion of commenters, we are not adopting our proposal that ETFs include disclosure of market price returns in addition to returns based on NAV.<sup>173</sup> Like any other fund that files Form N-1A, an ETF must disclose returns based on NAV.<sup>174</sup> All

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<sup>171</sup> ETFs directly sell and redeem creation units only to investors (“authorized participants”), usually brokerage houses, with which the ETF has a contractual agreement. See, e.g., Investment Company Act Release No. 27963 (Aug. 31, 2007) [72 FR 51475 (Sept. 7, 2007)]. The authorized participant may act as a principal in the transaction or as agent for another, typically an institutional investor.

<sup>172</sup> We have not, as one commenter to the ETF Proposing Release suggested, used a dollar value of a creation unit as the threshold for disclosure. See ICI Letter on ETF Proposing Release, supra note 167. We do not want to establish a threshold that may change (and as a consequence require amended disclosure) as a result of fluctuations in portfolio value rather than direct action by the ETF. We also disagree with one commenter who opined that the proposed threshold would create a de facto minimum of 25,000 shares for creation units and suggested that the threshold for exemptions from disclosure be set at 1,000 shares. See Letter of James J. Angel (May 16, 2008) (File No. S7-07-08). Other commenters, including ETF sponsors, explained they supported the proposed exemption from disclosure on the purchase and redemption of creation units because the information would confuse retail investors rather than because the disclosures were particularly costly or burdensome. See BGFA Letter on ETF Proposing Release, supra note 166; ICI Letter on ETF Proposing Release, supra note 167; Letter of Xshares Advisors LLC (May 20, 2008) (File No. S7-07-08) (“Xshares Letter”). Thus, it seems unlikely that an exemption from these disclosures would outweigh the other factors an ETF considers in determining the appropriate size of a creation unit, and we have not reduced the threshold for the exemption. See ICI Letter on ETF Proposing Release, supra note 167 (“[T]he appropriate size of a creation unit may vary depending on a number of factors, such as the type and availability of component securities, the expected uses of the product, and the likely Authorized Participants.”).

<sup>173</sup> See ETF Proposing Release, supra note 14, 73 FR at 14623 n. 163 and preceding, accompanying, and following text.

<sup>174</sup> See Item 13(a) of Form N-1A.

commenters who addressed this proposal opposed it.<sup>175</sup> They disagreed that these returns would be more relevant to an investor's experience in the ETF than returns based on NAV because market price (which we proposed to define as closing price) is not tied to an investor's particular purchase price.<sup>176</sup> One commenter suggested that while NAV also does not represent any single investor's experience, it provides a better metric of performance than market price.<sup>177</sup> After consideration of these comments, we agree with these commenters that market price returns would not more closely represent the experience of any particular investor and may confuse investors, particularly when disclosed next to NAV returns.<sup>178</sup> We therefore are not requiring ETFs to disclose market price returns in Form N-1A.<sup>179</sup>

We also are not adopting our proposal that would have required an index-based ETF to compare its performance to its underlying index rather than a benchmark index.<sup>180</sup> Commenters on the ETF proposing release stated that we should not change the disclosure requirement for index-based ETFs without changing the requirement for all

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<sup>175</sup> See ICI Letter on ETF Proposing Release, supra note 167; BGFA Letter on ETF Proposing Release, supra note 166; Xshares Letter, supra note 171.

<sup>176</sup> See ICI Letter on ETF Proposing Release, supra note 167; Xshares Letter, supra note 172.

<sup>177</sup> ICI Letter on ETF Proposing Release, supra note 167 (“[NAV] provides a consistent metric calculated as of the same time each day in accordance with the fund’s valuation policies and procedures, and is not subject to the influence of outlier bids or offers.”).

<sup>178</sup> See id.; BGFA Letter on ETF Proposing Release, supra note 166.

<sup>179</sup> Similarly, we are not adopting our proposed conforming amendments to the total return information in ETF annual reports. See ETF Proposing Release, supra note 14, 73 FR at 14633 nn. 171-172 and accompanying text.

<sup>180</sup> See ETF Proposing Release, supra note 14, 73 FR 14633 at nn. 173-174.

index funds.<sup>181</sup> We agree that the proposed change should be considered with respect to all index funds, not just index-based ETFs, and therefore, we are not adopting this amendment but may consider future rulemaking.<sup>182</sup>

**c. Premium/Discount Information**

We are adopting, as proposed, the amendments to the form to require each ETF to disclose to investors information about the extent and frequency with which market prices of fund shares have tracked the fund's NAV.<sup>183</sup> Each ETF will be required to disclose in its prospectus the number of trading days during the most recently completed calendar year and quarters since that year on which the market price of the ETF shares was greater than the fund's NAV and the number of days it was less than the fund's NAV (premium/discount information).<sup>184</sup> This disclosure is designed to alert investors to the

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<sup>181</sup> See, e.g., ICI Letter on ETF Proposing Release, supra note 167; Xshares Letter, supra note 171.

<sup>182</sup> We also are not, as one commenter suggested, eliminating the required disclosure concerning portfolio turnover information for index-based ETFs. See BGFA Letter, supra note 166. Although most ETFs may sell and redeem their creation units in kind (i.e., for a basket of assets), they still engage in portfolio transactions in order to conform the portfolio to changes in the index. We believe that information regarding portfolio turnover also may be relevant to an investor who is comparing an investment in an index-based ETF to an investment in an open-end index fund.

<sup>183</sup> Item 11(g)(2) of Form N-1A. See ETF Proposing Release, supra note 14, 73 FR at 14632 nn. 166-169 and accompanying and following text. ETFs currently are required to disclose on their Internet Web sites the prior business day's last determined NAV, the market closing price of the fund's shares or the midpoint of the bid-ask spread at the time of the calculation of NAV ("bid-ask price"), and the premium/discount of that price to NAV. See, e.g., WisdomTree Investments, Inc. et al., Investment Company Act Release Nos. 27324 (May 18, 2006) [71 FR 29995 (May 24, 2006)] (notice) and 27391 (June 12, 2006) (order); PowerShares Exchange Traded Fund Trust et al., Investment Company Act Release Nos. 25961 (Mar. 4, 2003) [68 FR 11598 (Mar. 11, 2003)] (notice) and 25985 (Mar. 28, 2003) (order).

<sup>184</sup> Consistent with our proposal, the final amendments require ETFs to present premiums or discounts as a percentage of NAV. Instruction 2 to Item 11(g)(2) of Form N-1A. See ETF Proposing Release, supra note 14, 73 FR at 14632 nn. 166-169 and accompanying and following text. ETFs also will have to explain that shareholders may pay more than NAV when purchasing shares and receive less than NAV when selling, because shares

relationship between NAV and the market price of the ETF's shares, and that investors may purchase or sell ETF shares at prices that do not correspond to NAV. In addition, this disclosure will provide historical information regarding the frequency of these deviations.

Commenters on the ETF proposing release were divided as to whether this specific premium/discount information would be useful to investors, although all who commented suggested the information need only be provided on the ETF's Web site.<sup>185</sup> Based on these comments, it appears that specific premium/discount information may not be generally useful to all ETF investors. For that reason, an ETF may omit the disclosure of specific premium/discount information in its prospectus or annual report if the fund provides the information on its Internet Web site and discloses in the prospectus or annual report an Internet address where investors can locate the information.<sup>186</sup> Because

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are bought and sold at market prices. Instruction 3 to Item 11(g)(2) of Form N-1A. Consistent with the proposal, the final amendments require ETFs to include a table with premium/discount information in their annual reports for the five recently completed fiscal years. Item 27(b)(7)(iv) of Form N-1A. We are including instructions similar to those in Item 11 to assist funds in meeting this disclosure obligation. Instructions to Item 27(b)(7)(iv) of Form N-1A.

<sup>185</sup> See Xshares Letter, supra note 172 (“[W]e believe that the disclosure of [premium/discount] information is useful to investors and support this requirement.”); Letter of NYSE Arca (May 28, 2008) (File No. S7-07-08) (asserting generally that disclosure of premium/discount information required on the Web site, together with other available index or portfolio information provides necessary information to investors to assess ETF pricing against the underlying index or portfolio). But see BGFA Letter on ETF Proposing Release, supra note 166 (“[T]he concept of premium/discount may not be an instructive way of thinking about ETF share prices in the secondary market ... BGFA’s Internet website experience suggests investors do not value this information highly.”); ICI Letter on ETF Proposing Release, supra note 167 (premium/discount information is not particularly useful and investors do not regularly seek it).

<sup>186</sup> Item 11(g)(2) of Form N-1A; Item 27(b)(7)(iv) of Form N-1A. Although the time period required in the disclosure is different in the prospectus and annual report, ETFs will be able to omit both disclosures by providing on their Internet Web sites only the premium/discount information required by Item 11(g)(2) (the most recently completed fiscal year and quarters since that year). Id. In order to rely on the exemptive orders that permit them to operate, ETFs also must disclose on their Web sites each day the premium

ETFs may choose to provide this disclosure on their Web sites instead of in their prospectuses, we have added a requirement that the prospectus disclose that ETF shares may trade at a premium or discount.<sup>187</sup> This approach is designed to require disclosure of the information, but avoid duplicative disclosures that may result in additional regulatory burdens. Commenters who addressed the issue strongly supported permitting ETFs to include historical premium/discount information on their Web sites instead of in their prospectuses and annual reports.<sup>188</sup> Our amendments allow ETFs to choose the most cost-effective method of providing this disclosure to their investors.

For purposes of calculating premium/discount information, we are adopting, with a modification, the proposed definition of “market price.”<sup>189</sup> Commenters objected to our proposed definition of market price as the closing price because of stale pricing concerns.<sup>190</sup> These commenters suggested that ETFs instead be permitted to use the mid-

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and discount of the market closing price or the bid/ask price against the NAV as a percentage of NAV. See supra note 183. Investors in ETFs that choose not to disclose the required premium/discount information in their prospectuses or annual reports would be able to review historic and daily premium/discount information on the ETF’s Web site.

<sup>187</sup> Item 6(c)(i)(B) of Form N-1A.

<sup>188</sup> See, e.g., BGFA Letter on ETF Proposing Release, supra note 166 (“Duplicative disclosure strikes us as unnecessary and burdensome .... Because data in a prospectus speaks of the prospectus date and therefore does not include the most recent information, we believe Internet Web site disclosure is preferable to prospectus disclosure. Accordingly, we believe that it would be sufficient to reference the availability of the information on the Internet Web site in a prospectus.”).

<sup>189</sup> General Instruction A of Form N-1A. See ETF Proposing Release, supra note 14, 73 FR at 14632 nn. 164-165 and accompanying text for a discussion of the proposed definition of “market price.”

<sup>190</sup> See, e.g., Letter of Chapman and Cutler LLP (May 19, 2008) (File No. S7-07-08) (“Chapman Letter”); ICI Letter on ETF Proposing Release, supra note 167 (noting that the closing price may be less accurate because the last trade occurred at a much earlier time than the NAV calculation).

point between the highest bid and the lowest offer at the time the fund's NAV is calculated.<sup>191</sup> To address these concerns, the final amendments define the term "market price" to mean the closing price on the principal market on which ETF shares trade or within the range between the highest offer and the lowest bid if that price more accurately reflects the current market value of the fund's shares at the time the Fund calculates its NAV.<sup>192</sup>

## 5. Conforming and Technical Amendments to Form N-1A

The foregoing amendments to Form N-1A require adding new items to the form and revising and renumbering certain existing items. We are adopting conforming

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<sup>191</sup> See, e.g., Chapman Letter, *supra* note 190; ICI Letter on ETF Proposing Release, *supra* note 167. See also, e.g., Claymore Exchange-Traded Fund Trust, Investment Company Act Release No. 27469 (Aug. 28, 2006) [71 FR 51869 (Aug. 31, 2006)] (exemptive order permitting ETF to operate in which ETF has used the mid-point price, rather than the closing price, in circumstances when closing price may be less accurate because the last trade occurred at a much earlier point in the day than NAV calculation). One commenter also noted that the principal trading market for an ETF may shift during the trading day and, therefore, that the rule should use the market price on the various principal U.S. markets on which the ETF shares trade during a regular trading session. See Chapman Letter, *supra* note 190. We have not incorporated this suggestion in our amendments. We note that rules of the national securities exchanges use the term "principal market." See, e.g., NYSE Arca Rule 6.1(b)(27) (in its rule that applies to options trading on the exchange, defining "primary market" in respect of an underlying stock or ETF share to mean "the principal market in which the underlying stock or [ETF share] is traded."). We have included the term "trading" to be clear that the term does not refer to the principal listing market. In addition, expanding the rule to various principal trading markets may be confusing and could create the potential that funds will seek the market that provides the best bid/offer.

<sup>192</sup> Definition of "Market Price" in General Instruction A of Form N-1A ("Market Price" refers to the last reported sale price at which ETF shares trade on the principal U.S. market on which the fund's shares are traded during a regular trading session or, if it more accurately reflects the current market value of the fund's shares at the time the fund uses to calculate its NAV, a price within the range of the highest bid and lowest offer on the principal U.S. market on which the fund's shares are traded during a regular trading session."). See Codification of Financial Reporting Policies, Section 404.03.b.ii, "Valuation of Securities—Securities Listed or Traded on a National Securities Exchange," reprinted in SEC Accounting Rules (CCH) ¶ 38,221, at 38.424-25. See also Fair Value Measurements, Statement of Financial Accounting Standards No. 157, § 24 (Fin. Accounting Standards Bd. 2006).

amendments to Form N-1A, consistent with these revisions and renumbering, in order to update the table of contents and the various references to Form N-1A items contained within the form. We are also adopting technical amendments to Form N-1A to update the Commission's telephone number and address.<sup>193</sup>

**B. New Delivery Option for Mutual Funds**

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

The Commission is adopting, with modifications to address commenters' concerns, the proposal to replace rule 498<sup>194</sup> with a new rule that permits 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 will require a fund to send the statutory prospectus in paper or by e-mail upon request. The Summary Prospectus is required to contain the key information that is included in the new summary section of the statutory prospectus in the same order that is required in the statutory prospectus.

The new rule 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. The rule provides for a layered approach to disclosure in which key information is sent or given to the investor and more detailed information is provided

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<sup>193</sup> Cover page to Form N-1A; Item 1(b)(3) of Form N-1A.

<sup>194</sup> As adopted in 1998, rule 498 permits mutual funds to offer investors a disclosure document called a "profile," which summarizes key information about the fund. An investor deciding to purchase fund shares based on the information in a profile is required to receive the fund's statutory prospectus with the security or confirmation of purchase. Investment Company Act Release No. 23065 (Mar. 13, 1998) [63 FR 13968 (Mar. 23, 1998)]. The amendments we are adopting today result in the elimination of the profile.

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.<sup>195</sup> In short, we believe that the new rule will result in funds providing investors with more useable information than they receive today in a format that investors are more likely to use and understand. Under the new rule, an investor could choose to receive the statutory prospectus in the same paper format that would be provided under our prior rules.

The new rule provides that any obligation under Section 5(b)(2) of the Securities Act<sup>196</sup> 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;<sup>197</sup> (2) the Summary Prospectus is not bound together with any materials, except

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<sup>195</sup> A recent survey indicated that 90% of investors surveyed had access to the Internet. See Telephone Survey Report, supra note 32, at 115. It also indicated over half (56%) rely on the Internet to some extent (ranging from “a little” to “completely”) in making investment decisions. Id. at 116. The survey report further indicated that 53% of respondents who own mutual funds accessed investment information via the Internet. Id. at 6.

<sup>196</sup> 15 U.S.C. 77e(b)(2).

<sup>197</sup> 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)]. If, prior to the effective date of this rule, an investor had consented in accordance with existing Commission guidance to receive future versions of one or more funds’ statutory prospectuses by electronic means, we would not object if a fund or financial intermediary relies on that consent to send or give the Summary Prospectuses of those funds by electronic means to that investor, provided that the consent is not otherwise revoked.

as described below; (3) 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 (4) the conditions set forth in the rule, which require a fund to provide the Summary Prospectus, statutory prospectus, and other information on the Internet in the manner specified in the rule, are satisfied.<sup>198</sup> As discussed in more detail below, we have changed the proposed condition that the Summary Prospectus be given "greater prominence" than accompanying materials into a requirement of the rule, rather than a condition to satisfaction of delivery obligations under Section 5(b)(2) of the Securities Act. We have also clarified that any particular Summary Prospectus is not required to be given "greater prominence" than any other Summary Prospectuses or statutory prospectuses. As adopted, we are also permitting the Summary Prospectuses and statutory prospectuses of multiple underlying funds of a variable insurance contract to be bound with each other and with the statutory prospectus for the contract.

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) is 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

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<sup>198</sup> Rule 498(c).

satisfaction of the Section 5(b)(2) obligation by other available means,<sup>199</sup> a Section 5(b)(2) violation would result. The rule also requires a fund to send the statutory prospectus upon request. This requirement is not a condition to reliance on the rule, and failure to send the requested statutory prospectus will result in a violation of the rule (as opposed to a violation of Section 5(b)(2)).

Section 5(b)(2) does not require delivery of the statutory prospectus prior to delivery of the security or confirmation of the transaction. As a result, mutual fund investors too often receive the statutory prospectus after the purchase transaction when the investment decision is complete. The rules we are adopting will, in practice, require any fund that is relying on the Summary Prospectus to meet its obligations under Section 5(b)(2) to post both its Summary Prospectus and statutory prospectus on the Internet at all times. This will result in significantly enhanced access by investors to information about the fund prior to the time of making an investment decision. Several commenters observed that it would be helpful if investors could review a Summary Prospectus prior to making an investment decision.<sup>200</sup> We intend to consider additional steps in the future that would further enhance investors' access to the Summary Prospectus, other

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<sup>199</sup> These include paper delivery of a statutory prospectus or electronic delivery of a statutory prospectus in reliance upon existing Commission guidance. See supra note 197 for existing Commission guidance on electronic delivery. We note that it would be permissible to satisfy Section 5(b)(2) obligations by relying on rule 498 to send or give a Summary Prospectus to some investors, while providing a statutory prospectus to others. For example, it would be permissible to rely on rule 498 to send or give the Summary Prospectus to existing investors who purchase additional shares while providing the statutory prospectus to new investors. It would also be permissible for a life insurance company to satisfy Section 5(b)(2) obligations with respect to a variable insurance contract by relying on rule 498 to send or give a Summary Prospectus with respect to some underlying funds, while providing a statutory prospectus with respect to other underlying funds, for example, where some underlying funds maintain a Summary Prospectus while others do not.

<sup>200</sup> See, e.g., AARP Letter, supra note 34; Fund Democracy et al. Letter, supra note 34.

information about the fund, and enhanced information about broker and intermediary compensation and conflicts of interest before the investment decision. For example, we continue to consider appropriate disclosures at the point of sale by financial intermediaries, including whether there should be an obligation to direct investors to the online availability of the Summary Prospectus and offer investors a copy of the Summary Prospectus.<sup>201</sup>

The rule we are adopting also provides 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; (2) the Summary Prospectus is not bound together with any materials, except as described below; (3) the Summary Prospectus that was sent or given satisfies the rule's requirements at the time of the communication; and (4) the conditions set forth in the rule, which require a fund to provide the Summary Prospectus, statutory prospectus, and other information on the Internet in the manner specified in the rule, are satisfied.<sup>202</sup> 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

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<sup>201</sup> See supra note 155. To the extent that we conclude that such an obligation on the part of financial intermediaries is appropriate, we would also consider similar obligations in the case of funds that are sold directly to investors.

<sup>202</sup> Rule 498(d). This provision is limited to a mutual fund Summary Prospectus that satisfies the terms of the proposed rule and does not apply in the case of any issuer other than a mutual fund.

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.<sup>203</sup> 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.<sup>204</sup> Similarly, under the new rule, communications that are preceded or accompanied by a Summary Prospectus are not deemed to be prospectuses and are not subject to Section 12(a)(2) if all the conditions of the rule are met. These communications remain subject to the general antifraud provisions of the federal securities laws.<sup>205</sup>

Commenters generally supported the proposal, noting that investors will be more likely to read and understand the Summary Prospectus than the statutory prospectus and that use of the Summary Prospectus will help investors to focus on what is most important in making investment decisions with respect to a particular fund.<sup>206</sup> One commenter noted that its own research has shown that most investors do not find the statutory prospectus to be a particularly useful document and do not rely heavily on it in

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<sup>203</sup> 15 U.S.C. 77b(a)(10)(a).

<sup>204</sup> 15 U.S.C. 77j(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.

<sup>205</sup> See, e.g., Section 17(a) of the Securities Act [15 U.S.C. 77q(a)]; Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)]; Section 34(b) of the Investment Company Act [15 U.S.C. 80a-33(b)].

<sup>206</sup> See, e.g., AARP Letter, supra note 34; CMFI Letter, supra note 44; Fund Democracy et al. Letter, supra note 34; ICI Letter, supra note 34; MFDF Letter, supra note 34.

making a fund selection. The commenter agreed that it makes little sense to continue to require delivery of a document to all investors that most say they do not value.<sup>207</sup> A second commenter noted that the proposal “reflects the strikingly broad consensus that investors would be best served by simplified, streamlined disclosure of essential fund information” and is supported by research conducted by the Commission and others.<sup>208</sup> Similarly, investors in our focus groups generally expressed favorable views of the Summary Prospectus, noting its usefulness as a screening tool to identify funds that they might wish to research further.<sup>209</sup> Commenters also approved of the proposal’s use of the power of the Internet and advances in technology to deliver information to investors.<sup>210</sup>

Two commenters argued that use of the Summary Prospectus should be mandatory, including one who noted that inconsistent use of the Summary Prospectus could create confusion and would make comparison of funds more difficult for investors.<sup>211</sup> We have determined not to mandate use of the Summary Prospectus at this time. We believe that further public comment on this important step is necessary, and we intend to review the use of the Summary Prospectus by investors in funds that voluntarily

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<sup>207</sup> See Fund Democracy et al. Letter, supra note 34.

