

# SEC Adopts Summary Prospectus Rule for Open-End Management Investment Companies

On January 13, 2009, the Securities and Exchange Commission (SEC) issued a final rule release (the “Final Rule Release”) adopting (i) amendments to Form N-1A, the registration form for mutual funds, requiring a summary section at the front of a fund’s long-form prospectus (the “statutory prospectus”), and (ii) a new rule permitting a fund to satisfy its prospectus delivery obligations by sending a stand-alone short-form prospectus (the “Summary Prospectus”) provided that the Summary Prospectus, statutory prospectus and other specific information are available online and certain other conditions are met.

These amendments represent significant changes to a fund’s disclosure and prospectus delivery requirements. While use of the Summary Prospectus will be voluntary, compliance with the disclosure amendments to Form N-1A will be mandatory, regardless of whether a fund chooses to use a Summary Prospectus.

The rule changes will become effective on March 31, 2009. All initial registration statements on Form N-1A, and all amendments to effective registration statements that are annual updates or that add new series, filed on or after January 1, 2010 must comply with the Form N-1A amendments. The final compliance date for filing amendments to effective registration statements to comply with the new Form N-1A requirements is January 1, 2011. Amendments to existing registration statements filed to comply with the amendments to Form N-1A should be filed under Rule 485(a) of the Securities Act of 1933, as amended (the “Securities Act”), unless otherwise permitted by the SEC staff.

The following summarizes certain key changes announced in the Final Rule Release:

## I. Summary Information at the Front of the Statutory Prospectus (Mandatory)

The amendments to Form N-1A require that every fund include a summary of key information at the front of its statutory prospectus. The information included in the summary section must be presented in plain English and in the following standardized order:

- Investment objectives and goals
- Costs (including fee table and example)
- Principal investment strategies, risks, and past performance
- Management (investment adviser(s) and portfolio manager(s))
- Purchase and sale procedures
- Tax information
- Financial intermediary compensation

While a fund may continue to include information in the statutory prospectus that is not required by Form N-1A, a fund may not include such additional information in the summary section. Additionally, information that is included in the summary section need not be repeated elsewhere in the statutory prospectus. The SEC did not set a page limit on the summary section for a fund; however, the SEC emphasizes in the Final Rule Release that it intends for fund summaries to be concise (three or four pages).

The new summary section will replace the former risk/return summary of a statutory prospectus. Although certain items required in the new summary section were also required in the risk/return summary, the Form N-1A amendments add new items to this section and revise the order of presentation. The amendments also modify certain items previously required in the risk/return summary. For example, funds that offer discounts on front-end sales charges for volume purchases (breakpoint discounts) must now include a brief narrative in their fee table alerting investors to the availability of these discounts and describing where investors can find additional information.

The summary information must be presented separately for each fund covered by a multiple fund prospectus, which represents a significant change from the former risk/return summary; however, “purchase and sale procedures,” “tax information” or “financial intermediary compensation” disclosures may be integrated if such disclosures are identical for all funds covered in a multiple fund prospectus. Information for multiple share classes of the same fund may still be integrated.

The amendments also permit funds that are used as investment options for retirement plans and variable insurance contracts to modify or omit certain information required in the summary section of the fund prospectus. Specifically, these funds will be able to omit or modify the information regarding purchase and sale procedures of fund shares to the extent such information is not relevant.

## II. New Prospectus Delivery Option (Voluntary)

The SEC also adopted a new rule replacing Rule 498, the voluntary fund profile rule. The new Rule 498 under the Securities Act permits a fund to satisfy its prospectus delivery obligations under Section 5(b)(2) of the Securities Act by sending or giving a stand-alone Summary Prospectus, provided that the fund’s Summary Prospectus, statutory prospectus and other specified documents are available online and certain other conditions are met. Certain key provisions of the new Rule 498 include the following:

### **Use of the Summary Prospectus and Satisfaction of Statutory Prospectus Delivery Requirements**

The new Rule 498 provides that any obligation under Section 5(b)(2) of the Securities Act to have a statutory prospectus precede or accompany the delivery of a fund security would be satisfied through the delivery of a stand-alone Summary Prospectus so long as certain conditions are met. Upon an investor’s request, funds would also be required to send the statutory prospectus and other information in paper or electronic form to an investor within three business days of the request. A Summary Prospectus must be filed with the SEC on EDGAR no later than the date that it is first used.

