

Memorandum to Our Mutual Fund Clients and Friends

**New Prospectus Disclosure Requirements for Mutual Funds
and a New Summary Prospectus Delivery Option**

Introduction

The Securities and Exchange Commission (the “SEC”) recently adopted amendments to, among other things, the prospectus disclosure requirements of Form N-1A and the short-form prospectus requirements in Rule 498 under the Securities Act of 1933 (the “Securities Act”) to permit the use of a summary prospectus (the “Amendments”).¹ The Amendments were originally proposed in November 2007 (the “Proposed Rules”).

Under the Amendments, a new short-form, or summary, prospectus may, at the election of a mutual fund, be used to satisfy the mutual fund’s prospectus delivery obligations under the Securities Act. While the focus of the Amendments is the new summary prospectus (replacing the profile prospectus adopted in 1998, which has rarely been used by funds), the Amendments reflect significant changes to the standard prospectus offering document, requiring a new version of the risk/return summary at the beginning of the statutory prospectus and an identical version of the risk/return summary in the summary prospectus.

The use of a summary prospectus is not mandatory, and a mutual fund that does not elect to use a summary prospectus must continue to deliver its statutory prospectus to investors. If a fund elects to deliver its summary prospectus in lieu of its statutory prospectus, it is required to make its statutory prospectus, statement of additional information (“SAI”) and annual and semi-annual reports available on an Internet website. To address liability concerns, the Amendments permit the statutory prospectus, the SAI and information from recent shareholder reports to be incorporated by reference into the summary prospectus.

Generally, the Amendments rearrange existing disclosure requirements of Form N-1A and add certain new disclosure requirements, such as portfolio turnover rate, to the risk/return summary disclosure. The Amendments, however, follow a less flexible disclosure approach, requiring that the revised risk/return summary appear in a standardized order in the statutory prospectus and the summary prospectus. In a prospectus that includes multiple funds, the

¹ Enhanced Disclosure and New Prospectus Delivery Option, Securities Act Release No. 33-8998 (January 13, 2009). The SEC also adopted amendments, originally proposed in March 2008, intended to result in enhanced disclosure to investors who purchase shares of exchange-traded funds (“ETFs”) on national securities exchanges. Pursuant to the amendments: (i) ETF prospectuses are no longer required to disclose information on how to buy and redeem shares directly from the ETF; (ii) the fee table disclosure excludes fees and expenses for purchases and redemptions of creation units; (iii) the fee table narrative preceding the example in an ETF’s prospectus must state that fund shares are sold on the secondary market and that investors in ETF shares may pay brokerage commissions that are not reflected in the example; and (iv) generally, each ETF must disclose information regarding the extent and frequency with which market prices of fund shares have tracked the fund’s NAV.

risk/return summary information must be presented for each fund sequentially with, subject to a few exceptions, no modifications to avoid repetition of the same information. A summary prospectus may only include information for one fund.

Effective and Compliance Dates

The effective date of the Amendments is **March 31, 2009**. In an effort to give funds sufficient time to update their prospectuses or to prepare new registration statements under the revised Form N-1A requirements, the SEC is providing for a transition period after the effective date of the Amendments.

- Initial registration statements on Form N-1A and post-effective amendments that are annual updates to registration statements filed on or after **January 1, 2010**, must comply with the Amendments. Post-effective amendments to existing registration statements designed to address the new requirements must be filed under Rule 485(a). The SEC stated that it would consider, under appropriate circumstances, requests by existing funds to file under Rule 485(b), such as when a fund complex has previously filed a number of 485(a) filings that implement the new requirements.
- Post-effective amendments filed on or after **January 1, 2010** that add a new series must comply with the Amendments with respect to the new series.
- The final compliance date for filing amendments to effective registration statements is **January 1, 2011**.

Amendments to Form N-1A

Information Required in Summary Section

Substantially as proposed, the Amendments require a mutual fund prospectus to include a revised risk/return summary section at the front of the prospectus. The summary section, to be presented in “plain English,” consists of the following information:

1. **Investment Objectives:** As proposed, the summary section begins with disclosure of a fund’s investment objectives, as required in the current risk/return summary.
2. **Fee Table:** Substantially as proposed, the required information is similar to the current fee table and example with certain modifications as follows:
 - The fee table must precede the information about a fund’s principal investment strategies, risks and performance.