<sup>208</sup> See ICI Letter, supra note 34.

<sup>209</sup> Focus Group Report, supra note 32, at 5-6 (quoting participants as stating “I think it cuts to the important factors of performance, cost, objectives. I like it;” “It’s a two-minute read. If I want more information, I can ask for it;” “I think that this [short-form prospectus] you’d read and if you’re interested and then you’ve got questions and you want to go more in-depth and go to the long one;” “I think both [the long and short-form prospectuses] have their place. I think it would be foolish to give up the long-form for (the short[-]form) and I think it would be foolish not to have the short-form and insist on a long-form. They both have their place.”).

<sup>210</sup> See, e.g., AARP Letter, supra note 34; CMFI Letter, supra note 44; ICI Letter, supra note 34; Oppenheimer Letter, supra note 44.

<sup>211</sup> See Letter of Kevin Possin and Ann Lavine (Feb. 7, 2008); Vanguard Letter, supra note 42.

adopt the Summary Prospectus and reconsider whether the Summary Prospectus should be mandated in the future.

As noted above, we are modifying the rule's conditions in three respects to address the concerns of commenters. First, we have eliminated the condition that the Summary Prospectus be given greater prominence than any accompanying materials<sup>212</sup> and instead made it a rule requirement.<sup>213</sup> Second, we have modified this requirement to clarify that a Summary Prospectus need not be given "greater prominence" than other Summary Prospectuses or statutory prospectuses that accompany the Summary Prospectus. Third, we have revised the condition that would have prohibited the Summary Prospectus from being bound together with any other materials<sup>214</sup> to permit a Summary Prospectus for a fund that is available as an investment option in a variable annuity or variable life insurance contract to be bound together with the statutory prospectus for the contract and Summary Prospectuses and statutory prospectuses for other investment options available under the contract.<sup>215</sup>

We have made the "greater prominence" standard a rule requirement instead of a condition to satisfaction of Section 5(b)(2) obligations.<sup>216</sup> While we continue to believe that the "greater prominence" requirement is important to prevent the Summary Prospectus from being obscured by accompanying sales and other materials and to

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<sup>212</sup> Proposed rule 498(c)(1) and (d)(1).

<sup>213</sup> Rule 498(f)(2).

<sup>214</sup> Proposed rule 498(c)(1) and (d)(1).

<sup>215</sup> Rule 498(c)(2) and (d)(2).

<sup>216</sup> Rule 498(f)(2).

highlight for investors the concise, balanced presentation of the Summary Prospectus,<sup>217</sup> we are persuaded by commenters that the consequences of failure to meet the condition – a Section 5 violation – is not needed to achieve our goal.<sup>218</sup> Therefore, we are adopting commenters’ suggestion that satisfaction of the “greater prominence” standard be a rule requirement.<sup>219</sup> As adopted, the “greater prominence” requirement is not a condition to reliance on the rule to satisfy a fund’s or intermediary’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 complies with the conditions to the rule will not violate Section 5(b)(2) if the “greater prominence” standard is not satisfied. This failure will, however, constitute a violation of the Commission’s rules. Generally, we believe that the “greater prominence” requirement would be satisfied if the placement of the Summary Prospectus is more prominent than accompanying materials, e.g., the Summary Prospectus is on top of a group of paper documents that are provided together.<sup>220</sup>

We are adopting the condition that prohibits a Summary Prospectus from being bound together with any other materials. Although commenters were split on the proposed binding prohibition, with some supporting the requirement and others opposed

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<sup>217</sup> See, e.g., Pace Letter, supra note 125 (expressing support for the “greater prominence” requirement).

<sup>218</sup> See, e.g., ABA Letter, supra note 37; ICI Letter, supra note 34; NYC Bar Letter, supra note 75.

<sup>219</sup> See, e.g., ABA Letter, supra note 37; ICI Letter, supra note 34; Oppenheimer Letter, supra note 44.

<sup>220</sup> In response to a commenter’s concerns, we are making a technical change to the “greater prominence” requirement to clarify that any particular Summary Prospectus need not be given “greater prominence” than any other Summary Prospectuses or statutory prospectuses that accompany the Summary Prospectus. See ICI Letter, supra note 34.

or seeking modifications,<sup>221</sup> we continue to believe that it is important to prevent the Summary Prospectus from being obscured by accompanying sales and other materials and to highlight for investors the concise, balanced presentation of the Summary Prospectus. We are, however, persuaded that it is appropriate to permit binding the statutory prospectus of a variable insurance contract with the Summary Prospectuses and statutory prospectuses of its underlying funds.<sup>222</sup> This will permit satisfaction of prospectus delivery requirements for both a variable insurance contract and its underlying funds in one consolidated package and does not involve any risk of the prospectuses being obscured by sales or other materials. Specifically, under rule 498, a Summary Prospectus for a fund that is available as an investment option in a variable annuity or variable life insurance contract may be bound together with the statutory prospectus for the contract and Summary Prospectuses and statutory prospectuses for other investment options available in the contract, provided that: (i) all of the funds to which the Summary Prospectuses and statutory prospectuses that are bound together relate are available to the person to whom such documents are sent or given; and (ii) a table of contents identifying each Summary Prospectus and statutory prospectus that is bound together, and the page

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<sup>221</sup> See, e.g., Pace Letter, supra note 125 (supporting binding prohibition); T. Rowe Letter, supra note 49 (supporting a binding prohibition instead of a “greater prominence” requirement); ICI Letter, supra note 34 (arguing that rule should prohibit Summary Prospectuses from being bound together with sales materials, or alternatively that there be certain specific carve-outs to permit binding of funds’ privacy notices and to permit the binding together of Summary Prospectuses for certain similar types of funds); Letter of Charles Schwab & Co., Inc., and Charles Schwab Investment Management, Inc. (Feb. 28, 2008) (“Schwab Letter”) (requesting carve-out to permit binding of funds’ privacy policies); Data Communiqué Letter, supra note 35 (opposing binding prohibition); Dechert Letter, supra note 50 (opposing binding prohibition); Schnase Letter, supra note 35 (opposing binding prohibition).

<sup>222</sup> See, e.g., CAI Letter, supra note 67; Dechert Letter, supra note 50; EQ/AXA Letter, supra note 67; Fidelity Letter, supra note 86; ICI Letter, supra note 34; Vanguard Letter, supra note 42.

number on which it is found, is included at the beginning or immediately following a cover page of the bound materials. These conditions are intended to ensure that investors are not inundated with prospectuses that are not relevant to the contract they are considering and to ensure that investors can readily locate the particular prospectuses in which they are interested.

## **2. Content of Summary Prospectus**

Rule 498 sets forth the content requirements that a Summary Prospectus must satisfy.<sup>223</sup> A Summary Prospectus meeting the requirements of the rule will 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.<sup>224</sup> 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 will, however, preclude the use of the Summary Prospectus for the other purposes described in 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 will have to be met by means other than the new rule or a Section 5(b)(2) violation will result.

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<sup>223</sup> Rule 498(b). Rule 498(a) defines terms used in the rule.

<sup>224</sup> Rule 498(b). Section 10(b) of the Securities Act [15 U.S.C. 77j(b)] authorizes the Commission to adopt rules permitting the use of a prospectus for the purposes of Section 5(b)(1) [15 U.S.C. 77e(b)(1)] that summarizes information contained in the statutory prospectus. Section 24(g) of the Investment Company Act [15 U.S.C. 80a-24(g)] 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.

**a. General**

We are adopting, with one clarification, the requirement that the Summary Prospectus include the same information as required in the summary section of the statutory prospectus in the same order required in the statutory prospectus.<sup>225</sup> This key information about investment objectives, costs, and risks forms the body of the Summary Prospectus.

We are adopting a new requirement to clarify that if a fund relies on rule 498 to meet its statutory prospectus delivery obligations, the information contained in the Summary Prospectus must be the same as the information contained in the summary section of the fund's statutory prospectus, except as expressly permitted by rule 498.<sup>226</sup> That is, a fund may not provide different, such as more or less expansive, information in its Summary Prospectus than it provides in its statutory prospectus. If, pursuant to rule 497, a mutual fund files a "sticker" to its statutory prospectus that changes any information in the summary section, the Summary Prospectus should either be "stickered" or amended to reflect the information in the statutory prospectus "sticker." This new requirement is intended to clarify our intent in adopting the same content requirements for the Summary Prospectus and the summary section of the statutory prospectus.

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<sup>225</sup> Rule 498(b)(2) (Summary Prospectus to include information required or permitted by Items 2 through 8 of Form N-1A). We are adopting, as proposed, the provision that permits a fund to omit from the Summary Prospectus an explanation of the reasons for any change in the securities market index used for comparison purposes in the performance presentation. Rule 498(b)(2). Cf. Instruction 2(c) to Item 4(b)(2) of Form N-1A (requiring this explanation in summary section of statutory prospectus).

<sup>226</sup> Rule 498(f)(4). Rule 498(b)(2) expressly permits a Summary Prospectus to omit certain information relating to a change in the securities market index used for comparison purposes. See *supra* note 225.

The Summary Prospectus will 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 will not be a Summary Prospectus under the rule and may not be used under the rule for any purpose, including meeting the obligation to deliver a fund’s statutory prospectus.<sup>227</sup> We are adopting these requirements, as proposed, because we believe that uniformity of content in Summary Prospectuses will provide better comparability, which will help investors to make a more informed investment decision, a conclusion which was supported by a number of commenters.<sup>228</sup> While some commenters argued that the rule should provide funds with flexibility to customize the content of the Summary Prospectus,<sup>229</sup> we are not persuaded because customization would significantly impair investors’ ability to compare information across funds. We note that, provided the content and order requirements of the rule are met,

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<sup>227</sup> A Summary Prospectus that omits certain information required by the rule or includes additional information not permitted by the 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.

<sup>228</sup> See, e.g., Letter of Brown & Associates LLC and Self Audit, Inc. (Feb. 27, 2008) (“Self Audit Letter”); CMFI Letter, supra note 44; Data Communiqué Letter, supra note 35; Evergreen Letter, supra note 41; Firehouse Letter, supra note 35; Great-West Letter, supra note 42; ICI Letter, supra note 34; Keil Letter, supra note 62; Letter of NewRiver, Inc. (Feb. 28, 2008) (“NewRiver Letter”); Oppenheimer Letter, supra note 44; Pace Letter, supra note 125; Schnase Letter, supra note 35.

<sup>229</sup> See, e.g., Clarke Letter, supra note 35; Hastie Letter, supra note 59; Letter of Stephen A. Keen (Feb. 28, 2008); Ogg Letter, supra note 75.

funds have almost complete flexibility with respect to design issues, including layout, graphics, and color.<sup>230</sup>

We are adopting, as proposed, the requirement that a Summary Prospectus describe only one fund, but may describe multiple classes of a single fund.<sup>231</sup> This requirement is similar to the requirements for the summary section of the statutory prospectus.<sup>232</sup> Like those requirements, it is intended to result in a presentation of key fund information that is concise and easy to read.

One commenter suggested that the Commission permit funds to satisfy their obligation to deliver a statutory prospectus to their existing shareholders by delivering a document directing shareholders' attention to material changes that have occurred during the covered period.<sup>233</sup> The commenter argued that such an approach would focus

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<sup>230</sup> See, e.g., AARP Letter, supra note 34 (Commission “should set broad parameters for compliance with the required substance, format and presentation of the summary prospectus, but also allow funds to use their creativity in designing a form that is truly investor friendly.”); Data Communiqué Letter, supra note 35 (favoring similar content, but stating that the Commission should allow for layout and graphical differences).

Summary Prospectuses are subject to the font size and legibility requirements for prospectuses that are set forth in rule 420 under the Securities Act [17 CFR 230.420]. Rule 420 generally requires, among other things, that printed prospectuses be in roman type at least as large and as legible as 10-point modern type.

<sup>231</sup> Rule 498(b)(4).

<sup>232</sup> See discussion supra introductory text to Part III.A. and “Organizational Requirements” in Part III.A.1.

<sup>233</sup> See Fund Democracy et al. Letter, supra note 34. 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 statutory prospectuses annually to reflect current cost, performance, and other financial information. Many funds deliver updated statutory prospectuses annually to their existing shareholders in order to meet their prospectus delivery obligations with respect to additional purchases by those shareholders.

shareholders' attention on the factors that are most likely to affect their continuing evaluation of the fund and impose lower costs than delivery of the Summary Prospectus. We are not adopting this suggestion at this time. We are concerned that creation of an additional document to be used only for existing shareholders could impose significant costs on funds and their shareholders. Moreover, as noted earlier, we recently proposed to require mutual funds to submit in interactive data format information contained in the risk/return summary section of their statutory prospectuses.<sup>234</sup> We are continuing to consider that proposal and believe that, if adopted, this requirement would help investors, intermediaries, and others to readily identify any changes in this information.

**b. Cover Page or Beginning of Summary Prospectus**

We are adopting, as proposed, the requirements for the cover page or beginning of the Summary Prospectus, with the addition of a requirement to include the exchange ticker symbols of the fund's securities.<sup>235</sup> The Summary Prospectus will 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;
- the exchange ticker symbol of the fund's securities or, if the Summary Prospectus relates to one or more classes of the fund's securities, adjacent to each such class, the exchange ticker symbol of such class of the fund's securities;
- a statement identifying the document as a "Summary Prospectus"; and

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<sup>234</sup> Investment Company Act Release No. 28298, *supra* note 28, 73 FR at 35443.

<sup>235</sup> This requirement is discussed in Part III.A.2.

- the approximate date of the Summary Prospectus’s first use.

In addition, the cover page or beginning of the Summary Prospectus is 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 [\_\_\_\_\_].”<sup>236</sup>

In addition, the legend may 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.<sup>237</sup>

The legend is 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.<sup>238</sup> The legend is also 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.<sup>239</sup> The Internet address at which the statutory prospectus and other information are available is not permitted to be the address of the Commission’s Electronic Data

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<sup>236</sup> Rule 498(b)(1).

<sup>237</sup> Rule 498(b)(1)(v)(B).

<sup>238</sup> Rule 498(b)(1)(v)(A).

<sup>239</sup> The Web site and other contact information provided may be the Web site and contact information of a financial intermediary.

Gathering, Analysis, and Retrieval System (“EDGAR”).<sup>240</sup> The address is 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.<sup>241</sup> The Web site could be a central site with prominent links to each required document.<sup>242</sup>

We are not modifying the proposal in response to commenters who suggested that the legend provide more guidance regarding the types of information available,<sup>243</sup> because we believe that investors will be less likely to read a longer legend describing multiple documents and that the legend, as adopted, is sufficient to alert investors to the existence and location of additional information about the fund. Moreover, as discussed below in Part III.B.4.a., a Summary Prospectus that incorporates information by reference is required to include more specific disclosure identifying the documents from which the

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<sup>240</sup> 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).

<sup>241</sup> 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 the discussion in Part III.B.3. below.

<sup>242</sup> One commenter suggested removing the word “prominent” from the phrase “a central site with prominent links” because it calls into question whether a fund complex could have one Web page with numerous links or a drop-down menu allowing users to navigate to disclosure documents for each of the funds. See ICI Letter, *supra* note 34. We have decided to retain the prominence requirement because we believe that it is important to effective delivery that investors be able to easily find the links to the particular documents in which they are interested. Cf. Exchange Act Release No. 55146 (Jan. 22, 2007) [72 FR 4148, 4153-54 n. 79 (Jan. 29, 2007)] (use of central site with prominent links in electronic delivery of proxy materials). We note, however, that there is no requirement that the links be more prominent than other information. In addition, the requirement for prominent links to the relevant documents could be satisfied by a central site that lists each fund in alphabetical order with, in table format, links to each fund’s Summary Prospectus, statutory prospectus, SAI, and annual and semi-annual shareholder report or similar means, such as a drop-down menu allowing users to easily navigate the documents for each of the funds.

<sup>243</sup> See, e.g., CMFI Letter, *supra* note 44; Foreside Letter, *supra* note 74; MFS Letter, *supra* note 150.

information is incorporated. We also are not modifying the proposal in response to a commenter who suggested that the legend make clearer that the Summary Prospectus is only a part of the full statutory prospectus.<sup>244</sup> We believe that the combination of the legend and the requirement to identify the Summary Prospectus as a “Summary Prospectus” will provide clear notice to investors that more information is contained in the statutory prospectus.

### **c. Updating Requirements**

We are not adopting the proposed requirement that performance information in the Summary Prospectus be updated quarterly and related provisions of the proposed rule.<sup>245</sup> We are persuaded by commenters who expressed concerns about potential investor confusion, focus on short-term performance, and the costs and operational difficulties associated with implementing quarterly updating.<sup>246</sup> As adopted, the rule will

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<sup>244</sup> See, e.g., Schnase Letter, supra note 35 (state that investors may want to review the fund’s “full prospectus” or “complete prospectus” to adequately distinguish it from the Summary Prospectus).

<sup>245</sup> Proposed rule 498(b)(2)(ii) (quarterly updating requirement); proposed rule 498(e) (provisions related to quarterly updating requirement). The proposal also would have required quarterly updating of a fund’s top 10 portfolio holdings. Proposed rule 498(b)(2)(iii). As discussed above, we have determined not to require inclusion of a fund’s top 10 portfolio holdings in the summary section of the statutory prospectus or in the Summary Prospectus. See discussion supra Part III.A.3.a.

<sup>246</sup> See, e.g., AIM Letter, supra note 47; American Century Letter, supra note 48; CAI Letter, supra note 67; Capital Research Letter, supra note 34; Clarke Letter, supra note 35; Dechert Letter, supra note 50; EQ/AXA Letter, supra note 67; Evergreen Letter, supra note 41; Fidelity Letter, supra note 86; Financial Services Institute Letter, supra note 41; Letter of Financial Services Roundtable (Feb. 28, 2008) (“Financial Services Roundtable Letter”); Firehouse Letter, supra note 35; Letter of Fluent Technologies (Mar. 14, 2008) (“Fluent Letter”); Foreside Letter, supra note 74; Great-West Letter, supra note 42; ICI Letter, supra note 34; IDC Letter, supra note 61; MFS Letter, supra note 150; NYC Bar Letter, supra note 75; Oppenheimer Letter, supra note 44; Putnam Letter, supra note 48; Letter of RiverSource Funds (Feb. 25, 2008) (“RiverSource Letter”); Russell Letter, supra note 48; Schwab Letter, supra note 221; SIFMA Letter, supra note 97; Letter of Stradley Ronon Stevens & Young, LLP (Feb. 28, 2008) (“Stradley Letter”); T. Rowe Letter, supra note 49; USAA Letter, supra note 153; Vanguard Letter, supra note 42.

require a fund that makes updated performance information available on a Web site or at a toll-free (or collect) telephone number to include a statement explaining this and providing the Web site address and/or telephone number.<sup>247</sup>

Some commenters noted that investors may be confused if different information is contained in the summary section of the statutory prospectus (which the proposal did not require to be updated on a quarterly basis) and the Summary Prospectus.<sup>248</sup> A number of commenters also expressed concern that the proposed quarterly updating requirement signals a troubling shift toward focusing on short-term performance information, rather than encouraging investors to consider long-term performance.<sup>249</sup> Commenters also noted that updated performance information is already widely available on the Internet and from other sources.<sup>250</sup> Many commenters suggested as an alternative that the Commission require annual updating of the Summary Prospectus, with prominent disclosure in the document describing how investors can access updated performance information (*i.e.*, through a Web site address or toll-free telephone number).<sup>251</sup> Investors

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<sup>247</sup> Item 4(b)(2)(i) of Form N-1A. This requirement is discussed more fully in Part III.A.3.e.

<sup>248</sup> See, e.g., Capital Research Letter, supra note 34; Dechert Letter, supra note 50; ICI Letter, supra note 34; NYC Bar Letter, supra note 75; Oppenheimer Letter, supra note 44; Russell Letter, supra note 48; SIFMA Letter, supra note 97; Stradley Letter, supra note 246; T. Rowe Letter, supra note 49.

<sup>249</sup> See, e.g., AIM Letter, supra note 47; American Century Letter, supra note 48; Capital Research Letter, supra note 34; Dechert Letter, supra note 50; Fluent Letter, supra note 246; ICI Letter, supra note 34; Oppenheimer Letter, supra note 44; Russell Letter, supra note 48.

<sup>250</sup> See, e.g., ICI Letter, supra note 34, Vanguard Letter, supra note 42.

<sup>251</sup> See, e.g., AIM Letter, supra note 47; American Century Letter, supra note 48; Capital Research Letter, supra note 34; Clarke Letter, supra note 35; Fidelity Letter, supra note 86; Financial Services Institute Letter, supra note 41; Firehouse Letter, supra note 35; Financial Services Roundtable Letter, supra note 246; IDC Letter, supra note 61; Janus Letter, supra note 63; MFS Letter, supra note 150; Oppenheimer Letter, supra note 44;

participating in our focus groups also indicated that they would be willing to obtain updated fund information online.<sup>252</sup>

In addition, many commenters from the fund industry also stated that the costs and operational difficulties associated with implementing the quarterly updating requirement would discourage funds from using the Summary Prospectus.<sup>253</sup> The commenters noted that updating of Summary Prospectuses would likely require an entirely new process that would be more complex than the one used for existing quarterly fund fact sheets. Moreover, these commenters noted that a quarterly updating requirement would essentially require them to move to an “on demand” printing model for distribution of Summary Prospectuses, which would entail changes in business practices, new or amended vendor contracts, and, for a few fund families, significant initial outlays that could substantially delay implementation of the Summary

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Putnam Letter, supra note 48; Russell Letter, supra note 48; Schwab Letter, supra note 221; T. Rowe Letter, supra note 49.