### **Content of Summary Prospectus**

The new Rule 498 requires that a Summary Prospectus, if used by a fund, include the same information as the summary section of the statutory prospectus and in the same order that is required in the statutory prospectus. A fund may not provide different information (e.g., more or less expansive information) in its Summary Prospectus than it provides in the summary section of its statutory prospectus. Specific identification and disclaimer information must also be included on the cover page, or at the beginning, of the Summary Prospectus. As with the summary section of the statutory prospectus, information must be limited to the items required by the Rule.

The new Rule 498 requires a separate Summary Prospectus for each fund in a multiple fund statutory prospectus, but information about multiple classes of a single fund may be integrated. Because each Summary Prospectus contains information for a single fund, the exception available to statutory prospectuses to integrate identical information regarding “purchase and sale procedures,” “tax information” or “financial intermediary compensation” is not applicable for a Summary Prospectus.

### **Documents Required to be Provided on the Internet**

As described in further detail in the Final Rule Release, to rely on Rule 498 a fund must make its Summary Prospectus, statutory prospectus, SAI and most recent annual and semi-annual reports to shareholders available, free of charge, at an internet address specified on the cover page or at the beginning of the Summary Prospectus. This internet address cannot be the SEC’s EDGAR website. The online materials must be in a user-friendly format that permits investors to move back and forth (i) between the table of contents of the statutory prospectus and the SAI and the referenced sections and (ii) between the Summary Prospectus and related sections of the statutory prospectus and SAI. The online materials must be readable both on a computer screen and after printing on paper. Investors must also be able to permanently retain, through downloading or otherwise, an electronic version of this information.

### **Incorporation by Reference**

The new Rule 498 permits the Summary Prospectus to incorporate by reference information from a fund’s statutory prospectus and SAI, as well as certain information from a fund’s shareholder reports, as long as certain conditions are met. A fund may not incorporate by reference into the Summary Prospectus any of the summary information described above that is specifically required to be included in the Summary Prospectus.

The SEC has made previous attempts to encourage the use of shorter, user-friendly disclosure documents by mutual funds. In 1998, the SEC adopted the previous Rule 498, giving mutual funds the voluntary option of selling shares through the use of a summary document (the “fund profile”). Because the fund profile was brief, did not provide nearly the same level of disclosure as a statutory prospectus and did not allow for incorporation by reference, many fund groups were concerned that selling shares through a fund profile would expose them to potential liability for failing to disclose material information. Additionally, the fund profile required quarterly updating of performance information, and funds were still required to deliver a statutory prospectus with each purchase confirmation. As a result, the fund profile was not widely used.

After lengthy deliberation, the SEC first proposed rules to replace the fund profile with the Summary Prospectus in November 2007. As proposed, the SEC required quarterly updating of a fund’s performance information in the Summary Prospectus and inclusion of a fund’s top 10 portfolio holdings. After receiving feedback from the fund industry and fund investors, the SEC removed these requirements from the Final Rule Release (however, a fund that makes updated performance information available on a website or at a toll-free or collect telephone number must include a statement in the summary section of its statutory prospectus (and its Summary Prospectus, if applicable) explaining this and providing the website address and/or telephone number).

Additionally, as discussed above, the new Rule 498 allows a fund to incorporate documents by reference into the Summary Prospectus, including the statutory prospectus, which the SEC believes will reduce liability concerns. The SEC also believes that internet use has increased substantially among investors since 1998. By requiring easy access to the statutory prospectus and other disclosure documents on the internet, the SEC believes investors will have complete access to all relevant information, further limiting concerns over potential liability.

In addition to the changes adopted in the Final Rule Release, the SEC voted on December 17, 2008 to require mutual funds to file specified information in interactive data format using the eXtensible Business Reporting Language (XBRL). Through

this process, certain items will be labeled with computer-readable “tags” to make disclosure information more searchable on the internet and more readable by spreadsheets and other software. Beginning in 2011, mutual funds will be required to include these data tags in their public filings for information such as a fund’s investment objectives and strategies, risks, performance and costs. A fund will also be required to post the interactive data on its website, if it maintains one.

View the full text of the [Final Rule Release](#).

If you would like to learn more about the issues raised by this alert, please contact the Ropes & Gray attorney who normally advises you.

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