- Funds that offer breakpoint discounts are now required to include a brief narrative disclosure alerting investors to the availability of such discounts.²
 - The parenthetical following the heading “Annual Fund Operating Expenses” has been revised 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.”
 - Funds, other than money market funds, must disclose portfolio turnover information after the fee table example.³
 - 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, funds will also be permitted to place two additional captions directly below the “Total Annual Fund Operating Expenses” caption showing the amount of the waiver/reimbursement and the net expenses.
3. **Principal Investment Strategies, Risks, and Performance:** A fund must disclose its principal investment strategies and risks, as required in the current risk/return summary. The requirements with regard to the narrative accompanying the bar chart and performance table have been modified for funds that make updated performance information available on a website or by telephone. Such funds must include a statement explaining that such information is available and provide the website address and/or telephone number.
 4. **Investment Advisers (and Sub-advisers) and Portfolio Managers:** As proposed, the summary section must include the name of each investment adviser (and each sub-adviser) of the fund, followed by the name, title and length of service of the fund’s portfolio managers.⁴
 5. **Brief Purchase and Sale Information:** As proposed, the summary section is required to disclose the fund’s minimum initial and subsequent investment

² The narrative must state that further information is available from the investor’s financial professional, and identify the section heading and page number of the fund’s prospectus and SAI where more information can be found.

³ The disclosure must include the fund’s portfolio turnover rate for the most recent fiscal year as a percentage of the average value of its portfolio and a brief explanation of the effects of portfolio turnover on transaction costs and fund performance and adverse tax consequences.

⁴ Generally, a fund is not required to identify a sub-adviser whose sole responsibility consists of the day-to-day management of cash instruments, and a fund with three or more sub-advisers is not required to identify each sub-adviser, but must identify any sub-adviser responsible for managing at least 30% of the fund’s net assets.

requirements, the fact that the fund's shares are redeemable, and redemption procedures.

6. **Tax Information:** As proposed, a fund is now required to state, as applicable, its intention to make distributions that may be taxed as ordinary income or capital gains, or that it intends to distribute tax-exempt income. If a fund holds itself out as investing in securities generating tax-exempt income, it must provide a general statement disclosing that a portion of its distributions may be subject to federal income tax.
7. **Financial Intermediary Compensation Information:** As proposed, the risk/return summary must include the following statement (or a similar statement containing comparable information) regarding payments to broker-dealers and other financial intermediaries:

“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 website for more information.”

Funds that do not pay financial intermediaries for the sale of fund shares or related services may omit this disclosure.

Departing from the Proposed Rules, the SEC determined not to include the list of the fund's ten largest holdings in the revised summary section, persuaded by commenters that such lists could often be inaccurate and/or stale. The SEC acknowledged that accurate, up-to-date portfolio holdings are readily available through other sources, such as SEC filings.

A prospectus offering multiple funds is required to present all summary information for each fund sequentially, and common summary information for all funds offered in the prospectus cannot be integrated, *with the exception that a multiple fund prospectus is permitted to integrate the information required by any of items 5 (purchase and sale of fund shares), 6 (tax information) and 7 (financial intermediary compensation) above, if it is identical for all funds covered in the prospectus.* If such exception is employed, mandated disclosure is required in each individual fund summary section in the location where the integrated information would have appeared about the availability and location of the information.⁵

⁵ The SEC also adopted a requirement that a fund include its exchange ticker symbol on the front page of the prospectus and, if the prospectus relates to one or more classes, the ticker symbol for each class. The Amendments also eliminate the existing provisions of Form N-1A that permit a fund to omit from the

Rule 498 and Summary Prospectus Delivery Option for Mutual Funds

Reflecting its new “layered approach” to disclosure, the SEC has substantially adopted the Proposed Rules to amend Rule 498, the current “profile” rule, to permit a person to satisfy its prospectus delivery obligations under the Securities Act with respect to mutual fund shares, by sending or giving key information to investors in the form of a summary prospectus, and by providing access to the statutory prospectus at all times via an Internet website.⁶

The summary prospectus and the delivery of fund documents via the Internet must comply with the specific requirements and conditions of the Amendments, which are discussed below. Additionally, the Amendments:

- require a fund to deliver the statutory prospectus in paper or by e-mail upon request;
- modify the condition that the summary prospectus be given greater prominence than accompanying materials, making it a rule requirement;⁷ and
- prohibit, in general, a summary prospectus from being bound together with any other materials.