<sup>252</sup> See Focus Group Report, supra note 32, at 11; Focus Group Transcripts, supra note 32, at 25-26; id. at 49 (“I get my information from the Web anyway. So, what the prospectus says is less important in terms of recent performance. Because there’s no way that they can tell me what’s been going on that recently.”); id. at 78 (“You can go to the library and be on the Web and it doesn’t cost you anything, except 15 minutes.”); id. (“And if it says, ‘This is not necessarily the latest, current, go to this Web site and you’ll get the full comparison,’ that would be acceptable . . .”).

<sup>253</sup> See, e.g., AIM Letter, supra note 47; American Century Letter, supra note 48; Capital Research Letter, supra note 34; Clarke Letter, supra note 35; Dechert Letter, supra note 50; EQ/AXA Letter, supra note 67; Evergreen Letter, supra note 41; Financial Services Roundtable Letter, supra note 246; Fluent Letter, supra note 246; Great-West Letter, supra note 42; ICI Letter, supra note 34; IDC Letter, supra note 61; MFS Letter, supra note 150; Oppenheimer Letter, supra note 44; RiverSource Letter, supra note 246; Russell Letter, supra note 48; Letter of Saturna Capital Corporation (Jan. 14, 2008); Schwab Letter, supra note 221; T. Rowe Letter, supra note 49. The Investment Company Institute, a national association of United States investment companies, conducted a survey of its member firms and noted that up to 70 percent of funds would face substantial cost and operational burdens in complying with a quarterly updating requirement and that these burdens would likely lead funds to elect not to use the Summary Prospectus. ICI Letter, supra note 34.

Prospectus.<sup>254</sup> Financial intermediaries similarly expressed concern about “the ability of even large intermediaries to maintain and track a hard copy inventory of prospectuses which change multiple times per year.”<sup>255</sup> Some commenters also noted that updated performance information is already widely available from other sources.<sup>256</sup>

On the other hand, a small number of commenters supported the proposed quarterly updating requirement.<sup>257</sup> One such commenter argued that quarterly updating would enhance the public’s perception of the Summary Prospectus and the information provided. The commenter noted that funds presently provide such updated information in their sales materials; that displaying annually updated performance information in the statutory prospectus and quarterly updated information in the Summary Prospectus would not necessarily confuse investors; and that although funds post updated information online throughout the year, investors without access to the Internet would be greatly disadvantaged if the Commission did not require quarterly updating of the paper Summary Prospectus.<sup>258</sup>

We have determined not to require quarterly updating of performance information in the Summary Prospectus because we are persuaded that this requirement could confuse investors and would discourage funds from using the Summary Prospectus and thereby undermine our goal of encouraging concise, user-friendly disclosure to investors. We

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<sup>254</sup> See, e.g., ICI Letter, supra note 34.

<sup>255</sup> See, e.g., SIFMA Letter, supra note 97.

<sup>256</sup> See, e.g., ICI Letter, supra note 34, Vanguard Letter, supra note 42.

<sup>257</sup> See, e.g., CMFI Letter, supra note 44; Data Communiqué Letter, supra note 35; Keil Letter, supra note 62; NAPFA Letter, supra note 44.

<sup>258</sup> See Data Communiqué Letter, supra note 35.

have concluded that the benefits to be derived from quarterly updating do not outweigh this significant disincentive to use of the Summary Prospectus because updated performance information is widely available in fund sales materials, on fund Web sites, and from third-party sources. As noted above, investors in our focus groups indicated that they would be willing to obtain updated information online. As a result, we are requiring a fund that makes updated performance information available on a Web site or at a toll-free (or collect) telephone number to include a statement explaining this and providing the Web site address and/or telephone number.<sup>259</sup> This approach will eliminate any potential investor confusion that could arise as a result of a fund's Summary Prospectus containing more updated information than the fund's statutory prospectus.

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

We are adopting, with certain modifications to address the concerns of commenters, the requirement that, in addition to sending or giving a Summary Prospectus, a person relying on rule 498 to meet its statutory prospectus delivery obligations must provide the statutory prospectus on the Internet, together with other information, in the manner specified by the rule.<sup>260</sup> We are also adopting, as proposed, the requirement to send the statutory prospectus to any investor requesting a copy. We believe that requiring the statutory prospectus to be provided in two ways, by posting on an Internet Web site and by sending the information directly to any investor requesting a copy, maximizes both the accessibility and usability of the information, as indicated by the preference of commenters and investors participating in our focus groups for access

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<sup>259</sup> Item 4(b)(2)(i) of Form N-1A. This requirement is discussed more fully in Part III.A.3.e.

<sup>260</sup> Rule 498(c)(4), (d)(4), and (e).

to both online and paper resources.<sup>261</sup> Sending the information directly to an investor is not, however, a condition of reliance on the rule.

**a. Documents Required to be Provided on the Internet**

Under the rule, the statutory prospectus and other information are 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 are 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.<sup>262</sup> These documents are required to be accessible on or before the time that the Summary Prospectus is sent or given and current versions of the documents are 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 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, or (ii) in the case of reliance on the 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.<sup>263</sup> This requirement is

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<sup>261</sup> See AARP Letter, *supra* note 34 (supporting the proposal and noting that “timely access to hard copy, print disclosure must remain an option that is easy to exercise for investors choosing to do so”); Miller Letter, *supra* note 110 (“ensure a simple process for obtaining mutual fund information in paper format in order to maximize accessibility”); Focus Group Report, *supra* note 32, at 12 (noting that some participants preferred to read lengthy documents on the computer screen, while others indicated that they prefer paper documents); Focus Group Transcripts, *supra* note 32, at 28 (“not everybody has [a] computer, so there has to be alternatives”); *id.* at 50 and 78 (quoting most investors as preferring to receive fund information online but also quoting some investors who prefer to obtain at least some fund information on paper).

<sup>262</sup> 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, are not considered costs for purposes of determining whether information is accessible, free of charge.

<sup>263</sup> Rule 498(e)(1).

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 rule 498.

A number of commenters expressed concern regarding the meaning of the term “current” and asked whether funds would be required to maintain stale information online.<sup>264</sup> In response to these commenters’ concerns, we note that the “current” standard does not require a fund to maintain online an outdated version of a document that was current at the time the Summary Prospectus was sent or given, but that has subsequently been updated. Rather, the “current” standard requires a fund to maintain updated versions of the required documents online.

Several commenters argued that a person relying on the rule should not be required to provide the fund’s SAI on the Web site.<sup>265</sup> We have not adopted this suggestion. As discussed above, the rule 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 approach of rule 498 is two-fold, both to encourage funds to provide a concise, user-friendly Summary Prospectus to investors and to enhance investor access to more detailed information. Requiring the SAI to be provided online furthers the latter goal.<sup>266</sup>

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<sup>264</sup> See, e.g., AIM Letter, supra note 47; ICI Letter, supra note 34.

<sup>265</sup> See, e.g., Fidelity Letter, supra note 86; USAA Letter, supra note 153.

<sup>266</sup> See, e.g., CMFI Letter, supra note 44 (noting that the proposal to require that the SAI be made available through a Web site “will make it much easier for investors to review this document and become more knowledgeable about fund operations and management”).

**b. Formatting Requirements for Information Provided on the Internet**

We are adopting, with modifications to reflect commenters' concerns, the proposed formatting requirements for the information that is required to be provided online. The proposed rule would have required, as a condition to reliance on the rule to satisfy a person's delivery obligations under Section 5(b)(2) of the Securities Act and the provision that a communication shall not be deemed a prospectus under Section 2(a)(10) of the Securities Act, that the information on the Internet be presented in a format that is convenient for both reading online and printing on paper.<sup>267</sup> In lieu of this condition, we are adopting a condition requiring that the information on the Internet be presented in a format that is human-readable and capable of being printed on paper in human-readable format.<sup>268</sup> We are also adopting a requirement that the information be in a format that is convenient for both reading online and printing on paper, but this requirement is not a condition to reliance on the rule to satisfy a person'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 complies with the conditions to the rule will not violate Section 5(b)(2) if the "convenient for both reading online and printing on paper" standard is not satisfied, but this failure will constitute a violation of the Commission's rules.<sup>269</sup>

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<sup>267</sup> Proposed rule 498(f)(2)(i). *Cf.* Rule 14a-16(c) under the Exchange Act [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).

<sup>268</sup> Rule 498(e)(2)(i).

<sup>269</sup> Rule 498(f)(3) and (5). This is similar to the "greater prominence" requirement discussed in Part III.B.1. above.

The condition that we are adopting, that information on the Internet be presented in a format that is human-readable and capable of being printed on paper in human-readable format, is a more objective standard than the proposed “convenient” condition. Commenters expressed concern about applying the proposed standard as a condition to satisfying Section 5 obligations.<sup>270</sup> The adopted condition simply makes clear that posted information must be presented in human-readable text, rather than machine-readable software code, when accessed through an Internet browser and that it must be printable in human-readable text. This condition does not impose any further requirements relating to user-friendliness of the presentation.

We are, however, retaining the standard that posted information be “convenient for both reading online and printing on paper” as a rule requirement. This implements the suggestion of commenters who criticized the “convenient” standard as a condition and suggested that it could, instead, be made a rule requirement.<sup>271</sup> This standard was designed to ensure that the information provided over the Internet is user-friendly, both online and when printed. It imposes on the online information a standard of usability that is comparable to the readability of a paper document. While we continue to believe that this standard is important to the enhanced disclosure framework we are adopting, we are persuaded by commenters that the consequence of failure to meet a condition – a Section 5 violation – is not needed to achieve our goal.

We are not, at this time, specifying that any particular format, such as HTML or PDF, would constitute a convenient format for both reading online and printing on

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<sup>270</sup> See, e.g., ABA Letter, supra note 37; ICI Letter, supra note 34; NYC Bar Letter, supra note 75.

<sup>271</sup> See, e.g., ABA Letter, supra note 37; ICI Letter, supra note 34.

paper.<sup>272</sup> We are concerned that the Commission’s endorsement of any particular format could result in the use of that format to the exclusion of other formats that are in existence today or that may be developed in the future and that are more user-friendly. Moreover, whether a particular format is convenient for reading online and printing depends on a number of factors and must be decided on a case-by-case basis. These factors include the manner in which the online version renders charts, tables, and other graphics; the extent to which the fund utilizes search and other capabilities of the Internet to enhance investors’ access to information and provides access to any software necessary to view the online version; and the time required to download the online materials.<sup>273</sup>

**c. Technological Requirements for Online Information**

We are adopting the proposed requirements for linking within the statutory prospectus and SAI and for linking between the Summary Prospectus, on the one hand, and the statutory prospectus and SAI, on the other. These requirements are intended to result in online information that is in a better and more useable format than the same information when provided in paper. The requirements were generally supported by commenters in concept, although, as discussed below, many expressed concern regarding

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<sup>272</sup> See, e.g., ABA Letter, supra note 37 (arguing that the adopting release should state that a PDF format would constitute a “convenient” format for purposes of rule 498).

<sup>273</sup> See Investment Company Act Release No. 27671 (Jan. 22, 2007) [72 FR 4148, 4154 (Jan. 29, 2007)]; Exchange Act Release No. 56135, supra note 29, 72 FR at 42224 n. 35 (guidance concerning “convenient for both reading online and printing on paper” standard in context of electronic delivery of proxies).

specific requirements under the proposal.<sup>274</sup> We are making several modifications to the requirements to address technical considerations raised by commenters.<sup>275</sup>

### Linking within the Statutory Prospectus and SAI

We are adopting a requirement that persons accessing the statutory prospectus or SAI online be able to move directly back and forth between each section heading in a table of contents of the document and the section of the document referenced in that section heading. In the case of the statutory prospectus, the linked table of contents must be either the table of contents required by rule 481(c)<sup>276</sup> or a table of contents that contains the same section headings as the required table of contents.<sup>277</sup> This requirement allows an investor or other user to move directly between a table of contents of 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.

This requirement includes two modifications from the proposed requirement. First, we are clarifying that the linked table of contents may be outside the document, e.g., in a separate frame or panel of the computer screen and need not be the table of contents that is contained within the document itself, as long as the linked table of contents for the statutory prospectus conforms to the table of contents that is required by

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<sup>274</sup> See, e.g., CMFI Letter, supra note 44; Data Communiqué Letter, supra note 35; ICI Letter, supra note 34; MFDF Letter, supra note 34.

<sup>275</sup> We are not adopting the suggestion of one commenter that the Commission delay, or not apply, linking requirements with respect to funds that are offered through variable insurance contracts. See CAI Letter, supra note 67. While we recognize that there may be operational challenges associated with the offering of multiple funds from several fund families through a variable insurance contract, the linking requirements are an essential condition to permitting a person to satisfy its prospectus delivery obligations by sending or giving a Summary Prospectus.

<sup>276</sup> 17 CFR 230.481(c).

<sup>277</sup> Rule 498(e)(2)(ii).

our rules to be contained within the document itself. This modification is intended to provide flexibility to use linking technologies other than hyperlinking within the document itself. Permitted technologies would include, for example, the use of “bookmarks” that replicate the document’s table of contents, but are displayed in a separate panel from the document itself.<sup>278</sup> We have accomplished this clarification by modifying the language of the proposed requirement<sup>279</sup> to refer to “**a** table of contents **of**” the relevant document rather than “**the** table of contents **in**” the relevant document and by requiring that, in the case of the statutory prospectus, the linked table of contents either be the table of contents required by rule 481(c) or contain the same section headings as the table of contents required by that rule. Second, we are revising the rule language to clarify that the links must permit movement directly back and forth between each section heading in a table of contents and the particular section of the document referenced in that section heading.<sup>280</sup>

### Linking Between Documents

We are also adopting a requirement for funds to comply with one of two options: that persons accessing the Summary Prospectus be able to move directly back and forth between either (i) each section of the Summary Prospectus and any section of the statutory prospectus and SAI that provides additional detail concerning that section of the Summary Prospectus; or (ii) links located at both the beginning and end of the Summary

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<sup>278</sup> See, e.g., ICI Letter, supra note 34 (arguing that proposal should be revised to permit the use of bookmarks); Oppenheimer Letter, supra note 44 (same).

<sup>279</sup> Proposed rule 498(f)(2)(ii).

<sup>280</sup> See Oppenheimer Letter, supra note 44 (noting that the proposal could be read to require a viewer to be able to move from each section heading in the table of contents to each and every section of the document referenced in the table).

Prospectus, or that remain continuously visible to persons accessing the Summary Prospectus, and tables of contents of both the statutory prospectus and the SAI that meet the linking requirements described in the preceding section.<sup>281</sup> This requirement allows an investor to move back and forth between related sections of the Summary Prospectus, on the one hand, and the statutory prospectus and SAI, on the other, either directly through a single mouse click or indirectly by means of a table of contents of the prospectus or SAI, in which case two mouse clicks would be required.

We are adopting, as proposed, the first option, which permits movement between related sections of the Summary Prospectus, on the one hand, and the statutory prospectus and SAI, on the other, directly through a single mouse click.<sup>282</sup> Although a number of commenters suggested that this option is unlikely to be used as a result of the number of links that would be required to be maintained,<sup>283</sup> we believe that the option should remain available because the ability to single-click between related sections has the potential to result in an extremely user-friendly presentation.

We are, however, modifying the second proposed option, which involves linking between the Summary Prospectus and tables of contents of the statutory prospectus and SAI, in order to reduce the number of links that would be required.<sup>284</sup> As proposed, this

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<sup>281</sup> Rule 498(e)(2)(iii). It is our intention that the ability to move between multiple windows that remain open simultaneously constitutes “back and forth” movement under this provision.

<sup>282</sup> Rule 498(e)(2)(iii)(A); proposed rule 498(f)(2)(iii)(A).

<sup>283</sup> See, e.g., AIM Letter, supra note 47; Capital Research Letter, supra note 34; ICI Letter, supra note 34; Janus Letter, supra note 63; MFS Letter, supra note 150; Oppenheimer Letter, supra note 44; T. Rowe Letter, supra note 49.

<sup>284</sup> We are also making a technical modification to the rule to clarify that a linked table of contents must meet the requirements described in the preceding section, i.e., it must permit direct movement between each section heading in the table of contents and the section of the document referenced in that section heading and, in the case of the

option would have required links between each section of the Summary Prospectus and tables of contents in the statutory prospectus and SAI. This would potentially have required two links in each section of the Summary Prospectus (one for the statutory prospectus and one for the SAI). As adopted, this option will require either links located at both the beginning and end of the Summary Prospectus, or links that remain continuously visible to persons accessing the Summary Prospectus, perhaps in a separate panel or frame.<sup>285</sup> The number of links will be reduced, but their placement, either at the beginning and end of the Summary Prospectus or continuously visible, will ensure that they are prominent and readily accessible to investors. This modification responds to commenters' concerns that multiple links within the Summary Prospectus could result in a cluttered presentation, create mistaken expectations that the Summary Prospectus links would lead directly to related information rather than to tables of contents of the statutory prospectus and SAI, and would be expensive to maintain.<sup>286</sup>

### Interactive Data

Some commenters urged the Commission to make greater use of technology to permit investors to access the specific information they need and to facilitate automated comparisons of data across multiple funds.<sup>287</sup> The Commission agrees with these commenters that technology holds great promise for enabling mutual fund investors to

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statutory prospectus, it must be the table of contents required by rule 481(c) or contain the same section headings as that table of contents. See rule 498(e)(2)(iii)(B) (requiring linked table of contents to meet requirements of paragraph (e)(2)(ii) of rule 498).

<sup>285</sup> Rule 498(e)(2)(iii)(B).

<sup>286</sup> See, e.g., Financial Services Roundtable Letter, supra note 246; ICI Letter, supra note 34; Janus Letter, supra note 63; MFS Letter, supra note 150; Oppenheimer Letter, supra note 44; Self Audit Letter, supra note 228.

<sup>287</sup> See, e.g., Fund Democracy et al. Letter, supra note 34; Letter of Dominic Jones (Feb. 27, 2008) (“Jones Letter”).

make better use of existing information to understand and compare funds. To that end, we note that the Commission has already proposed to require a significant portion of the information that is contained in the summary section of the statutory prospectus and the Summary Prospectus to be filed in interactive data format, which is intended to facilitate automated analysis and comparison of this information.<sup>288</sup> Accordingly, while we are taking a number of steps in the current rulemaking to make greater use of technology, we are considering additional steps, along the lines suggested by the commenters, in the context of the pending interactive data rulemaking. In addition, we recently undertook an initiative to fundamentally reexamine how we can make greater use of technology to deliver information to investors more effectively.<sup>289</sup>

**d. Ability to Retain Documents**

We are adopting the proposed requirement that 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, like the online version, (i) is human-readable and capable of being printed on paper in human-readable format; and (ii) permits persons accessing the downloaded statutory prospectus or SAI to move directly back and forth between each section heading in a table of contents of that document and the section of the document referenced in that section heading.<sup>290</sup> The permanently retained document is not required

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<sup>288</sup> See Investment Company Act Release No. 28298, supra note 28, 73 FR at 35449.

<sup>289</sup> See SEC Announces '21st Century Disclosure' Initiative to Fundamentally Rethink the Way Companies Report and Investors Acquire Information, Securities and Exchange Commission Press Release, June 24, 2008, available at <http://www.sec.gov/news/press/2008/2008-119.htm>.

<sup>290</sup> Rule 498(e)(3). This requirement is identical to our proposal, except that the standards of clauses (i) and (ii) have been modified to reflect the parallel modifications that we made with respect to requirements for the online version. See discussion supra Part III.B.3.b.

to be in a format that allows an investor to move back and forth between the Summary Prospectus and the statutory prospectus and SAI because of technical difficulties associated with maintaining links between multiple downloaded documents.

Commenters generally expressed support for this proposal.<sup>291</sup> Two commenters suggested that rule 498 expressly provide that once a user saves a document, a fund is not responsible for maintaining the links that it contains to other documents and that failure to maintain a link will not provide a basis for liability.<sup>292</sup> We have determined that such a provision is unnecessary because we are not requiring downloaded documents to retain any links to other documents. In addition, as described above in Part III.B.3.c., we have revised the requirements for online linking between documents to permit the links to be external to the documents, in which case they would not even appear in the online versions of the documents.

**e. Safe Harbor for Temporary Noncompliance**

As discussed above, compliance with all of the conditions in rule 498 regarding Internet posting (other than the convenient for reading and printing standard) is required in order to meet prospectus delivery obligations under Section 5(b)(2) of the Securities Act. Failure to comply with any of these conditions will be a violation of Section 5(b)(2) unless the fund's statutory prospectus is delivered by means other than reliance on the

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and c. Persons accessing the materials must also be able to permanently retain, free of charge, an electronic version of the materials in a format, or formats, that are convenient for both reading online and printing on paper. This is a rule requirement and not a condition to satisfy a person's statutory prospectus delivery obligations under Section 5. Rule 498(f)(3)(ii). See discussion supra Part III.B.3.b.

<sup>291</sup> See, e.g., Data Communiqué Letter, supra note 35; ICI Letter, supra note 34; Jones Letter, supra note 287; Schnase Letter, supra note 35; T. Rowe Letter, supra note 49.

<sup>292</sup> See ICI Letter, supra note 34; T. Rowe Letter, supra note 49.

rule. The Commission recognizes, however, that there may be times when, due to events beyond a fund's control, such as system outages or other technological issues, natural disasters, acts of terrorism, or pandemic illnesses, a fund is temporarily not in compliance with the Internet posting requirements of the rule. For that reason, we are adopting the proposed safe harbor provision stating that the conditions regarding Internet availability of a fund's Summary Prospectus, statutory prospectus, SAI, and shareholder reports will 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 is 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.<sup>293</sup> The safe harbor, by its terms, is expressly applicable to the format, linking, and permanent retention conditions of the rule, in addition to the conditions requiring that the documents be available online.<sup>294</sup>

**f. Requirement to Send Documents**

We are adopting the proposed requirement 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

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<sup>293</sup> Rule 498(e)(4). This safe harbor is not available to a fund that repeatedly fails to comply with the rule's Internet posting requirements or that is not in compliance with the requirements over a prolonged period.

<sup>294</sup> Rule 498(e)(4) (safe harbor applies to conditions set forth in paragraphs (e)(1), (2), and (3) of rule 498).

report to any person requesting such a copy within three business days after receiving a request for a paper copy. We are also adopting, with one modification, the proposed requirement 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 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.<sup>295</sup> These requirements are intended to ensure that every investor in a fund taking advantage of the new prospectus delivery framework is 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. As a result of these requirements, each investor will have prompt access to the required information in the form that he or she prefers.

We are modifying the proposal, as suggested by one commenter,<sup>296</sup> to clarify that the requirement to send an electronic copy of a document by e-mail may be satisfied by sending a direct link to the document on the Internet, provided that a current version of the document is directly accessible through the link from the time that the e-mail is sent through the date that is six months after the date that the e-mail is sent and the e-mail explains both how long the link will remain useable and that, if the recipient desires to retain a copy of the document, he or she should access and save the document.<sup>297</sup> We believe that six months is a reasonable period of time to require the documents to be

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<sup>295</sup> Rule 498(f)(1).

<sup>296</sup> See ICI Letter, supra note 34.

<sup>297</sup> Rule 498(f)(1). We intend that “current” means the updated version of a document, not an outdated version that was current at the time the e-mail was sent. This is similar to the meaning of “current” discussed above in Part III.B.3.a.

available and will provide sufficient time for an investor who has requested a copy to access and, if desired, download the information. We also note that an investor may at any time request to receive a paper copy of the documents.

As in the proposal, 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 to a person requesting such a copy is not 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 complies with all other aspects of rule 498 will not violate Section 5(b)(2) of the Securities Act if the fund (or financial intermediary) fails to send the required paper or electronic copy of the statutory prospectus, SAI, and most recent shareholder reports. This failure will, however, constitute a violation of the Commission's rules.<sup>298</sup>

#### **4. Incorporation by Reference**

##### **a. Permissible Incorporation by Reference**

We are adopting, with modifications, the proposal to permit a fund to incorporate by reference into the Summary Prospectus information contained in its statutory prospectus, SAI, and shareholder reports.<sup>299</sup> The proposal would have permitted a fund to incorporate by reference information from the fund's most recent report to shareholders. As adopted, rule 498 permits a fund to incorporate by reference any information from the fund's reports to shareholders that the fund has incorporated by reference into its statutory prospectus. This modification addresses commenters'

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<sup>298</sup> Rule 498(f)(5).

<sup>299</sup> Rule 498(b)(3).

concerns that the proposal was overbroad<sup>300</sup> by limiting incorporation from shareholder reports to information that has been incorporated into the fund's statutory prospectus and, as a result, is subject to liability under Section 11 of the Securities Act.<sup>301</sup> The modification also addresses other commenters' concerns that funds be permitted to incorporate by reference information from both the most recent annual shareholder report and most recent semi-annual shareholder report<sup>302</sup> and will permit the Summary Prospectus to incorporate from shareholder reports precisely the same information that the statutory prospectus may incorporate today. Incorporation by reference is subject to the conditions described below.

A fund may not incorporate by reference into a Summary Prospectus information from any source other than those described above.<sup>303</sup> In addition, a fund may not incorporate by reference into the Summary Prospectus any of the information described above that is required to be included in the Summary Prospectus.<sup>304</sup> Information may 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.<sup>305</sup> Thus, if a fund's statutory prospectus incorporates the fund's SAI by reference, the fund's Summary Prospectus could not

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<sup>300</sup> See Fund Democracy *et al.* Letter, *supra* note 34 (arguing there is no basis to extend incorporation by reference to annual report); Letter of Prof. Joseph A. Franco (Feb. 28, 2008) (incorporation by reference should be limited to the statutory prospectus).

<sup>301</sup> 15 U.S.C. 77k.

<sup>302</sup> See ICI Letter, *supra* note 34.

<sup>303</sup> Rule 498(b)(3)(i) and (ii).

<sup>304</sup> Rule 498(b)(3)(ii)(B).

<sup>305</sup> Rule 498(b)(3)(ii)(C).

incorporate information in the SAI simply by referencing the statutory prospectus but would be required to reference the SAI directly.<sup>306</sup>

Incorporation by reference of information from a fund’s statutory prospectus, SAI, and shareholder reports is permitted only if the fund satisfies the conditions described above in Part III.B.3., which prescribe the means by which the incorporated information is provided to investors.<sup>307</sup> In addition, if a fund incorporates information by reference, the Summary Prospectus legend must specify the type of document (e.g., statutory prospectus) from which the information is incorporated and the date of the document. If a fund incorporates by reference a part of a document, the Summary Prospectus legend must clearly identify the part by page, paragraph, caption, or otherwise.<sup>308</sup> These document identification requirements have been modified from the proposal, which would have required that the legend clearly identify documents that are incorporated by reference, including the date of the documents, in order to make the

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<sup>306</sup> Cf. Item 10(d) of Regulation 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.

<sup>307</sup> Rule 498(b)(3)(ii)(A) and (e). We note that the safe harbor described in Part III.B.3.e. stating that, under certain circumstances, the conditions regarding Internet availability of a fund’s Summary Prospectus, statutory prospectus, SAI, and shareholder reports will be deemed to be met, notwithstanding the fact that those materials are not available for a time in the manner required, also applies to permit incorporation by reference in those circumstances. Rule 498(e)(4).

<sup>308</sup> Rule 498(b)(1)(v)(B). This requirement is similar to the requirements of rule 411(d) under the Securities Act [17 CFR 230.411(d)], which requires that information incorporated by reference “be clearly identified in the reference by page, paragraph, caption or otherwise.”

requirements more precise.<sup>309</sup> The legend is also required to explain that any information that is incorporated from the SAI or shareholder reports may be obtained, free of charge, in the same manner as the statutory prospectus.<sup>310</sup>

A fund that fails to comply with any of the above conditions may 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, is not also required to send or give the incorporated information together with the Summary Prospectus.<sup>311</sup>

A significant number of commenters expressed support for the Commission's proposal to permit incorporation by reference of information from other fund documents into the Summary Prospectus.<sup>312</sup> Commenters stated that, by permitting incorporation by reference, the proposal significantly addresses liability issues that resulted in funds' unwillingness to use the fund profile and will encourage wider use of the Summary Prospectus.<sup>313</sup>

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<sup>309</sup> See, e.g., ICI Letter, supra note 34; NYC Bar Letter, supra note 75.

<sup>310</sup> Rule 498(b)(1)(v)(B) and (b)(3)(ii)(A).

<sup>311</sup> Rule 498(b)(3)(i). Cf. General Instruction 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).

<sup>312</sup> See, e.g., ABA Letter, supra note 37; CFA Institute Letter, supra note 37; Letter of Citigroup Global Markets Inc. (Feb. 26, 2008) ("Citigroup Letter"); Dechert Letter, supra note 50; ICI Letter, supra note 34; MFDF Letter, supra note 34; NYC Bar Letter, supra note 75; Oppenheimer Letter, supra note 44; Schnase Letter, supra note 35; SIFMA Letter, supra note 97; T. Rowe Letter, supra note 49.

<sup>313</sup> See, e.g., ABA Letter, supra note 37; Citigroup Letter, supra note 312; ICI Letter, supra note 34; MFDF Letter, supra note 34; SIFMA Letter, supra note 97. See also AARP Letter, supra note 34 ("Various explanations have emerged as to why the fund profile did not take hold, including the rapid development of the Internet as a resource for mutual

A joint comment letter from three consumer and investor groups, however, stated that the Commission did not adequately address serious questions accompanying incorporation by reference in the proposing release.<sup>314</sup> These commenters argued, first, that the Commission did not adequately explain any purpose for permitting incorporation by reference other than the limitation of funds' liability. Second, the commenters argued that the Commission's proposal would relieve issuers of legal responsibility for misleading disclosure under Sections 12(a)(2) and 17(a)(2) of the Securities Act and that the proposing release had not discussed whether the benefits of having a Summary Prospectus that satisfies prospectus delivery obligations is worth the cost of relieving funds of this legal responsibility or whether such a tradeoff is appropriate.

With respect to the commenters' first concern, our purpose in permitting incorporation by reference into the Summary Prospectus is to further our goal of creating an improved mutual fund disclosure framework for the benefit of investors. We have concluded, and the comments and recent investor research support our conclusion, that investors will benefit greatly from receiving a shorter document, such as the Summary Prospectus. We have also concluded, based on both the comments and our experience with the fund profile that, to a significant extent, investors will not realize these benefits unless we permit incorporation by reference because many funds are unlikely to use the

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fund investors and liability concerns related to the profile. The proposal under consideration today addresses both issues, and as such, paves the way for more widespread use of the summary documents.”).

<sup>314</sup> See Fund Democracy *et al.* Letter, *supra* note 34. Another commenter opposed incorporation by reference into the Summary Prospectus, but noted that if incorporation by reference is permitted, the incorporated documents should be available on the Internet, linked with other documents, downloadable in printable form with retained links, and distributed upon request, similar to our proposal. See Data Communiqué Letter, *supra* note 35.

Summary Prospectus if incorporation by reference is prohibited. With respect to the commenters' second concern, we do not agree that permitting incorporation by reference will relieve funds of legal responsibility for misleading disclosure. Therefore, we believe that it is appropriate to permit incorporation by reference in order to realize for investors the considerable benefits that the Summary Prospectus will afford. We discuss our analysis more fully below.

#### Incorporation by Reference is Necessary to Improve Disclosure Framework

We have concluded that investors will benefit greatly from receiving the Summary Prospectus containing key information that they will be more likely to read and understand than the statutory prospectus, with the ability to access more detailed information either immediately in a user-friendly format online or, within a matter of days, in paper. Nearly all of the commenters, including those who opposed incorporation by reference, agreed with this conclusion.<sup>315</sup> This conclusion is also supported by our

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<sup>315</sup> See AARP Letter, supra note 34 (stating that it is AARP's view that the Commission's initiative provides a real opportunity to deliver practical disclosure that consumers can use to make informed mutual fund purchase decisions); CMFI Letter, supra note 44 (stating that the new disclosure regime would help investors focus on what is most important in making investment decisions with respect to any particular fund and that the Summary Prospectus is much more likely to be reviewed by investors); Data Communiqué Letter, supra note 35 (acknowledging the improvements that will result from improved access and ease of comparability of relevant information in a concise format); Fund Democracy et al. Letter, supra note 34 (supporting Summary Prospectus proposal overall and agreeing that "a short form alternative to a lengthy statutory prospectus can both improve the quality and usefulness of fund disclosure and reduce fund expenses"); ICI Survey, supra note 84 (stating that respondents to a survey it conducted overwhelmingly agreed that the Summary Prospectus is about the right length, makes it easier to compare funds, contains enough information (as long as more detailed information is available online or upon request), and is a document that they would be more likely to use than the current long-form prospectus); Letter of William D. McAllister (Nov. 27, 2007) (stating that current disclosure statements are definitely unreadable for the average citizen investor and that the simplification proposed is needed and appreciated); Letter of Kyle N. Orłowski (March 10, 2008) (stating that the proposal would make an "apples to apples" comparison between funds much easier).

recent telephone survey of investors, which found that many mutual fund investors do not read statutory prospectuses because they are long, complicated, and hard to understand.<sup>316</sup>

The views expressed by investors in our focus groups also support our conclusion that investors will derive significant benefits from the Summary Prospectus, coupled with ready access to more detailed information in whatever format they choose, paper or electronic.<sup>317</sup> By using multiple means to provide information and by using technology to provide information in a layered format that permits users to move from key information to more detailed information, the new rule is intended to facilitate each investor's ability to effectively choose to review the particular information in which he or she is interested. Each investor in a fund taking advantage of the new prospectus delivery regime can choose the particular means of receiving information that he or she prefers because all of the information is required to be sent promptly to any requesting investor in paper or electronically. Thus, the Summary Prospectus disclosure framework will permit each and every investor to choose both the information he or she wants to review and the format in which he or she wants to review it.

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<sup>316</sup> See Telephone Survey Report, *supra* note 32, at 56, 58 (finding that nearly two-thirds of investors rarely (28%), very rarely (15%), or never (21%) read mutual fund statutory prospectuses that they receive, and that of those two-thirds, over half said that the reason they do not read them was because statutory prospectuses are too complicated or hard to understand (37%) or because statutory prospectuses are too long and wordy (19%)).

<sup>317</sup> See Focus Group Report, *supra* note 32, at 5-6 (noting that participants made numerous negative comments about the length of the long-form prospectus and that many participants liked the short-form prospectus and thought that it could be used as a screening tool to identify mutual funds in which they might be sufficiently interested to do some additional review); Focus Group Transcripts, *supra* note 32, at 63 (“It’s a two-minute read. If I want more information, I can ask for it.”); *id.* at 38 (“I think both [the long-form prospectus and short-form prospectus] have their place. I think it would be foolish to give up the long-form for ‘this’ and I think it would be foolish not to have the short-form and insist on a long-form. They both have their place.”).

We also believe that significantly more funds and intermediaries will utilize the Summary Prospectus if we permit funds to incorporate by reference information from the funds' statutory prospectus, SAI, and shareholder reports. Numerous commenters stated that, by permitting incorporation by reference, the proposal significantly addresses liability issues that resulted in funds' unwillingness to use the fund profile and will encourage wider use of the Summary Prospectus.<sup>318</sup> Our own experience with the fund profile over the past 10 years confirms that very few funds have adopted it.<sup>319</sup> We believe that one of the principal reasons for the profile's low adoption rate is concern about potential liability for omitting facts from the profile that are contained in the statutory prospectus or SAI.<sup>320</sup> While we acknowledge that an additional contributing factor was the requirement that funds using the profile also provide a statutory prospectus with the confirmation,<sup>321</sup> we do not believe that elimination of this requirement alone, without permitting incorporation by reference, would result in widespread use of the Summary Prospectus by funds.

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<sup>318</sup> See letters cited supra note 313.

<sup>319</sup> Profiles were filed for less than 200 funds during calendar year 2007. During 2007, there were almost 9,000 mutual funds in existence. See 2008 ICI Fact Book, supra note 16, at 15.

<sup>320</sup> See letters cited supra note 313. See also Tom Leswing, Profile Prospectus Rule Expected Soon, IGNITES (Mar. 28, 2007) (panelists at the ICI Mutual Funds and Investment Management Conference expressed concern about liability for using a short-form prospectus and noted that concern about liability was the main reason that few funds use the profile); NASD Mutual Fund Task Force Report, supra note 19, at 5 ("To date, few mutual funds have used the fund profile in the retail market. One concern that has been voiced about the fund profile is that it could expose funds to unforeseen liability. For example, by summarizing disclosure that appeared in the full prospectus, some fear that the fund profile could be deemed to have omitted material information.").

<sup>321</sup> See Fund Democracy et al. Letter, supra note 34.

Thus, permitting incorporation by reference into the Summary Prospectus is essential to accomplishing the Commission's important goal of encouraging use of a disclosure document that provides key information that investors are more likely to read and understand than the statutory prospectus. Commenters and investor testing consistently affirm the importance of the goal and of the Summary Prospectus in achieving the goal. Commenters on the current proposal, and our experience with the profile, confirm that we cannot accomplish the goal without permitting incorporation by reference.

### Investor Protection

We have also concluded that permitting incorporation by reference will not relieve funds of any legal responsibility for misleading disclosure under Sections 12(a)(2) and 17(a)(2) of the Securities Act.<sup>322</sup> As a result, we have concluded that it is appropriate to permit incorporation by reference in order to realize for investors the considerable benefits that the Summary Prospectus will afford.

The Summary Prospectus, together with information incorporated therein by reference, is subject to liability under Sections 12(a)(2) and 17(a)(2) of the Securities Act, and nothing in rule 498 removes, or diminishes, that liability. 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. Section 17(a)(2) of the Securities Act is a general antifraud provision which makes it unlawful for any person in the offer and sale

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<sup>322</sup> We also note that rule 498 does not reduce, or otherwise affect, liability under Section 11 of the Securities Act. This is discussed in Part III.B.5.

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.

We are permitting incorporation by reference of the statutory prospectus, SAI, and information from the shareholder reports that is incorporated into the statutory prospectus in order to reflect, as a legal matter, the practical reality that, under the conditions of rule 498, the information incorporated into the Summary Prospectus will be provided at the same time as the Summary Prospectus though by different means.<sup>323</sup> Funds and other sellers will be liable under Sections 12(a)(2) and 17(a)(2) for information incorporated by reference into the statutory prospectus. Investors who choose to review the statutory prospectus, SAI, and shareholder reports in paper will have the same ability to do so that they do today. In addition, rule 498 requires that all information contained in the Summary Prospectus, statutory prospectus, SAI, and shareholder reports be immediately available to investors online in a user-friendly format.<sup>324</sup> By using multiple means to provide this information and using technology to provide information in a layered format, the new rule is intended to facilitate investors' ability to easily access and review the particular information in which they are interested. Indeed, each investor in a fund taking advantage of the new prospectus delivery regime can choose the particular means of receiving information because all of the information is

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<sup>323</sup> Thus, rule 498(b)(3)(iii) expressly provides that incorporated information is, for purposes of rule 159 (and therefore for purposes of Sections 12(a)(2) and 17(a)(2) of the Securities Act), conveyed not later than the time the Summary Prospectus is received. See discussion infra Part III.B.4.b.

<sup>324</sup> The provisions that we are adopting requiring linking within and between documents and that the documents be in a format that is convenient for both reading online and printing on paper are intended to contribute to a user-friendly online presentation. Rule 498(e)(2)(ii), (e)(2)(iii), and (f)(3).

required to be promptly sent to any requesting investor in paper or electronically. The Summary Prospectus disclosure regime enhances the accessibility of the information that is available to investors and increases their options for how to receive the information; it does not take away any information or any option for the method by which information is received.

Our determination to permit incorporation by reference 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 more than 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.<sup>325</sup> 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.<sup>326</sup>

By contrast, the Summary Prospectus is not a self-contained document, but rather one element in a layered disclosure regime that is intended to provide investors with better, more useable 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

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<sup>325</sup> Investment Company Act Release No. 23065, supra note 194, 63 FR at 13971.

<sup>326</sup> Id.

in 1998 have made this possible.<sup>327</sup> As a result of these considerations and for the other reasons discussed above, we believe that it is consistent with the purpose of the Summary Prospectus and in the public interest to permit incorporation by reference of information from the statutory prospectus, SAI, and shareholder reports into the Summary Prospectus, subject to the conditions to incorporation by reference contained in rule 498.

**b. Effect of Incorporation by Reference**

We are adopting, as proposed, the provision of rule 498 stating that, for purposes of rule 159 under the Securities Act,<sup>328</sup> 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 rule 498.

This provision addresses the question of when information that is incorporated into the Summary Prospectus under rule 498 is conveyed for purposes of Sections 12(a)(2) and

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<sup>327</sup> See, e.g., AARP Letter, supra note 34 (noting that “the growth of the Internet as an information source has dramatically improved investors’ access to mutual fund information”); CFA Institute Letter, supra note 37 (“In a time of electronic accessibility, this approach is in keeping with movement taken by the SEC through other proposals to streamline the process and reduce expenses to investment companies, while preserving investor protections.”). 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, our recent telephone survey indicates that 90% of investors have Internet access. Telephone Survey Report, supra note 32, at 115. See also 2008 ICI Fact Book, supra note 16, at 80-81 (noting that more than nine in 10 U.S. households owning mutual funds have Internet access, up from two-thirds in 2000; 69 percent of mutual fund shareholders age 65 or older have Internet access, up from 30 percent in 2000; and about eight in 10 mutual fund shareholders with Internet access go online for financial purposes, such as to check their bank or investment accounts, obtain investment information, or buy or sell investments). Moreover, very few American homes had broadband connections in 1998. See 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 26. 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).

<sup>328</sup> 17 CFR 230.159.

17(a)(2) of the Securities Act. Commenters who addressed this provision generally supported the position that all information that is properly incorporated by reference into the Summary Prospectus is conveyed to an investor for purposes of these sections.<sup>329</sup>

As we have previously stated, we interpret Section 12(a)(2) and Section 17(a)(2) to mean 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 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.<sup>330</sup> 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 Sections 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<sup>331</sup> 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

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<sup>329</sup> See, e.g., ABA Letter, supra note 37; Dechert Letter, supra note 50; ICI Letter, supra note 34; Schnase Letter, supra note 35; T. Rowe Letter, supra note 49. As discussed more fully in Part III.B.4.a., several commenters disagreed with the Commission's determination to permit incorporation by reference.

<sup>330</sup> See Securities Act Release No. 8591 (Jul. 19, 2005) [70 FR 44722, 44766 (Aug. 3, 2005)].

<sup>331</sup> 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.

circumstances under which they were made, not misleading,<sup>332</sup> any information conveyed to the purchaser only after the time of sale will not be taken into account.

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 rule.<sup>333</sup> 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.<sup>334</sup> We have designed the requirements of 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, 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.<sup>335</sup> The relevant facts and circumstances required by rule 498 include actual receipt of the Summary Prospectus;

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<sup>332</sup> 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.

<sup>333</sup> Rule 498(b)(3)(iii).

<sup>334</sup> See Securities Act Release No. 8591, supra note 330, 70 FR at 44766. 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.

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 human-readable and capable of being printed on paper in human-readable format, and meet the document linking requirements of the rule.<sup>336</sup>

We are not adopting the suggestion of two commenters that rule 498 state that information is conveyed to a person not later than the time that the Summary Prospectus is conveyed to the person, rather than received by the person.<sup>337</sup> We are unable to conclude that, in all circumstances, information incorporated into a Summary Prospectus has been conveyed to an investor before the investor has received the Summary Prospectus.

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. 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

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<sup>335</sup> 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 will be a facts and circumstances determination.

<sup>336</sup> 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).

<sup>337</sup> See ICI Letter, supra note 34; Schnase Letter, supra note 35.

information incorporated by reference into a mutual fund Summary Prospectus in accordance with the new rule.

The Commission believes that a person that provides investors with a mutual fund Summary Prospectus in good faith compliance with rule 498 will be able to rely on Section 19(a) of the Securities Act<sup>338</sup> 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.<sup>339</sup> Section 19(a) protects a defendant from liability for actions taken in good faith in conformity with any rule of the Commission.<sup>340</sup>

## **5. Filing Requirements for the Summary Prospectus**

We are requiring each Summary Prospectus to be filed with the Commission on EDGAR no later than the date that it is first used, rather than, as proposed, the fifth business day after the date that it is first used.<sup>341</sup> We agree with commenters who suggested that the Summary Prospectus should be filed with the Commission and be available on the Commission's Web site earlier than the fifth business day after it is first used.<sup>342</sup> In addition, we do not believe that the proposed five-day lag between first use of

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<sup>338</sup> 15 U.S.C. 77s(a).

<sup>339</sup> Cf. Investment Company Act Release No. 23065, supra note 194, 63 FR at 13972 (similar Commission statement in context of profile).

<sup>340</sup> See also Section 38(c) of the Investment Company Act [15 U.S.C. 80a-37(c)] (similar provision under Investment Company Act).

<sup>341</sup> Rule 497(k). As proposed, we are deleting the reference to the profile from rule 497(a) [17 CFR 230.497(a)].

<sup>342</sup> See Bo Li Letter, supra note 35; NewRiver Letter, supra note 228. Two commenters supported the Commission's proposal to require each Summary Prospectus to be filed with the Commission no later than the fifth business day after first use. See ICI Letter, supra note 34; Schnase Letter, supra note 35.

a Summary Prospectus and filing is necessary, given that we are requiring that the Summary Prospectus be updated only once a year, at the same time that a fund files its updated statutory prospectus. A Summary Prospectus that is filed on EDGAR will be publicly available; however, a fund may not rely on this availability to satisfy the requirements to post the document online discussed in Part III.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.<sup>343</sup> In accordance with Section 10(b), a Summary Prospectus will be filed as part of the registration statement, but will not be deemed a part of the registration statement for purposes of Section 11 of the Securities Act.

A joint comment letter from three consumer and investor groups expressed concerns that the Summary Prospectus would not be subject to Section 11 liability, suggesting that this would result in a diminution of funds' liability under that section.<sup>344</sup> We emphasize that the registration statement of a fund that uses the Summary Prospectus will remain subject to liability under Section 11, as is the case today. All of the information that may be included in, or incorporated by reference into, a fund's Summary Prospectus is also required to be included in the fund's registration statement. Thus, as described more fully in the following paragraph, all information included in, or

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<sup>343</sup> 15 U.S.C. 77j(b) and 77k.

<sup>344</sup> See Fund Democracy *et al.* Letter, *supra* note 34. Under Section 11 of the Securities Act [15 U.S.C. 77k], purchasers of an issuer's securities have private rights of action for untrue statements of material facts or omissions of material facts required to be included in the registration statement or necessary to make the statements in the registration statement not misleading.

incorporated by reference into, the Summary Prospectus will be subject to liability under Section 11 of the Securities Act.

As described in Part III.B.2.a., we are adopting a new requirement to clarify that the information contained in a Summary Prospectus that is used to satisfy prospectus delivery obligations must be the same as the information contained in the summary section of the fund's statutory prospectus. This information is, and will remain, subject to Section 11 liability because the fund's prospectus, in its entirety, is subject to Section 11 liability. In addition, information may be incorporated by reference into a Summary Prospectus only if it is contained in the fund's statutory prospectus, SAI, or has been incorporated into the statutory prospectus from the shareholder reports. That is, information that may be incorporated by reference into the Summary Prospectus is already a part of the fund's registration statement and, as a result, is subject in its entirety to liability under Section 11. Thus, while Section 10(b) of the Securities Act prescribes that the Summary Prospectus will not itself be deemed a part of the registration statement for purposes of Section 11, all of the information in the Summary Prospectus will be subject to liability under Section 11, either because the information is the same as information contained in the statutory prospectus or because the information is incorporated by reference from the registration statement.

We also note that a Summary Prospectus is subject to the stop order and other administrative provisions of Section 8 of the Securities Act.<sup>345</sup> This is in addition to the

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<sup>345</sup> 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").

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.<sup>346</sup>

### **C. Technical and Conforming Amendments**

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

- The scope section of rule 482 is revised to clarify that the rule does not apply to a Summary Prospectus or to a communication that, pursuant to rule 498, is not deemed a “prospectus” under section 2(a)(10) of the Securities Act.<sup>347</sup>
- For funds using the Summary Prospectus, the legend required in a rule 482 advertisement regarding the availability of the statutory prospectus will be required to include references to the Summary Prospectus.<sup>348</sup>
- The provision addressing the use of rule 482 advertisements together with a profile that includes an application to purchase shares is deleted as unnecessary.<sup>349</sup>

We are also adopting amendments to various cross-references to Form N-1A in our rules and forms to reflect changes that we are adopting 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

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<sup>346</sup> 15 U.S.C. 77j(b).

<sup>347</sup> Rule 482(a).

<sup>348</sup> Rule 482(b)(1).

<sup>349</sup> Rule 482(c).

N-14 under the Securities Act. We are also revising rule 159A under the Securities Act to refer to a Summary Prospectus rather than a profile.

**D. Compliance Date**

As discussed in the proposing release, the Commission is providing for a transition period after the effective date of the amendments to Form N-1A that gives funds sufficient time to update their prospectuses or to prepare new registration statements under the revised Form N-1A requirements. The effective date of the amendments is March 31, 2009.

All initial registration statements on Form N-1A, and all post-effective amendments that are annual updates to effective registration statements on this form, filed on or after January 1, 2010, must comply with the amendments to Form N-1A. All post-effective amendments that add a new series, filed on or after January 1, 2010, must comply with the amendments with respect to the new series. The final compliance date for filing amendments to effective registration statements to comply with the new Form N-1A requirements is January 1, 2011. Based on the comments, we believe that this will provide adequate time for funds to compile and review the information that must be disclosed.<sup>350</sup> A fund may, at its option, prepare documents in accordance with the requirements of Form N-1A, as amended, at any time after the effective date of the amendments. A person may not 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.

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<sup>350</sup> A number of commenters expressed the view that a one-year transition period was needed to make the required disclosure changes and implement the business process changes associated with use of the Summary Prospectus. See e.g., ICI Letter, supra note 34; Janus Letter, supra note 63; Oppenheimer Letter, supra note 44.

Post-effective amendments to existing registration statements filed to comply with the amendments to Form N-1A should be filed under Securities Act rule 485(a).<sup>351</sup> However, in appropriate circumstances, we will consider requests by existing funds to file these post-effective amendments pursuant to Securities Act rule 485(b)(1)(vii).<sup>352</sup> Appropriate circumstances may include, for example, situations where a fund complex has previously filed under rule 485(a) post-effective amendments for a number of funds that implement the new requirements, and the staff determines not to review additional such filings by the fund complex in light of the staff's experience with the previously filed amendments.

#### **IV. PAPERWORK REDUCTION ACT**

Certain provisions of the amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").<sup>353</sup> 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" (OMB Control No. 3235-0307) and (2) "Summary Prospectus for Open-End Management Investment Companies" (OMB Control No. 3235-

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<sup>351</sup> A post-effective amendment filed under rule 485(a) [17 CFR 230.485(a)] generally becomes effective either 60 days or 75 days after filing, unless the effective date is accelerated by the Commission. A post-effective amendment filed under rule 485(b) may become effective immediately upon filing. A post-effective amendment may be filed under rule 485(b) if it is filed for one or more specified purposes, including to make non-material changes to the registration statement. A post-effective amendment filed for any purpose not specified in rule 485(b) generally must be filed pursuant to rule 485(a).

<sup>352</sup> Under rule 485(b)(1)(vii), the Commission may approve the filing of a post-effective amendment to a registration statement under rule 485(b) for a purpose other than those specifically enumerated in the rule. The Commission's staff has been delegated the authority to approve registrants' requests under rule 485(b)(1)(vii). 17 CFR 200.30-5(b-3)(1).

<sup>353</sup> 44 U.S.C. 3501 et seq.

0637). We published notice soliciting comments on the collection of information requirements in the release proposing the amendments<sup>354</sup> and submitted the proposed collections of information to the Office of Management and Budget (“OMB”) for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. Four commenters specifically addressed the collection of information requirements and we have revised the proposed rule amendments in response to those comments.<sup>355</sup> We have also revised the estimated reporting and cost burdens of the rule amendments to address these comments, as discussed below.

Form N-1A under the Securities Act and the Investment Company Act<sup>356</sup> is used by mutual funds to register under the Investment Company Act and to offer their securities under the Securities Act. Rule 498 under the Securities Act will be used by mutual funds that choose to send or give a Summary Prospectus to investors.<sup>357</sup> 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. Because we have modified our proposals as described above, we are revising the burden estimate for Form N-1A and rule 498. We have submitted a revised request for both to OMB.

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<sup>354</sup> See Proposing Release, supra note 12, 72 FR at 67809.

<sup>355</sup> See American Century Letter, supra note 48; Capital Research Letter, supra note 34; Janus Letter, supra note 63; ICI Letter, supra note 34.

<sup>356</sup> 17 CFR 239.15A; 17 CFR 274.11A.

<sup>357</sup> A request has been submitted to OMB to remove the collection of information for the fund profile, which is being eliminated, under current rule 498.

We are adopting an improved mutual fund disclosure framework that we originally proposed in November 2007.<sup>358</sup> This improved disclosure framework 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 improved disclosure framework is the provision to all investors of streamlined and user-friendly information that is key to an investment decision.

To implement the new disclosure framework, we are adopting amendments to Form N-1A that will 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. We are also adopting a new option for satisfying prospectus delivery obligations with respect to mutual fund securities under the Securities Act. Under the option, key information will be sent or given to investors in the form of a Summary Prospectus, and the statutory prospectus will be provided on an Internet Web site. Funds that select this option will also be required to send the statutory prospectus to the investor upon request.

We are also adopting technical and conforming amendments to rules 159A and 482 under the Securities Act that reflect the Summary Prospectus and the elimination of the voluntary profile, along with amendments that 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. These technical and conforming amendments do not

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<sup>358</sup> See Proposing Release, *supra* note 12, 72 FR at 67990.

constitute a collection of information because we are not altering the legal requirements of these rules and forms.

Finally, amendments to rule 497 provide the requirements for filing Summary Prospectuses with the Commission. These amendments do 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 rule 498.

**A. Form N-1A**

Form N-1A, including the 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 is required in the summary section of the prospectus under the amendments has previously been required in a fund's prospectus. However, the amendments require new information regarding the exchange ticker symbol and the compensation received by financial intermediaries. In addition, except for some information common to multiple funds, the summary section must be presented separately for each fund covered by a multiple fund prospectus. As a result, the amendments to Form N-1A may require additional burden hours to compile, review, and present the required information in a separate summary section for each fund. We estimate that the amendments will 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 approximately 17 hours.

In the proposing release, we estimated 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 approximately 16 hours.<sup>359</sup> We received two comments on this estimate.<sup>360</sup> One commenter anticipated approximately 19,000 hours for its 75 funds, or over 253 hours per portfolio, to initially comply with the proposed amendments.<sup>361</sup> Another commenter, who conducted a survey of mutual fund complexes, estimated that the amendments would increase the hour burden per portfolio by 17 hours.<sup>362</sup> Recognizing that the commenter surveyed a broad cross-section of the mutual fund industry, and having reviewed the specific questions it asked respondents, we have incorporated this estimate in our analysis.<sup>363</sup>

We estimate, as we did in the proposing release, that subsequent post-effective amendments to a registration statement will require, on average, approximately 4 burden hours per portfolio to update and review the information.<sup>364</sup> We received one comment, which estimated that ongoing compliance with the proposed amendments to Form N-1A

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<sup>359</sup> Proposing Release, supra note 12, 72 FR at 67808.

<sup>360</sup> See Janus Letter, supra note 63; ICI Letter, supra note 34.

<sup>361</sup> Janus Letter, supra note 63. The commenter did not, however, indicate what percentage of the 19,000 hours it would dedicate to compliance with the proposed amendments to Form N-1A and what percentage it would dedicate to compliance with proposed rule 498.

<sup>362</sup> ICI Letter, supra note 34. The commenter estimated that the 42 fund complexes it surveyed offer 3,122 funds, accounting for nearly 60 percent of total mutual fund industry assets as of December 2007.

<sup>363</sup> Although the final rule eliminates disclosure of portfolio holdings in the summary section, we believe that the 17 hours estimated by the commenter based on its survey remains reasonable.

<sup>364</sup> See Proposing Release, supra note 12, 72 FR at 67808.

would require an average of 9 hours per fund.<sup>365</sup> However, we believe that the commenter based this estimate on responses to an ambiguous survey question.<sup>366</sup> We believe that respondents may have interpreted this question to ask how many hours it would take them to update and review all information each year to comply with Form N-1A rather than only how many additional hours it would take them each year to update and review information to comply with the amended items in Form N-1A.<sup>367</sup> For this reason, we are not adjusting our original burden hour estimate.

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 amendments to be approximately 8 hours.<sup>368</sup> We estimate that 8,752 portfolios file initial registration statements and post-effective amendments on Form N-1A.<sup>369</sup> Thus, the incremental hour burden resulting from the amendments relating to the summary section disclosure would be 70,016 hours.<sup>370</sup> The total annual hour burden for all funds for preparation and filing

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<sup>365</sup> See ICI Letter, supra note 34.

<sup>366</sup> See id. (asking survey respondents, “How much time (in hours) would you estimate that it would take to update and review the information each year for Form N-1A on an **on-going** basis for all of your funds?” (bold in original)).

<sup>367</sup> The respondents estimated that initial compliance with the Form N-1A amendments, including the creation of separate summaries for funds in a multiple fund prospectus, would require an average of 17 hours per fund, whereas ongoing compliance would average 9 hours per fund. See ICI Letter, supra note 34. Once such summary sections have been created, we do not believe that an update of such information on an annual basis should require more than half the time it takes to initially compile, review, and present that information in the summary section.

<sup>368</sup> (17 hours in the first year + 4 hours in the second year + 4 hours in the third year) ÷ 3 years = approximately 8 hours.

<sup>369</sup> See 2008 ICI Fact Book, supra note 16, at 15. In the Proposing Release, based on information in the 2007 version of the ICI Fact Book, we assumed that there were 8,726 portfolios. See Proposing Release, supra note 12, 72 FR at 67990 n. 14.

<sup>370</sup> 8 hours x 8,752 portfolios.

of registration statements and post-effective amendments to Form N-1A would be approximately 1,645,200 hours.<sup>371</sup>

**B. Rule 498**

Rule 498 contains collection of information requirements. The likely respondents to this information collection are open-end management investment companies registered or registering with the Commission. Under rule 498, use of the Summary Prospectus is voluntary, but the rule's requirements regarding provision of the statutory prospectus are mandatory for funds that elect to send or give a Summary Prospectus in reliance upon rule 498. The information provided under rule 498 will not be kept confidential.

We estimate that for those funds that choose to use the Summary Prospectus, initial compliance with the requirements for the Summary Prospectus will require approximately 23 burden hours per portfolio. We originally assumed in the proposing release that 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.<sup>372</sup> One commenter suggested that initial compliance with requirements for the Summary Prospectus and the other provisions of rule 498 would require approximately 23 burden hours per portfolio.<sup>373</sup> The commenter pointed out that initial compliance with the requirements for the Summary Prospectus would include, among other things, a document design process to create the Summary Prospectus; technology requirements for

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<sup>371</sup> 70,016 hours + 1,575,184 hours. Currently, the approved annual hour burden for preparing and filing registration statements on Form N-1A is 1,575,184 hours.

<sup>372</sup> See Proposing Release, supra note 12, 72 FR at 67809.

<sup>373</sup> See ICI Letter, supra note 34.

posting documents on funds' websites and providing hyperlinks within and between certain documents; and communication with distribution channels regarding the use of the Summary Prospectus.<sup>374</sup> Recognizing that we may have underestimated the costs associated with initial compliance with rule 498 and that the commenter based its estimate on a survey of a broad cross-section of the mutual fund industry, we have added an estimate of 23 burden hours necessary for initial compliance with rule 498.

In addition to initial compliance, we estimate, as we did in the proposing release, that rule 498 will impose a ½ hour burden per portfolio annually associated with the compilation of the additional information required on a cover page or at the beginning of the Summary Prospectus.<sup>375</sup> Rule 498 also imposes annual 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.<sup>376</sup> We estimate that the average hour burden for one portfolio to comply with the Internet Web site posting requirements will be approximately one hour annually.<sup>377</sup>

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<sup>374</sup> See id.

<sup>375</sup> See Proposing Release, supra note 12, 72 FR at 67809.

<sup>376</sup> Rule 498, as proposed, also would have imposed an annual hour burden associated with updating the Summary Prospectus every quarter. In the Proposing Release, we estimated that quarterly updating would impose approximately 3 burden hours per quarter per portfolio, or 9 hours annually for each of the three subsequent quarters. See Proposing Release, supra note 12, 72 FR at 67809. However, we are not including quarterly updating requirements in the final rule.

<sup>377</sup> See Proposing Release, supra note 12, 72 FR at 67809. We have reduced this figure from the 4 hour estimate we made in the Proposing Release because we have not included quarterly updating requirements in the final rule. We originally estimated that Internet Web site posting would require approximately 1 hour per quarter, but without quarterly updating, we estimate that it will require 1 hour annually.

We received four comments on our original estimates of the burden of ongoing compliance. See American Century Letter, supra note 48; Capital Research Letter, supra note 34; Janus Letter, supra note 63; ICI Letter, supra note 34. One commenter estimated

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 amendments to be approximately 9 hours.<sup>378</sup> The Summary Prospectus is voluntary, so the percentage of funds that will choose to provide it is uncertain. Given the potential benefits of the amendments to funds, we assume that 80% of all funds will choose to send or give the Summary Prospectus.<sup>379</sup> Assuming 80% 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 rule 498 would be approximately 63,014 hours.<sup>380</sup>

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that filing Summary Prospectuses for its funds would require approximately 1150 hours per quarter, or 11 hours per fund. See American Century Letter, supra note 48. The second commenter estimated that the proposed quarterly updating requirement would require its 75 funds to spend approximately 5,300 burden hours. See Janus Letter, supra note 63. The third commenter estimated that it would spend an additional 4,400 hours per year to comply with the proposed quarterly updating requirements. See Capital Research Letter, supra note 34. Based on a survey of mutual funds, the fourth commenter stated that ongoing compliance with rule 498, as proposed, would require approximately 10 hours per fund per update. See ICI Letter, supra note 34. All three commenters, however, based their estimates on the proposal's requirement of quarterly updating of top 10 portfolio holdings and performance information. Because we are not requiring quarterly updating of performance information and we are not requiring any disclosure of top 10 portfolio holdings, we are not making further adjustments to our estimates.

<sup>378</sup> (23 hours in the first year + 1.5 hours in the second year + 1.5 hours in the third year) ÷ 3 years = approximately 9 hours.

<sup>379</sup> See Proposing Release, supra note 12, 72 FR at 67809. In the Proposing Release, we assumed that 75% of all funds would choose to send or give a Summary Prospectus. However, one commenter estimated that 80% of funds would elect to use the Summary Prospectus if the Commission eliminated quarterly updating requirements from the final rule. See ICI Letter, supra note 34. Having eliminated quarterly updating from the final rule and recognizing that the commenter had surveyed a major cross-section of the mutual fund industry, we have adopted the commenter's estimate that 80% of funds will likely choose to send or give a Summary Prospectus.

<sup>380</sup> 9 hours x 8,752 portfolios x .80.

### C. ETF-Related Amendments

We are amending Form N-1A to provide more useful information to investors who purchase and sell ETF shares on national securities exchanges.

The amendments permit an ETF to exclude certain information from its prospectus that is not pertinent to investors purchasing individual ETF shares on secondary markets. Specifically, an ETF that has creation units of 25,000 shares or more may exclude from its prospectus: (i) information on how to purchase and redeem shares of the ETF;<sup>381</sup> and (ii) fee table fees and expenses for purchases and redemptions of creation units.<sup>382</sup> Based on conversations with industry representatives, Commission staff estimated in the ETF proposing release that these amendments would decrease the information collection burdens of an ETF that has creation units of 25,000 shares or more by an average of 1.4 hours per fund per filing of an initial registration statement or post-effective amendment to a registration statement. We requested comment on this estimate in the ETF proposing release. No commenters addressed this estimate and we continue to believe that it is appropriate.

The amendments also require disclosures designed to include important information for purchasers of individual ETF shares, as described below. An ETF will have to modify the narrative explanation preceding the example in the fee table in its prospectus and periodic reports to state that fund shares are sold on the secondary market rather than redeemed at the end of the periods indicated, and that investors in ETF shares may be required to pay brokerage commissions that are not reflected in the fee table.<sup>383</sup>

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<sup>381</sup> Item 6(c)(2) of Form N-1A.

<sup>382</sup> Instruction 1(e)(ii) to Item 3 of Form N-1A.

<sup>383</sup> Instruction 1(e)(i) to Item 3 of Form N-1A; Instruction 1(e)(i) to Item 27(d) of Form N-

We believe that the added information collection burdens associated with this statement, if any, would be negligible.

The proposed amendments would have required each ETF to include a separate line item for returns based on the market price of ETF shares in the average annual total returns table in Item 2 of the Form,<sup>384</sup> and to calculate total return at market prices in addition to returns at NAV for their financial highlights tables.<sup>385</sup> At the suggestion of commenters, we have not adopted these requirements.

The proposed amendments would have required ETFs to include premium/discount information in both the prospectus and annual report of each ETF. Based on commenters suggestions, the final amendments permit ETFs to omit the historical premium/discount disclosure in those documents if the ETF includes premium/discount information on its Internet Web site and discloses in the prospectus and annual report an Internet address where investors can locate the information.<sup>386</sup> Commission staff estimated in the ETF proposing release that each ETF currently spends an average of 0.5 hours per filing of an initial registration statement or a post-effective

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1A. The amendments also require each ETF to identify the principal U.S. market on which its shares are traded and include a statement to the effect that ETF shares are bought and sold on national securities exchanges. We believe that the added information collection burdens associated with these very brief and specific statements, if any, would be negligible.

<sup>384</sup> Proposed Instruction 5(a) to Item 2(c)(2) of Form N-1A.

<sup>385</sup> Proposed Instruction 3(f) to Item 8(a) of Form N-1A.

<sup>386</sup> Item 11(g)(2) of Form N-1A; Item 27(b)(7)(iv) of Form N-1A. Although the time period required in the disclosure is different in the prospectus and annual report, ETFs will be able to omit both disclosures by providing on their Internet Web site only the premium/discount information required by Item 11(g)(2) (the most recently completed fiscal year and quarters since that year). *Id.*

amendment to a registration statement to include this disclosure.<sup>387</sup> The staff further estimated that each ETF also would spend 0.5 hours per annual report to include this disclosure. We requested comment on these estimates in the ETF proposing release. No commenters addressed these estimates and we continue to believe that they are appropriate for ETFs that choose to include the information in the prospectus and annual report.

Based on Commission filings, Commission staff estimates that on an annual basis, ETFs file initial registration statements covering 98 ETF portfolios, and post-effective amendments covering 1,441 ETF portfolios on Form N-1A. Based on staff estimates, we estimate that the amendments will not increase the hour burden per ETF per filing on an initial registration or post-effective amendment to a registration statement. We estimate that the amendments will add approximately 0.5 hours, which staff estimates will be offset by a reduction of 1.4 hours (elimination of description of creation units and associated fees). Although the total annual hour burden for ETFs to prepare and file initial registration statements and post-effective amendments may decrease slightly, we are not decreasing our overall estimates to reflect the incremental decrease in order to be conservative in our estimates of the collection of information burdens.

## **V. COST/BENEFIT ANALYSIS**

The Commission is sensitive to the costs and benefits imposed by its rules. We are adopting amendments to Form N-1A that will 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. The

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<sup>387</sup> This estimate is based on discussions with representatives of ETFs, which include premium/discount information as required by their exemptive orders.

key information is required to be presented in plain English in a standardized order. Our intent is that this information will be presented succinctly, in three or four pages, at the front of the prospectus.

We are also adopting a new option for satisfying prospectus delivery obligations with respect to mutual fund securities under the Securities Act. Under the option, key information will be sent or given to investors in the form of a Summary Prospectus, and the statutory prospectus will be provided on an Internet Web site. Upon an investor's request, funds will also be required to send the statutory prospectus to the investor. Our intent in providing 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.

The disclosure framework that we are adopting has the potential to revolutionize the provision of information to the millions of investors who rely on mutual funds for their most basic financial needs. It 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 useable formats, the disclosure framework 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.

In the proposing release, we requested public comment and specific data regarding the costs and benefits of the amendments. As discussed below, we received

five comments directly addressing our quantitative cost/benefit analysis.<sup>388</sup> We also received numerous comments pertinent to qualitative aspects of our analysis.<sup>389</sup>

**A. Benefits**

**1. Form N-1A**

Possible benefits of the amendments include enhanced 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.<sup>390</sup> These investors face a difficult task in choosing among the more than 8,000 available mutual funds.<sup>391</sup> 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

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<sup>388</sup> See Data Communiqué Letter, supra note 35; ICI Letter, supra note 34; MFS Letter, supra note 150; NewRiver Letter, supra note 228; Memorandum from the Division of Investment Management regarding August 25, 2008 meeting with representatives of RR Donnelly & Sons Co. and Prospectus Central, LLC (Aug. 26, 2008) (“RR Donnelley Memorandum”).

<sup>389</sup> See, e.g., AARP Letter, supra note 34; CFA Institute Letter, supra note 37; CMFI Letter, supra note 44; Fund Democracy et al. Letter, supra note 34; ICI Letter, supra note 34; MFDF Letter, supra note 34; NAPFA Letter, supra note 44.

<sup>390</sup> See supra note 16.

<sup>391</sup> See 2008 ICI Fact Book, supra note 16, at 15.

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.

The amendments 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 will allow investors to compare information across funds and may assist them in making better informed portfolio allocation decisions in line with their investment goals.

The amendments also will 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,<sup>392</sup> and significant strides have been made in the speed and quality of Internet connections.<sup>393</sup> 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

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<sup>392</sup> See supra note 25.

<sup>393</sup> See supra note 26.

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 amendments will 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.

Nearly all of the comments we received, including comments from consumer groups and industry representatives, agreed with our conclusion that investors will benefit greatly from receiving the Summary Prospectus containing key information that investors will be more likely to read and understand, with the ability to access more detailed information either immediately in a user-friendly format online or, within a matter of days, in paper.<sup>394</sup> This conclusion is also supported by our recent telephone survey of investors, which found that many mutual fund investors do not read statutory

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<sup>394</sup> See, e.g., Fund Democracy et al. Letter, supra note 34; ICI Letter, supra note 34; see also supra notes 315-317 and accompanying text (discussing the qualitative benefits of the amendments).

prospectuses because they are long, complicated, and hard to understand.<sup>395</sup> In addition, the views expressed by investors in our focus groups also support our conclusion that investors will derive significant benefits from the Summary Prospectus, coupled with ready access to more detailed information in whatever format they choose.<sup>396</sup>

In addition to benefiting investors, the Summary Prospectus also will provide quantifiable cost savings to funds. We believe that funds will benefit from being able to send or give a Summary Prospectus rather than having to print and send statutory prospectuses to all investors and prospective investors. We expect that funds will 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 approximately 300,000,000 statutory prospectuses annually to their current shareholders<sup>397</sup> and another 64,500,000 in connection with fund purchases.<sup>398</sup> We

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<sup>395</sup> Telephone Survey Report, supra note 32, at 56, 58.

<sup>396</sup> See Focus Group Report, supra note 32, at 5-6. See also Focus Group Transcripts, supra note 32, at 63 (“It’s a two-minute read. If I want more information, I can ask for it.”); id. at 38 (“I think both [the long-form prospectus and short-form prospectus] have their place. I think it would be foolish to give up the long-form for ‘this’ and I think it would be foolish not to have the short-form and insist on a long-form. They both have their place.”).

<sup>397</sup> See 2008 ICI Fact Book, supra note 16, at 110 (estimating 298,966,000 shareholder accounts at the end of 2007). In the Proposing Release, we used an estimate of 290,000,000 statutory prospectuses, which was based on the 2007 version of the ICI Fact Book estimate of the number of shareholder accounts at the end of 2006. See Proposing Release, supra note 12, 72 FR at 67810.

Often, a fund will mail a statutory prospectus to each of its shareholders annually in addition to mailing a statutory prospectus in connection with a purchase of fund shares. 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.

received two comments related to the estimated number of statutory prospectuses that are distributed.<sup>399</sup>

We estimate that the cost savings for annual mailings will be approximately \$126,000,000<sup>400</sup> and that the cost savings for purchase mailings will be approximately \$80,496,000.<sup>401</sup> These cost savings would be reduced by the costs of sending the

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<sup>398</sup> 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, Inc. ("Broadridge") prior to issuing the Proposing Release. See Memorandum from the Division of Investment Management regarding October 25, 2007 meeting with Broadridge representatives (Nov. 28, 2007) ("Broadridge Memorandum").

<sup>399</sup> One commenter stated that our estimates of the numbers of statutory prospectuses distributed to existing shareholders and investors purchasing shares in the Proposing Release are reasonable because they fall within the range between the commenter's lowest possible estimates (230,000,000 for annual fulfillment and 58,000,000 for purchase fulfillment) and the commenter's highest possible estimates (373,000,000 million for annual fulfillment and 95,000,000 for purchase fulfillment). See ICI Letter, supra note 34. A second commenter estimated that the number of statutory prospectuses distributed to existing shareholders is 231,981,600 and the number distributed to investors purchasing fund shares is 72,494,250, based on its experience preparing distributions of statutory prospectuses and shareholder reports for mutual funds. See Data Communiqué Letter, supra note 35.

<sup>400</sup> Our annual estimates are derived from information we received from Broadridge. See Broadridge Memorandum, supra note 398. Broadridge estimated 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. Id. The cost savings with respect to annual mailings were calculated by multiplying the costs of printing and mailing a statutory prospectus by the 300,000,000 statutory prospectuses mailed annually reduced to reflect our estimate that 80% 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) x 300,000,000 statutory prospectuses x 80% of funds).

<sup>401</sup> 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. Id. 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. Id. 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 connection with a fund purchase reduced to reflect our estimate that 80% 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) x 64,500,000 statutory prospectuses x 80% of funds).

statutory prospectus to those investors who request it. We estimate that approximately 2% of the investors who own shares in the 80% of funds that likely will choose to send or give the Summary Prospectus will request that a statutory prospectus be mailed to them.<sup>402</sup> We estimate that the cost of mailing statutory prospectuses to existing investors would be \$12,288,000.<sup>403</sup> We further estimate that approximately 3% investors purchasing shares in the 80% of funds that likely will choose to send or give the Summary Prospectus will request that a statutory prospectus be sent to them.<sup>404</sup> We

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<sup>402</sup> We originally did not project that existing investors would request hard copies of the statutory prospectus. However, one commenter stated that at most 2% of existing investors would likely request hard copies, based on information from Broadridge indicating investor requests for written materials under the Commission's notice and access e-proxy model have averaged around 2%. See ICI Letter, supra note 34. We believe that it is reasonable to estimate a similar percentage of existing investors will request hard copies of the statutory prospectus.

<sup>403</sup> For purposes of this estimate, we used the digital print on demand rate of \$1.35 and the average first class mail rate of \$1.21. See Broadridge Memorandum, supra note 398 (estimating postage costs of \$1.21); ICI Letter, supra note 34 (estimating a digital print on demand rate of \$1.35). In the Proposing Release, we estimated a blended print rate of \$0.35 for prospectuses sent to requesting investors. See Proposing Release, supra note 12, 72 FR at 67810 n. 162. However, one commenter stated that this estimate is too low because it largely reflects economies of scale from high volume offset printing that are not realistic given the likely low number of investor requests for hard copies of the statutory prospectus. See ICI Letter, supra note 34. Therefore, we have adopted the commenter's digital print rate estimate of \$1.35.

The costs were calculated by multiplying the costs of printing and mailing a statutory prospectus by the 300,000,000 prospectuses sent out annually to existing shareholders reduced to reflect our estimate that 80% of funds will elect to adopt the new disclosure option and 2% of investors will request a statutory prospectus be mailed to them (((\$1.35 for the printing of a statutory prospectus + \$1.21 for the mailing of a statutory prospectus) x 300,000,000 statutory prospectuses x 80% of funds x 2% of investors).

<sup>404</sup> In the Proposing Release, we originally estimated that 10% of such investors would likely request hard copies of the statutory prospectus. However, one commenter stated that 2% of both existing investors and investors purchasing fund shares would request hard copies of the statutory prospectus. See ICI Letter, supra note 34. While we agree with the commenter that we may have initially underestimated the percentage of existing investors and overestimated the percentage of purchasing investors that would request hard copies, we do not believe that the same percentage of both groups would request hard copies. Investors making initial fund purchases would potentially have a greater interest in receiving hard copies of statutory prospectuses than investors that have owned fund

estimate that the cost of sending statutory prospectuses requested by investors making purchases of fund shares would be approximately \$3,962,880.<sup>405</sup> Therefore, we estimate the annual cost savings will be approximately \$190,245,120,<sup>406</sup> or approximately \$21,737 per portfolio.<sup>407</sup>

We received four comments bearing on the cost savings of the new delivery option.<sup>408</sup> Of those, only two commenters provided actual estimates of the total savings

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shares for some time. For this reason, we have lowered our original estimate that 10% of investors purchasing fund shares would request hard copies, but have lowered it less than the commenter suggested.

<sup>405</sup> For purposes of this estimate, we used the digital print on demand rate of \$1.35 and the average first class mail rate of \$1.21. See supra note 403. 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 80% of funds will elect to send Summary Prospectuses and 3% of investors will request a statutory prospectus be mailed to them ((\$1.35 for the printing of a statutory prospectus + \$1.21 for the mailing of a statutory prospectus) x 64,500,000 statutory prospectuses x 80% of funds x 3% of investors).

<sup>406</sup> (\$126,000,000 cost savings for annual mailings + \$80,496,000 cost savings for purchase mailings) – (\$12,288,000 cost of sending requested statutory prospectuses to existing investors + \$3,962,880 cost of sending requested statutory prospectuses to investors purchasing funds).

A study of industry participants estimated cost savings of approximately \$300,000,000 per year. See Forrester Consulting Study commissioned on behalf of NewRiver, Inc., The Short-Form Prospectus, at 6 (Oct. 2007), available at [http://www1.newriver.com/upload\\_files/ForresterConsulting\\_NewRiver\\_ShortForm\\_Prospectus\\_10\\_25\\_2007.pdf](http://www1.newriver.com/upload_files/ForresterConsulting_NewRiver_ShortForm_Prospectus_10_25_2007.pdf).

<sup>407</sup> \$190,245,120 ÷ 8,752 portfolios.

Although we believe that not all funds will choose to use the Summary Prospectus, we believe it is appropriate to estimate the amendments' effect across the entire mutual fund industry. Therefore, we have estimated the average cost savings per portfolio industry-wide rather than estimate the cost savings per portfolio only for those portfolios using the Summary Prospectus.

<sup>408</sup> See Data Communiqué Letter, supra note 35; ICI letter, supra note 34; MFS Letter, supra note 150; RR Donnelley Memorandum, supra note 388.

that would be generated by the new delivery option.<sup>409</sup> Insofar as these two commenters' total savings estimates differed from our \$190,245,120 figure, they did so largely because the commenters assumed different per unit printing and postage costs. However, assuming (1) that 80% of funds will choose to send or give the Summary Prospectus, (2) that funds distribute approximately 300,000,000 statutory prospectuses to existing investors annually and distribute approximately 64,500,000 statutory prospectuses to purchasing investors annually, and (3) that 2% of existing investors in funds using the new delivery option and 3% of investors purchasing shares in such funds request hard copies of the statutory prospectus, the commenters' differing per unit printing and postage cost estimates would not produce total cost savings estimates that differ significantly from our estimate.<sup>410</sup>

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<sup>409</sup> See Data Communiqué Letter, supra note 35 (estimating \$220,254,203 in annual cost savings) ICI Letter, supra note 34 (estimating \$236,000,000 in annual cost savings).

The two commenters also provided the printing and postage cost estimates they used to arrive at their total cost savings estimates. See Data Communiqué Letter, supra note 35 (estimating per unit printing and postage costs for annual fulfillment of \$0.25 and \$0.392 respectively, per unit printing and postage costs for purchase fulfillment of \$0.25 and \$0.654 respectively, and a blended per unit printing and postage cost for delivery of hard copies of the statutory prospectus to requesting investors of \$0.50); ICI Letter, supra note 34 (estimating per unit printing and postage costs for annual fulfillment of \$0.26 and \$0.255 respectively, per unit printing and postage costs for purchase fulfillment of \$0.26 and \$1.39 respectively, and per unit printing and postage costs for delivery of hard copies of the statutory prospectus to requesting investors of \$1.35 and \$1.39 respectively).

Of the two commenters that did not provide total cost savings estimates, one commenter estimated that it currently pays an average of \$0.15 per piece for offset printing of a statutory prospectus. MFS Letter, supra note 150. The other commenter estimated that a fund with a print volume of 30,000 64-page statutory prospectuses could save 6.3% by using a four-page Summary Prospectus and that a fund with a print volume of 100,000 64-page statutory prospectuses could save 22.2%, assuming that 10% of investors still request hard copies of the statutory prospectus. RR Donnelley Memorandum, supra note 388.

<sup>410</sup> One commenter also did not account for the fact that less than 100% of funds would adopt the new delivery option in its calculation of quantified benefits. See ICI Letter, supra note 34.

We expect that funds will 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 amendments. We expect that, as funds gain familiarity with the extent of 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.

## **2. ETF-Related Disclosures**

As noted above, in March of this year, the Commission proposed several amendments to Form N-1A to accommodate the use of the form by ETFs, and we are adopting those amendments today, with some changes to respond to issues raised by commenters. As noted in the ETF proposing release, many of the exemptive orders that permit an ETF to operate exempt broker-dealers from the obligation to deliver prospectuses in secondary market transactions. The exemptive orders permit a broker-dealer instead to deliver a product description containing basic information about the ETF and its shares. We understand that many, if not most, broker-dealers transmit a prospectus to purchasers and do not rely on the exemption in our orders. In light of this practice, we are adopting amendments to Form N-1A designed to meet the needs of investors (including retail investors) who purchase ETF shares in the secondary market rather than financial institutions that purchase creation units directly from the ETF.

We expect that one benefit of the amendments will be to provide ETF investors purchasing shares in the secondary market with information on the investment that they currently may not receive in a product description, such as the fund's fee table and the name and length of service of the portfolio manager. Another benefit of the amendments will be to provide ETF investors purchasing shares in the secondary market with

prospectus disclosure that is specifically tailored to ETFs. We expect this would provide ETF investors with information that will allow them to understand more easily an investment in an ETF. This information also may be helpful to investors in making portfolio allocation decisions.

Our amendments are designed to simplify prospectus and periodic report disclosure in two ways. First, the amendments allow ETFs to exclude from the prospectus information on how to purchase and redeem creation units, including information on fees and expenses associated with creation unit sales or purchases. Current ETF prospectuses and periodic reports include detailed information on how to purchase and redeem creation units. The fee table and example include information on transaction fees payable only by creation unit purchasers. Our amendments permit ETFs with creation units of at least 25,000 shares to exclude this information because it is not relevant (and may be potentially confusing) to investors purchasing in secondary market transactions.<sup>411</sup> This provision should simplify ETF prospectuses without compromising the disclosure provided to investors who purchase ETF shares in secondary market transactions.

Second, our exemptive orders require ETFs to include in their prospectuses and annual reports premium/discount information to alert investors of the extent and frequency with which market prices deviated from the fund's NAV. ETFs may omit this disclosure if they provide the information on their Internet Web sites and provide an Internet address where investors may locate the information. ETFs have generally included this information in a supplemental section of the prospectus and annual

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<sup>411</sup> See supra Part III.A.4.

report.<sup>412</sup> The amendments incorporate this disclosure in the shareholder information section (Item 11 of Form N-1A) of the prospectus and the management's discussion of fund performance in the annual reports (Item 27(b)(7) of Form N-1A ). We anticipate that this may benefit ETF investors by simplifying the prospectuses and annual reports of ETFs while codifying important disclosures mandated by our ETF exemptive orders. ETFs also may benefit because they may choose to disclose this information in the most cost efficient way – either in the prospectus and the annual report, or on their Web sites.

## **B. Costs**

### **1. Form N-1A**

While the amendments will result in significant cost savings for funds, we believe that there will be costs associated with them. These include the costs for funds to compile and review the new information required by our amendments 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 will be approximately \$106,200,000<sup>413</sup> or approximately \$12,134 per portfolio.<sup>414</sup>

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<sup>412</sup> See, e.g., iShares MSCI Series, Prospectus 62-65 (Jan. 1, 2007); iShares MSCI Series, 2006 Shareholders Annual Report 130-136 (Aug. 31, 2006).

<sup>413</sup> This estimate assumes printing and postage costs for annual fulfillment of \$0.08 and \$0.255 per unit respectively and printing and postage costs for purchase fulfillment of \$0.08 and \$0.42 per unit respectively. We increased our estimate of postage costs for purchase fulfillment from \$0.41 in the Proposing Release to \$0.42 to reflect the current rate for first class mail. Our estimate is derived as follows: [(((\$0.08 to offset print a Summary Prospectus + \$0.255 for bulk mail) x 300,000,000 prospectuses estimated to be sent out annually) + ((\$0.08 to offset print a Summary Prospectus + \$0.42 for first class mail) x 64,500,000 prospectuses estimated to be sent out in response to a fund purchase)] x 80% of funds.

We received four comments regarding our estimates of per unit print costs for the Summary Prospectus.<sup>415</sup> Of the four commenters, only one accounted for the likelihood that some funds would print Summary Prospectuses in color.<sup>416</sup> In discussing its estimates, the commenter reported that 47% of funds it surveyed expected to use color for the Summary Prospectus. Therefore the commenter's per unit print cost estimates

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In the Proposing Release, we estimated printing costs of \$0.11 per unit for on-demand printing in black and white. See Proposing Release, supra note 12, 72 FR at 67811 n. 168. However, we have changed our estimate of per unit printing costs based on comments we received and based on our decision not to include a quarterly updating requirement in the final rule. Instead of using the original \$0.11 per unit figure for on-demand printing in black and white, we now estimate printing costs of \$0.08 per unit, a figure representing offset printing of a blend of color and black and white. See ICI Letter, supra note 34.

<sup>414</sup> \$106,200,000 ÷ 8,752 portfolios.

Our new cost/benefit analysis retains our original postage costs of \$0.255 per unit for annual fulfillment and \$0.41 per unit for purchase fulfillment. Two commenters assumed the same postage costs in their cost/benefit analyses. See ICI Letter, supra note 34; NewRiver Letter, supra note 228. Another commenter's estimates of postage costs were close to ours (\$0.233 per unit for annual fulfillment and \$0.484 per unit for purchase fulfillment). See Data Communiqué Letter, supra note 35. By contrast, a fourth commenter estimated postage costs of \$0.241 per Summary Prospectus, without differentiating between annual and purchase fulfillment costs. See RR Donnelley Memorandum, supra note 388. However, we did not adjust our postage cost estimates based on this comment because the other three commenters largely agreed with our original postage cost estimates.

Although we believe that not all funds will choose to use the Summary Prospectus, we believe it is appropriate to estimate the amendments' effect across the entire mutual fund industry. Therefore, we have estimated the average external costs per portfolio industry-wide rather than estimate the costs per portfolio only for those portfolios using the Summary Prospectus.

<sup>415</sup> Data Communiqué Letter, supra note 35 (estimating \$0.07 per unit for offset printing in black and white); ICI Letter, supra note 34 (estimating \$0.17 per unit for annual fulfillment and \$0.26 per unit for purchase fulfillment, with both figures representing a blend of offset printing and print on demand as well as a blend of color and black and white printing); MFS Letter, supra note 150 (estimating \$0.10 per unit for print on demand, but not indicating whether that figure includes any color printing); NewRiver Letter, supra note 228 (estimating \$0.10 per unit for print on demand, but not indicating whether that figure includes any color printing).

<sup>416</sup> See ICI Letter, supra note 34.

represent a blend of 47% color and 53% black and white. Assuming that the Commission would require quarterly updating of the Summary Prospectus, the commenter estimated a per unit printing cost of \$0.17 for annual fulfillment and \$0.26 for purchase fulfillment.<sup>417</sup> However, the commenter also estimated that without quarterly updating, most funds would print Summary Prospectuses by offset methods, and therefore estimated a per unit print cost of \$0.08 per unit for both annual and purchase fulfillment.<sup>418</sup>

We accept the commenter's assertion that roughly half of funds will print their Summary Prospectuses in color and half will print in black and white because their estimate was based on a survey of a broad cross-section of the mutual fund industry. Additionally, with the elimination of quarterly updating requirements in the final rule, we believe that most funds will likely print Summary Prospectuses for annual and purchase fulfillment at the same time, giving most funds sufficient print volume to make offset printing methods economical.<sup>419</sup> Therefore, we have revised our estimates of per unit print costs for annual and purchase fulfillment to \$0.08 per unit.

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<sup>417</sup> Given our assumptions that 80% of funds will adopt the Summary Prospectus, that funds distribute 300 million prospectuses for purposes of annual fulfillment, and that they distribute 64.5 million prospectuses for purchase fulfillment each year, the commenter's per unit postage and mailing cost estimates would lead to total postage and mailing costs of \$136,572,000 annually [(((\$0.17 for a blend of offset/print on demand and color/black and white printing + \$0.255 for bulk mail) x 300,000,000 prospectuses estimated to be sent out annually) + ((\$0.26 for print on demand of a blend of color/black and white printing + \$0.41 for first class mail) x 64,500,000 prospectuses estimated to be sent out in response to a fund purchase)] x 80% of funds.

<sup>418</sup> See Memorandum from the Division of Investment Management regarding September 29, 2008 telephone conversation with representatives of the Investment Company Institute (October 6, 2008).

<sup>419</sup> We recognize that some funds may not have sufficient numbers of investors and purchasers to warrant printing Summary Prospectuses by offset method. ICI, however, estimated that absent a quarterly updating requirement, nearly 90% of funds would print Summary Prospectuses by offset methods. See id.

For purposes of the PRA, we have estimated that the new disclosure requirements, assuming 80% of funds choose to send or give a Summary Prospectus, would add: (1) 70,016 hours to the annual burden of preparing Form N-1A; and (2) 63,014 hours to the annual burden of preparing and using a Summary Prospectus, including complying with Internet posting requirements, under rule 498. We estimate that this additional burden would equal total internal costs of \$37,248,400 annually<sup>420</sup> or approximately \$4,256 per portfolio.<sup>421</sup>

The amendments also may result in costs associated with investors printing fund documents posted online. We estimate that approximately ½% of existing investors and 3% of investors purchasing shares will print statutory prospectuses at an estimated cost of \$2.03 per statutory prospectus.<sup>422</sup> Based on these assumptions, the amendments are estimated to produce annual investor printing costs of \$5,578,440.<sup>423</sup>

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<sup>420</sup> This cost increase is estimated by multiplying the total annual hour burden (133,030 hours) by the rounded estimated hourly wage rate of \$280. 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 \$270 and \$289, respectively. See Securities Industry and Financial Markets Association's Report on Management & Professional Earnings in the Securities Industry 2007. The estimated wage rate is further based on the estimate that attorneys and programmers would divide time equally, resulting in a rounded weighted wage rate of \$280 (((\$270 x .50) + (\$289 x .50)).

In the Proposing Release, we estimated an hourly wage rate of \$252.50, which was based on the Report on Management & Professional Earnings in the Securities Industry 2006. See Proposing Release, supra note 12, 72 FR at 67811 n. 170.

<sup>421</sup> \$37,248,400 ÷ 8,752 portfolios.

In the Proposing Release, we estimated the costs per fund choosing to use the Summary Prospectus. See Proposing Release, supra note 12, 72 FR 67811 n. 166. We have revised this calculation to produce an average cost per portfolio industry-wide.

<sup>422</sup> Our estimate of potential printing costs is based on data provided by Lexecon Inc. in response to Investment Company Act Release No. 27182 (Dec. 8, 2005) [70 FR 74598 (Dec. 15, 2005)]. See Lexecon Inc. Letter (Feb. 13, 2006). To calculate printing costs,

We received one comment letter arguing that the use of the Summary Prospectus under rule 498 may impose costs on investors by relieving funds of liability for misleading disclosure.<sup>424</sup> For the reasons discussed in Parts III.B.4.a. and III.B.5., we do not believe that the amendments, as adopted, will entail such costs.

## 2. ETF-Related Disclosures

The primary goal of our amendments relating to ETF disclosures is to provide investors in ETF shares with more valuable information regarding an investment in an ETF. We do not expect that the amendments will result in significant additional costs to ETFs.<sup>425</sup> As noted above, the N-1A amendments generally codify disclosure requirements in existing ETF exemptive orders.

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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) x 45 pages).

In the Proposing Release, we estimated that approximately 5% of investors making fund purchases would print statutory prospectuses. See Proposing Release, supra note 12, 72 FR at 67811. However, we received a comment estimating that 2% of both existing investors and investors purchasing fund shares would print the statutory prospectus. See ICI Letter, supra note 34. While we agree with the commenter that we may have initially underestimated the percentage of existing investors and overestimated the percentage of investors purchasing fund shares that would print the statutory prospectus, we do not believe that the same percentage of both groups of investors would print statutory prospectuses. Rather, we believe that investors making initial fund purchases would have greater interest in printing statutory prospectuses than investors who already own fund shares. Thus, we have lowered our original estimate of investors purchasing shares who print the statutory prospectus to 3% and estimate that approximately ½% of existing investors will print statutory prospectuses.

<sup>423</sup> (300,000,000 x ½% of printing investors) + (64,500,000 x 3% of printing investors) x 80% of funds x \$2.03.

<sup>424</sup> Fund Democracy et al. Letter, supra note 34.

<sup>425</sup> Existing ETFs would face a one-time “learning cost” to determine the difference between the current Form N-1A requirements as modified by their exemptive orders and the amendments we are adopting today. We do not anticipate that this cost will be significant given the similarity of the amendments to the conditions in existing exemptive orders.

In addition to codifying disclosure requirements of existing exemptive orders, we are adopting a few new disclosure requirements in Form N-1A. The disclosure amendments require each ETF to identify the principal U.S. market on which its shares are traded<sup>426</sup> and include statements to the effect that (i) ETF shares are bought and sold on national securities exchanges;<sup>427</sup> (ii) because the price of shares is based on market price, shares may trade at a premium or discount to NAV;<sup>428</sup> and (iii) ETF investors may be required to pay brokerage commissions.<sup>429</sup> Including these additional statements should present minimal, if any, printing costs. Any additional costs incurred by an ETF in complying with these additional disclosures should be offset by the cost-savings of the amendments, which would allow most, if not all, ETFs to exclude creation unit purchase and redemption information in their prospectuses.<sup>430</sup>

## **VI. CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION**

Section 2(c) of the Investment Company Act<sup>431</sup> and Section 2(b) of the Securities Act<sup>432</sup> require the Commission, when engaging in rulemaking that requires it to consider

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<sup>426</sup> Item 1(a)(2) of Form N-1A.; rule 498(b)(1)(ii).

<sup>427</sup> Item 6(c)(i)(A) of Form N-1A.

<sup>428</sup> Item 6(c)(i)(B) of Form N-1A.

<sup>429</sup> Instruction 1(e)(i) to Item 3 of Form N-1A. We also are adopting a conforming amendment to the expense example in ETF annual and semi-annual reports. Instruction 1(e)(i) to Item 27(d) of Form N-1A.

<sup>430</sup> See Instruction 1(e)(ii) to Item 3 of Form N-1A; Items 6(c)(ii); 11(g)(1) of Form N-1A. For purposes of our Paperwork Reduction Act analysis, we have estimated that these amendments will not change the current Form N-1A compliance costs. See supra Part IV.C.

<sup>431</sup> 15 U.S.C. 80a-2(c).

<sup>432</sup> 15 U.S.C. 77b(b).

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. We requested, but did not receive, any comments directly addressing whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation, or comments on any anti-competitive effects of the proposed amendments.<sup>433</sup>

The amendments we are adopting 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 by focusing attention on key information, which could promote efficiency. We anticipate that the amendments will increase efficiency at mutual funds by providing an alternative to the printing and mailing of paper copies of statutory prospectuses.

We anticipate that improving investors' ability to make informed investment decisions may also lead to increased competitiveness of the U.S. capital markets. 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 investment in the U.S. capital markets. In addition, we believe that the amendments may enhance competition and efficiency because they will reduce fund printing and mailing costs. Funds could, for example, use these savings to conduct additional investment research or to pass cost savings on to investors. We also believe that the amendments will enhance competition among funds because they will facilitate investor comparisons of mutual fund information, including important cost and fee disclosures.

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<sup>433</sup> See Proposing Release, supra note 12, 72 FR at 67812.

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 amendments will: (1) facilitate greater availability of information to investors and the market with regard to all funds; (2) build upon the increased importance of electronic dissemination of information, including the use of the Internet; and (3) promote the capital formation process.

## **VII. FINAL REGULATORY FLEXIBILITY ANALYSIS**

This Final Regulatory Flexibility Analysis has been prepared in accordance with the Regulatory Flexibility Act.<sup>434</sup> It relates to the Commission's amendments to Form N-1A under the Securities Act and the Investment Company Act and to new rule 498 under the Securities Act.

### **A. Need for the Rule**

We are adopting 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 improved disclosure framework is the provision to all investors of streamlined and user-friendly information that is key to an investment decision.

In addition, the amendments to Form N-1A that specifically apply to ETFs are intended to accommodate the form for use by ETFs and are designed to provide more useful information to investors who purchase and sell ETF shares on national securities exchanges.

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<sup>434</sup> 5 U.S.C. 603 et seq.

## **B. Significant Issues Raised by Public Comment**

In the proposing release, we requested comment on the number of small entity issuers that may be affected, the existence or nature of the potential impact and how to quantify the impact of the amendments. Commenters generally supported the proposal.<sup>435</sup> One commenter, however, stated that the proposal would simply add another costly burden to small fund families.<sup>436</sup> While we believe there will be some costs associated with the amendments, we have tried to minimize those costs. Nearly all of the information that is required in the summary section of the prospectus under the amendments has previously been required in a fund's prospectus. We eliminated the proposed quarterly updating requirement in response to commenters' concerns. In addition, we have made use of the Summary Prospectus voluntary, meaning that a fund can choose whether or not to adopt it considering its costs and benefits to the fund and its investors.

In the initial regulatory flexibility analysis for the ETF proposing release, we requested comment on any aspect of the IRFA, including the number of small entities likely to rely on the proposed amendments to Form N-1A, the likely impact of the proposed amendments on small entities, and the nature of any impact on small entities. We also requested empirical data supporting the extent of any impact on small entities. We received no comments on that analysis.

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<sup>435</sup> See supra note 206 and accompanying text.

<sup>436</sup> See McCormick Letter, supra note 74. The commenter made specific suggestions for improving mutual fund disclosure, such as consolidating the statutory prospectus and SAI and eliminating the semi-annual reports and quarterly filings on Form N-Q, that were beyond the scope of this particular rulemaking.

### **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.<sup>437</sup> Approximately 127 mutual funds registered on Form N-1A meet this definition.<sup>438</sup> Of the approximately 593 registered open-end investment companies that are ETFs, only one is a small entity.<sup>439</sup>

### **D. Reporting, Recordkeeping, and Other Compliance Requirements**

The amendments we are adopting require all funds, including funds that are small entities, to provide key information in a summary section of their statutory prospectuses. In addition, the amendments provide a new option that will permit a person to satisfy its mutual fund prospectus delivery obligations under the Securities Act. Under the option, key information will be sent or given to investors in the form of a Summary Prospectus, and the statutory prospectus will be provided on an Internet Web site. Upon an investor's request, funds are required to send the statutory prospectus to the investor. No funds are required to send or give a Summary Prospectus. However, for purposes of the PRA, we estimate that 80% of all funds will choose to send or give a Summary Prospectus pursuant to rule 498 both to enhance investor access to information about a fund and to

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<sup>437</sup> 17 CFR 270.0-10.

<sup>438</sup> This estimate is based on analysis by the Division of Investment Management staff of publicly available data.

<sup>439</sup> For purposes of this analysis, any series or portfolio of an ETF is considered a separate ETF. Therefore, there are 593 portfolios or series of registered open-end investment companies operating as ETFs. For purposes of determining whether a fund is a small entity under the Regulatory Flexibility Act, however, the assets of funds (including each portfolio and series of a fund) in the same group of related investment companies are aggregated.

take advantage of the cost savings that a fund may realize. If a fund elects the new delivery regime for prospectuses, it is required to prepare, file, and send or give a Summary Prospectus to investors. The required disclosure in the Summary Prospectus is information that generally is readily available to funds. A fund is 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 new disclosure requirements would increase the hour burden of filings on Form N-1A by 70,016 hours annually and for rule 498 by 63,014 hours annually. We estimate that this additional burden would increase total internal costs per portfolio, including those that are small entities, by approximately \$4,256 per portfolio annually.<sup>440</sup> We also estimate that the external costs for printing and mailing of the Summary Prospectus will be approximately \$12,075 per portfolio.<sup>441</sup> However, we estimate that the benefit of decreased printing and other costs will decrease total external costs per portfolio, including those that are small entities, by approximately \$21,737 per portfolio annually.<sup>442</sup>

The amendments to Form N-1A that specifically apply to ETFs will impose reporting requirements on open-end funds that operate as ETFs. The amendments require

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<sup>440</sup> These figures are based on an estimated hourly wage rate of \$280. See supra note 420. We note that this estimate includes a one-time burden of 17 hours to create the summary section of the statutory prospectus and a one-time burden of 23 hours to create the Summary Prospectus.

<sup>441</sup> See supra note 414 and accompanying text.

<sup>442</sup> See supra note 407 and accompanying text.

an ETF to disclose in its prospectus and annual reports the number of trading days on which the market price of an ETF's shares was greater than its NAV and the number of days it was less than its NAV (premium/discount information) unless the ETF discloses this information on its Web site and provides an Internet address where an investor can locate the information.<sup>443</sup> The amendments also require the ETF to disclose in its prospectus (in addition to its exchange ticker trading symbol), the principal U.S. market(s) on which its shares are traded.<sup>444</sup>

The amendments to Form N-1A also eliminate some disclosure requirements for ETFs with creation units of 25,000 or more shares and replace them with fewer disclosures. Under the amendments, those ETFs do not have to: (i) disclose information on how to buy and redeem shares of ETF;<sup>445</sup> (ii) include in its fee table in its prospectus or annual and semi-annual reports fees and expenses for purchases or sales of creation units;<sup>446</sup> or (iii) disclose procedures for the purchase and redemption of fund shares.<sup>447</sup>

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<sup>443</sup> Item 11(g)(2) of Form N-1A (requiring premium/discount information in the prospectus to span the most recently completed calendar year and quarters since that year); Item 27(b)(7)(iv) of Form N-1A (requiring premium/discount information disclosed in annual reports to span five fiscal years). The ETF is required to present premiums or discounts as a percentage of NAV and to explain that shareholders may pay more than NAV when purchasing shares and receive less than NAV when selling, because shares are bought and sold at market prices. Instructions 2, 3 to Item 11(g)(2) of Form N-1A; Instructions 2, 3 to Item 27(b)(7)(iv).

<sup>444</sup> Item 1(a)(2) of Form N-1A; rule 498(b)(1)(ii).

<sup>445</sup> Item 6(c)(ii) of Form N-1A. Instead ETF prospectuses could simply state that individual fund shares can only be bought and sold on the secondary market through a broker-dealer. Item 6(c)(i)(A) of Form N-1A.

<sup>446</sup> Instruction 1(e)(ii) to Item 3 of Form N-1A; Instruction 1(e)(ii) to Item 27(d) of Form N-1A. An ETF will instead modify the narrative explanation preceding the example in the fee table to state that investors may be required to pay brokerage commissions that are not reflected in the fee table. Instruction 1(e)(i) to Item 3 of Form N-1A; Instruction 1(e)(i) to Item 27(d) of Form N-1A.

<sup>447</sup> Item 11(g)(1) of Form N-1A.

The amendments to Form N-1A are designed to accommodate the form for use by ETFs and to meet the needs of investors (including retail investors) who purchase ETF shares in secondary market transactions rather than institutional investors purchasing creation units directly from the ETF. We anticipate that the amendments will have a negligible impact (if any) on the disclosure burdens on ETFs while providing necessary information to ETF investors. We do not believe that the amendments to Form N-1A will disproportionately impact small funds.

**E. 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 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 amendments for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the 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 amendments to Form N-1A will provide investors with enhanced disclosure regarding funds. This enhanced disclosure will allow investors to better assess their investment decisions. The ETF amendments to Form N-1A are designed to accommodate the form for use by ETFs and to meet the needs of investors (including retail investors) who

purchase ETF shares in secondary market transactions rather than financial institutions purchasing creation units directly from the ETF. 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 is required by the amendments to Form N-1A to be provided to investors in all funds, not just funds that are not considered small entities.

Rule 498 provides a new option that permits a person to satisfy its mutual fund prospectus delivery obligations under the Securities Act. Under the option, key information is to be sent or given to investors in the form of a Summary Prospectus, and the statutory prospectus is to be provided on an Internet Web site. Upon an investor's request, funds are required to send the statutory prospectus to the investor. Because the rule is optional, an exemption from the rule for small entities would deprive small entities of the potential benefits of the rule.

We have endeavored through the 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 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 present context. Based on our past experience, we believe that the disclosure required by the amendments will be more useful to investors if there are enumerated informational requirements.

## **VIII. STATUTORY AUTHORITY**

The Commission is adopting 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 adopting 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 adopting 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].

### **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 FINAL RULE AND FORM AMENDMENTS**

For the reasons set out in the preamble, the Commission amends 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, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

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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)).

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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 5(b) or 10(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 date that it is first used.

6. Revise Section 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) Exchange-Traded Fund means a Fund or a Class, the shares of which are traded on a national securities exchange, and that has formed and operates pursuant to an

exemptive order granted by the Commission or in reliance on an exemptive rule adopted by the Commission.

(3) 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)).

(4) 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.

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

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

(7) 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) The exchange ticker symbol of the Fund's shares or, if the Summary Prospectus relates to one or more Classes of the Fund's shares, adjacent to each such Class, the exchange ticker symbol of such Class of the Fund's shares. If the Fund is an Exchange-Traded Fund, also identify the principal U.S. market or markets on which the Fund shares are traded.

(iii) A statement identifying the document as a "Summary Prospectus."

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

(v) 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 (e)(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 identify the type of document (e.g., Statutory Prospectus) from which the information is incorporated and the date of the document. If a Fund incorporates by reference a part of a document, the legend must clearly identify the part by page, paragraph, caption, or otherwise. 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) or 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. Except as otherwise provided in this paragraph (b), provide the information required or permitted by Items 2 through 8 of Form N-1A, and only that information, in the order required by the form. A Summary Prospectus may omit the explanation and information required by Instruction 2(c) to Item 4(b)(2) of Form N-1A.

(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 Fund's reports to shareholders under § 270.30e-1 that the Fund has incorporated by reference into the Fund's Statutory Prospectus, provided that:

(A) The conditions of paragraphs (b)(1)(v)(B) and (e) 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;
- (2) The Summary Prospectus is not bound together with any materials, except that a Summary Prospectus for a Fund that is available as an investment option in a variable annuity or variable life insurance contract may be bound together with the Statutory Prospectus for the contract and Summary Prospectuses and Statutory Prospectuses for other investment options available in the contract, provided that:
  - (i) All of the Funds to which the Summary Prospectuses and Statutory Prospectuses that are bound together relate are available to the person to whom such documents are sent or given; and
  - (ii) A table of contents identifying each Summary Prospectus and Statutory Prospectus that is bound together, and the page number on which it is found, is included at the beginning or immediately following a cover page of the bound materials;
- (3) 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
- (4) The conditions set forth in paragraph (e) 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;

(2) The Summary Prospectus is not bound together with any materials, except as permitted by paragraph (c)(2) of this section;

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

(4) The conditions set forth in paragraph (e) of this section are satisfied.

(e) 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 (e)(1) of this section must be presented on the Web site in a format, or formats, that:

(i) Are human-readable and capable of being printed on paper in human-readable format;

(ii) Permit persons accessing the Statutory Prospectus or Statement of Additional Information to move directly back and forth between each section heading in a table of contents of such document and the section of the document referenced in that

section heading; provided that, in the case of the Statutory Prospectus, the table of contents is either required by § 230.481(c) or contains the same section headings as the table of contents required by § 230.481(c); and

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

(A) Each section of the Summary Prospectus and any section of the Statutory Prospectus and Statement of Additional Information that provides additional detail concerning that section of the Summary Prospectus; or

(B) Links located at both the beginning and end of the Summary Prospectus, or that remain continuously visible to persons accessing the Summary Prospectus, and tables of contents of both the Statutory Prospectus and the Statement of Additional Information that meet the requirements of paragraph (e)(2)(ii) of this section.

(3) Persons accessing the materials specified in paragraph (e)(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 (e)(2)(i) and (ii) of this section.

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

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

(f) Other requirements.

(1) Delivery upon request. 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. The requirement to send an electronic copy of a document by e-mail may be satisfied by sending a direct link to the document on the Internet; provided that a current version of the document is directly accessible through the link from the time that the e-mail is sent through the date that is six months after the date that the e-mail is sent and the e-mail explains both how long the link will remain useable and that,

if the recipient desires to retain a copy of the document, he or she should access and save the document.

(2) Greater prominence. If paragraph (c) or (d) of this section is relied on with respect to a Fund, the Fund's Summary Prospectus shall be given greater prominence than any materials, with the exception of other Summary Prospectuses or Statutory Prospectuses, that accompany the Fund's Summary Prospectus.

(3) Convenient for reading and printing. If paragraph (c) or (d) of this section is relied on with respect to a Fund:

(i) The materials that are accessible in accordance with paragraph (e)(1) of this section must be presented on the Web site in a format, or formats, that are convenient for both reading online and printing on paper; and

(ii) Persons accessing the materials that are accessible in accordance with paragraph (e)(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 are convenient for both reading online and printing on paper.

(4) Information in Summary Prospectus must be the same as information in Statutory Prospectus. If paragraph (c) or (d) of this section is relied on with respect to a Fund, the information provided in response to Items 2 through 8 of Form N-1A in the Fund's Summary Prospectus must be the same as the information provided in response to Items 2 through 8 of Form N-1A in the Fund's Statutory Prospectus except as expressly permitted by paragraph (b)(2) of this section.

(5) Compliance with paragraph (f) not a condition to reliance on paragraphs (c) and (d). Compliance with this paragraph (f) 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 (f) 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.

\* \* \* \* \*

8. Section 232.304 is amended by revising the references “Item 22 of Form N-1A” in paragraphs (d) and (e) to read “Item 27 of Form N-1A”.

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 13(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, 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 14 through 27 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 14 through 17 and 19 through 27 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 8, 9(a), 9(b), and 10 through 13 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), 78l, 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 Cover Page by replacing the address reference “450 5th Street, N.W., Washington, D.C. 20549-6009” with “100 F Street, NE, Washington, DC 20549-1090”;

- b. Revising the Table of Contents;
- c. Revising the General Instructions as follows:
  - i. Adding the definitions “Exchange-Traded Fund” and “Market Price” in alphabetical order to paragraph A;
  - ii. 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 13), B, and C (except Items 28(e) and (i) – (k))”;
  - iii. Revising paragraphs B.4.(c), C.3.(a), C.3.(b), and C.3.(c);
  - iv. Revising the reference “Items 6(b)-(d) and 7(a)(2)-(5)” in paragraph C.3.(d)(i) to read “Items 6, 11(b)-(d), and 12(a)(2)-(5)”;
  - v. 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)”;
- d. Revising Item 1 as follows:
  - i. Revising paragraph (a)(1);
  - ii. Adding new paragraph (a)(2) and redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4);
  - iii. Removing Instruction 6 to Item 1(b)(1);
  - iv. In Item 1(b)(3), revising the telephone number “1-202-942-8090” to read “1-202-551-8090”; and
  - v. In Item 1(b)(3), revising the zip code “20549-0102” to read “20549-1520”;
- e. 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, 9, 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, and 35, respectively;

- f. Adding new Item 2;
- g. 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. Adding new Instruction 1(e);
  - vi. In Instruction 2(a)(i), revising the reference “Item 7(a)” to read “Item 12(a)”;
  - vii. Revising Instruction 3(e);
  - viii. In Instruction 3(f)(iii), revising the references “Item 8(a)” to read “Item 13(a)”;
  - ix. In Instruction 3(f)(vii), revising the reference “Item 8” to read “Item 13”;
  - x. Revising Instruction 4(a);
  - xi. Redesignating Instruction 5 as Instruction 6 and adding new Instruction 5; and
  - xii. In newly redesignated Instruction 6, removing paragraph (b) and redesignating paragraph (c) as paragraph (b);

- h. 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 9(b)”;
  - iii. In newly redesignated Item 4(b)(1)(i), revising the reference “Item 4(c)” to read “Item 9(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. Revising newly redesignated Item 4(b)(2)(i);
  - vi. In newly redesignated Item 4(b)(2)(iii), revising the reference “Item 22(b)(7)” to read “Item 27(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 13(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 26(a)”, “Item 26(b)(1)”, and “Items 26(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 27(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 26(b)(2)” and “Item 26”, respectively;

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

xiv. In Instruction 3(c)(ii)(D) to newly redesignated Item 4(b)(2), revising the reference “paragraphs 2(c)(2)(iii)(B) and (C)” to read “paragraphs 4(b)(2)(iii)(B) and (C)”;

xv. In Instruction 3(c)(iii) to newly redesignated Item 4(b)(2), revising the reference “paragraphs 2(c)(2)(iii)(A), (B), and (C)” to read “paragraphs 4(b)(2)(iii)(A), (B), and (C)”;

xvi. In Instruction 4 to newly redesignated Item 4(b)(2), revising the reference “Item 22(b)(7)” to read “Item 27(b)(7)”;

i. Adding new Items 5, 6, 7, and 8;

j. In Instruction 5 to newly redesignated Item 9(b)(1), revising the reference “Item 11(c)(1)” to read “Item 16(c)(1)”;

k. Revising newly redesignated Item 10 as follows:

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

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

iii. Removing the Instructions to newly redesignated Item 10(a)(2);

l. Revising newly redesignated Item 11 as follows:

i. Revising paragraph (a)(1);

ii. Revising paragraph (b); and

iii. Revising paragraph (g);

- m. Revising newly redesignated Item 12 as follows:
  - i. In Instruction 1 to newly redesignated Item 12(a)(2), revising the reference “Item 7” to read “Item 12”;
  - ii. In Instruction 2 to newly redesignated Item 12(a)(2), revising the references “Item 7” and “Items 12(d) and 17(b)” to read “Item 12” and “Items 17(d) and 22(b)”, respectively;
  - iii. In newly redesignated Item 12(a)(5), revising the reference “Item 17(a)” to read “Item 22(a)”;
  - iv. In the Instruction to newly redesignated Item 12(a)(5), revising the references “Item 7” to read “Item 12”;
- n. Revising newly redesignated Item 14 as follows:
  - i. Revising paragraph (a)(1); and
  - ii. Adding new paragraph (a)(2) and redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4);
- o. Revising newly redesignated Item 16 as follows:
  - i. In newly redesignated Item 16(d), revising the reference “Item 4(b)” to read “Item 9(b)”;
  - ii. In newly redesignated Item 16(e), revising the reference “Item 8” to read “Item 13”;
  - iii. In Instruction 1 to newly redesignated Item 16(f)(2), revising the reference “Item 11(f)(2)” to read “Item 16(f)(2)”;
- p. In newly redesignated Item 17, revising the references “Item 12” to read “Item 17”;

- q. In newly redesignated Items 20(a), 20(b), and 20(c), revising the references “Item 5(a)(2)” to read “Item 5(b)”;
- r. Revising newly redesignated Item 23 as follows:
  - i. Removing the Instruction to newly redesignated Item 23(a);
  - ii. In Instruction 4 to newly redesignated Item 23(c), revising the reference “Item 22” to read “Item 27”; and
  - iii. In Instruction 1 to newly redesignated Item 23(e), revising the reference “Item 17(e)” to read “Item 23(e)”;
- s. In Instruction 1 to newly redesignated Item 25(c), revising the references “Item 7(b)(2)”, “Item 14(d)”, and “Item 30” to read “Item 12(b)(2)”, “Item 19(d)”, and “Item 34”, respectively;
- t. Revising newly redesignated Item 27 as follows:
  - i. In newly redesignated Item 27(a), revising the reference “Item 17(c)” to read “Item 23(c)”;
  - ii. In newly redesignated Item 27(b)(2), revising the reference “Item 8(a)” to read “Item 13(a)”;
  - iii. In newly redesignated Item 27(b)(5), revising the reference “Item 12(a)(1)” to read “Item 17(a)(1)”;
  - iv. In newly redesignated Item 27(b)(7)(ii)(B), revising the reference “Item 21(b)(1)” to read “Item 26(b)(1)”;
  - v. In newly redesignated Item 27(b)(7), adding new paragraph (iv);
  - vi. In Instruction 10 to newly redesignated Item 27(b)(7), revising the reference “Instruction 5 to Item 3” to read “Instruction 6 to Item 3”;

- vii. In the Instruction to newly redesignated Item 27(c)(1), revising the references “Item 22(b)(1)” and “Item 22(c)(1)” to read “Item 27(b)(1)” and “Item 27(c)(1)”, respectively;
- viii. In newly redesignated Item 27(c)(2), revising the reference “Item 8(a)” to read “Item 13(a)”;
- ix. In Instruction 1(c) to newly redesignated Item 27(d)(1), revising the reference “Item 8(a)” to read “Item 13(a)”;
- x. In newly redesignated Item 27(d)(1), adding Instruction 1(e);
- xi. In Instruction 2(a)(ii) to newly redesignated Item 27(d)(1), revising the reference “Item 22(d)(1)” to read “Item 27(d)(1)”;
- xii. In the Instruction to newly redesignated Item 27(d)(4), revising the reference “Item 12(f)” to read “Item 17(f)”;
- u. In newly redesignated Item 28(k), revising the reference “Item 22” to read “Item 27”;
- v. Revising newly redesignated Item 32 as follows:
  - i. In newly redesignated Item 32(b), revising the reference “Item 20” to read “Item 25”;
  - ii. In Instruction 2 to newly redesignated Item 32(c), revising the reference “Item 20(c)” to read “Item 25(c)”;
- w. In Instruction 1 to newly redesignated Item 34, revising the reference “Item 14” to read “Item 19”.

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**

\* \* \* \* \*

**CONTENTS OF FORM N-1A**

**GENERAL INSTRUCTIONS**

- A. Definitions**
- B. Filing and Use of Form N-1A**
- C. Preparation of the Registration Statement**
- D. Incorporation by Reference**

**PART A: INFORMATION REQUIRED IN A PROSPECTUS**

- Item 1. Front and Back Cover Pages**
- Item 2. Risk/Return Summary: Investment Objectives/Goals**
- Item 3. Risk/Return Summary: Fee Table**
- Item 4. Risk/Return Summary: Investments, Risks, and Performance**
- Item 5. Management**
- Item 6. Purchase and Sale of Fund Shares**
- Item 7. Tax Information**
- Item 8. Financial Intermediary Compensation**
- Item 9. Investment Objectives, Principal Investment Strategies, Related Risks, and Disclosure of Portfolio Holdings**
- Item 10. Management, Organization, and Capital Structure**
- Item 11. Shareholder Information**
- Item 12. Distribution Arrangements**
- Item 13. Financial Highlights Information**

**PART B: INFORMATION REQUIRED IN A STATEMENT OF  
ADDITIONAL INFORMATION**

- Item 14. Cover Page and Table of Contents**
- Item 15. Fund History**
- Item 16. Description of the Fund and Its Investments and Risks**
- Item 17. Management of the Fund**
- Item 18. Control Persons and Principal Holders of Securities**
- Item 19. Investment Advisory and Other Services**
- Item 20. Portfolio Managers**
- Item 21. Brokerage Allocation and Other Practices**
- Item 22. Capital Stock and Other Securities**
- Item 23. Purchase, Redemption, and Pricing of Shares**
- Item 24. Taxation of the Fund**
- Item 25. Underwriters**
- Item 26. Calculation of Performance Data**
- Item 27. Financial Statements**

**PART C: OTHER INFORMATION**

- Item 28. Exhibits**
- Item 29. Persons Controlled by or Under Common Control with the Fund**
- Item 30. Indemnification**
- Item 31. Business and Other Connections of the Investment Adviser**
- Item 32. Principal Underwriters**
- Item 33. Location of Accounts and Records**
- Item 34. Management Services**

**Item 35. Undertakings**

**SIGNATURES**

## GENERAL INSTRUCTIONS

### A. Definitions

\* \* \* \* \*

“Exchange-Traded Fund” means a Fund or Class, the shares of which are traded on a national securities exchange, and that has formed and operates pursuant to an exemptive order granted by the Commission or in reliance on an exemptive rule adopted by the Commission.

\* \* \* \* \*

“Market Price” refers to the last reported sale price at which Exchange-Traded Fund shares trade on the principal U.S. market on which the Fund’s shares are traded during a regular trading session or, if it more accurately reflects the current market value of the Fund’s shares at the time the Fund uses to calculate its net asset value, a price within the range of the highest bid and lowest offer on the principal U.S. market on which the Fund’s shares are traded during a regular trading session.

\* \* \* \* \*

### 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 8 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 8 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 8 need not be repeated elsewhere in the prospectus. Disclose the information required by Item 12 (Distribution Arrangements) in one place in the prospectus.

(b) Other Information. A Fund may include, except in response to Items 2 through 8, 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 8 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 8, 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 8 in numerical order at the front of the prospectus and not to precede Items 2 through 8 with other information. Except as permitted by paragraph (c)(iii), a prospectus that contains information about more than one Fund must present all of the information required by Items 2 through 8 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 8 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 8. A Multiple Class Fund may present the information required by Items 2 through 8 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 8. 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 8 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 8 information for those Classes.

(iii) A prospectus that contains information about more than one Fund may integrate the information required by any of Items 6 through 8 for all of the Funds together, provided that the information contained in any Item that is integrated is identical for all Funds covered in the prospectus. If the information required by any of Items 6 through 8 is integrated pursuant to this paragraph, the integrated information should be presented immediately following the separate presentations of Item 2 through 8 information for individual Funds. In addition, include a statement containing the following information in each Fund’s separate presentation of Item 2 through 8 information, in the location where the integrated information is omitted: “For important information about [purchase and sale of fund shares,] [tax information,] and [financial intermediary compensation], please turn to [identify section heading and page number of prospectus].”

\* \* \* \* \*

## **PART A: INFORMATION REQUIRED IN A PROSPECTUS**

### **Item 1. Front and Back Cover Pages**

(a) Front Cover Page. Include the following information, in plain English under rule 421(d) under the Securities Act, on the outside front cover page of the prospectus:

(1) The Fund's name and the Class or Classes, if any, to which the prospectus relates.

(2) The exchange ticker symbol of the Fund's shares or, if the prospectus relates to one or more Classes of the Fund's shares, adjacent to each such Class, the exchange ticker symbol of such Class of the Fund's shares. If the Fund is an Exchange-Traded Fund, also identify the principal U.S. market or markets on which the Fund shares are traded.

\* \* \* \* \*

**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. More information about these and other discounts is available from your financial professional and in [identify section heading and page number] of the Fund's prospectus and [identify section heading and page number] of the Fund's statement of additional information.**

\* \* \* \* \*

**Annual Fund Operating Expenses** (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 rate may indicate higher transaction costs and may result in higher taxes when Fund shares are held in a taxable account. 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 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 as disclosed in the table required by Item 12(a)(1).

\* \* \* \* \*

(e) If the Fund is an Exchange-Traded Fund,

(i) Modify the narrative explanation to state that investors may pay brokerage commissions on their purchases and sales of Exchange-Traded Fund shares, which are not reflected in the example; and

(ii) If the Fund issues or redeems shares in creation units of not less than 25,000 shares each, exclude any fees charged for the purchase and redemption of the Fund's creation units.

\* \* \* \* \*

3. Annual Fund Operating Expenses.

(a) \* \* \*

(e) 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 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, including the expected termination date, 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 will reduce any Fund operating expenses 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 13(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.

\* \* \* \* \*

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

\* \* \* \* \*

(b) Principal risks of investing in the Fund.

\* \* \* \* \*

(2) Risk/Return Bar Chart and Table.

(i) Include the bar chart and table required by paragraphs (b)(2)(ii) and (iii) of this section. Provide a brief explanation of how the information illustrates the variability of the Fund's returns (e.g., by stating that the information provides some indication of the risks of investing in the Fund by showing changes in the Fund's performance from year to year and by showing how the Fund's average annual returns for 1, 5, and 10 years compare with those of a broad measure of market performance). Provide a statement to the effect that the Fund's past performance (before and after taxes) is not necessarily an

indication of how the Fund will perform in the future. If applicable, include a statement explaining that updated performance information is available and providing a Web site address and/or toll-free (or collect) telephone number where the updated information may be obtained.

\* \* \* \* \*

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. 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 6. 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).

(c) Exchange-Traded Funds. If the Fund is an Exchange-Traded Fund,

(i) Specify the number of shares that the Fund will issue (or redeem) in exchange for the deposit or delivery of basket assets (i.e., the securities or other assets the Fund specifies each day in name and number as the securities or assets in exchange for which it will issue or in return for which it will redeem Fund shares) and explain that:

(A) Individual Fund shares may only be purchased and sold on a national securities exchange through a broker-dealer; and

(B) The price of Fund shares is based on market price, and because Exchange-Traded Fund shares trade at market prices rather than net asset value, shares may trade at a price greater than net asset value (premium) or less than net asset value (discount); and

(ii) If the Fund issues shares in creation units of not less than 25,000 shares each, the Fund may omit the information required by Items 6(a) and 6(b).

## **Item 7. 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 8. Financial Intermediary Compensation**

Include the following statement. A Fund may modify the statement if the modified statement contains comparable information. A Fund may omit the statement if neither the Fund nor any of its related companies pay financial intermediaries for the sale of Fund shares or related services.

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 create a conflict of interest by influencing 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 10. 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 5(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.

\* \* \* \* \*

**Item 11. Shareholder Information**

(a) \* \* \*

(1) An explanation that the price of Fund shares is based on the Fund's net asset value and the method used to value Fund shares (market price, fair value, or amortized cost); except that if the Fund is an Exchange-Traded Fund, an explanation that the price of Fund shares is based on market price.

\* \* \* \* \*

(b) Purchase of Fund Shares. Describe the procedures for purchasing the Fund's shares.

\* \* \* \* \*

(g) Exchange-Traded Funds. If the Fund is an Exchange-Traded Fund:

(1) The Fund may omit from the prospectus the information required by Items 11(a)(2), (b), and (c) if the Fund issues or redeems Fund shares in creation units of not less than 25,000 shares each; and

(2) Provide a table showing the number of days the Market Price of the Fund shares was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value (i.e., premium or discount) for the most recently completed calendar year, and the most recently completed calendar quarters since that year (or the life of the Fund, if shorter). The Fund may omit this table if the Fund provides an Internet address at the Fund's Web site, which is publicly accessible, free of charge, that investors can use to obtain the premium/discount information required in this Item.

Instructions.

1. Provide the information in tabular form.
2. Express the information as a percentage of the net asset value of the Fund, using separate columns for the number of days the Market Price was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value. Round all percentages to the nearest hundredth of one percent.
3. Adjacent to the table, provide a brief explanation that: shareholders may pay more than net asset value when they buy Fund shares and receive less than net asset value when they sell those shares, because shares are bought and sold at current market prices.
4. Include a statement that the data presented represents past performance and cannot be used to predict future results.

\* \* \* \* \*

**Item 14. Cover Page and Table of Contents**

(a) Front Cover Page. Include the following information on the outside front cover page of the SAI:

(1) The Fund's name and the Class or Classes, if any, to which the SAI relates. If the Fund is a Series, also provide the Registrant's name.

(2) The exchange ticker symbol of the Fund's securities or, if the SAI relates to one or more Classes of the Fund's securities, adjacent to each such Class, the exchange ticker symbol of such Class of the Fund's securities. If the Fund is an Exchange-Traded Fund, also identify the principal U.S. market or markets on which the Fund shares are traded.

\* \* \* \* \*

**Item 27. Financial Statements**

\* \* \* \* \*

(b) Annual Report. \* \* \*

\* \* \* \* \*

(7) Management's Discussion of Fund Performance. \* \* \*

\* \* \* \* \*

(iv) Provide a table showing the number of days the Market Price of the Fund shares was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value (i.e., premium or discount) for the most recently completed five fiscal years (or the life of the Fund, if shorter). The Fund may omit this table from the annual report if the Fund provides an Internet address at the Fund's Web site, which is publicly accessible, free of charge, that investors can use to obtain the premium/discount information required in Item 11(g)(2).

Instructions.

1. Provide the information in tabular form.

2. Express the information as a percentage of the net asset value of the Exchange-Traded Fund, using separate columns for the number of days the Market Price was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value. Round all percentages to the nearest hundredth of one percent.

3. Adjacent to the table, provide a brief explanation that: shareholders may pay more than net asset value when they buy Fund shares and receive less than net asset value when they sell those shares, because shares are bought and sold at current market prices.

4. Include a statement that the data presented represents past performance and cannot be used to predict future results.

\* \* \* \* \*

(d) Annual and Semi-Annual Reports. \* \* \*

(1) Expense Example. \* \* \*

\* \* \* \* \*

Instructions.

1. General.

\* \* \* \* \*

(e) If the Fund is an Exchange-Traded Fund:

(i) Modify the narrative explanation to state that investors may pay brokerage commissions on their purchases and sales of Exchange-Traded Fund shares, which are not reflected in the example; and

(ii) If the Fund issues or redeems shares in creation units of not less than 25,000 shares each, exclude any fees charged for the purchase and redemption of the Fund's creation units.

\* \* \* \* \*

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 27(b)(ii) of Form N-1A” and by revising the reference “Item 22(b)(ii) equation” to read “Item 27(b)(ii) equation” in Instruction 3 to Item 20(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.

Elizabeth M. Murphy  
Secretary

January 13, 2009