Summary Prospectus Content Requirements

Amended Rule 498 requires the summary prospectus to include the same information as the summary section of the statutory prospectus, except as expressly permitted by the Amendments.⁸ The Amendments place limitations on the information included in the summary prospectus. The summary prospectus information must be presented in the numerical order

prospectus detailed purchase and sale information and to provide such information in the SAI. The SEC did not, consistent with the Proposed Rules, impose page limits on the risk/return summary section, although it stated that it intended that the summary be concise (on the order of three or four pages).

⁶ Under amended Rule 498, the obligation to have a statutory prospectus accompany the delivery of a mutual fund security under the Securities Act is satisfied if: (i) a summary prospectus is sent or given no later than the time of the carrying or delivery of the fund security; (ii) the summary prospectus is not bound together with any other materials, with certain exceptions for variable insurance contracts; (iii) the summary prospectus satisfies the time requirements for delivery; and (iv) other various conditions of the Amendments are satisfied.

⁷ Amended Rule 498 retains the somewhat elusive “greater prominence” requirement. It is, however, a rule requirement rather than satisfaction of a fund’s delivery obligations under the Securities Act or the provision that a communication shall not be deemed a prospectus under the Securities Act. Rather circuitously, the SEC notes 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 placed on top of accompanying documents). The SEC noted that a summary prospectus need not be given greater prominence than other summary prospectuses or statutory prospectuses that accompany it.

⁸ If a fund files a “sticker” to its statutory prospectus that changes any information in the summary section, the summary prospectus must be amended or “stickered” to reflect the information in the statutory prospectus sticker.

discussed above with respect to the revised summary section of the statutory prospectus and must not be preceded by any information other than the cover page and table of contents.

Like the summary section of the statutory prospectus, a summary prospectus may describe one fund only, although it may describe multiple classes of that fund. This requirement will require a multi-fund complex to maintain a summary prospectus for each of its funds, which will likely result in substantial printing and other costs to the complex.

Substantially as proposed, amended Rule 498 requires the cover page of the summary prospectus to include the fund's name, the share classes, the exchange ticker symbol of the fund's securities, a statement identifying the document as a "summary prospectus," the approximate date of the summary prospectus's first use, and 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 email request to [_____].”

The SEC did not adopt the proposed amendment that performance information in the summary prospectus be updated quarterly, persuaded by commenters that such information would trigger investor confusion and focus on short-term performance, as well as increased costs and operational difficulties associated with its implementation. However, amended Rule 498 requires a fund that makes updated performance information available on a website or by telephone, to include a statement explaining this and to provide the website address and/or telephone number.

Conditions Addressing Internet Accessibility of Fund Documents

The Amendments require a fund to make its current summary prospectus, statutory prospectus, SAI and most recent annual and semi-annual reports available on the Internet website (i.e., the website specified on the cover page of the summary prospectus). Such documents are required to be available on the website on or before the time the summary prospectus is sent or given to investors, and current versions of the documents are required to remain on the website for at least 90 days after fund shares are delivered (or a communication is sent or given) to investors.

The SEC slightly modified the Proposed Rules regarding the format of fund documents made available on the Internet by requiring, as a condition to reliance on the rule, 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.⁹ Specifically, the posted information must

⁹ The SEC has adopted the requirement that the information be presented in a “convenient” format, but such requirement is not a condition to reliance on the rule to satisfy a person's delivery obligations under the Securities Act.

be presented and printable in “human-readable” text, rather than machine-readable software code.

Technical Requirements for Online Information

The Amendments adopt the following proposed technological requirements regarding online information:

- Persons accessing the statutory prospectus or SAI online must be able to move directly back and forth between each section heading in a table of contents of the documents and the section of the document referenced in that section heading.
- Persons accessing the summary prospectus must be able to move directly back and forth between either (i) each section of the summary prospectus and the relevant section of the statutory prospectus and SAI; or (ii) links located at the beginning and the end of the summary prospectus, or that remain visible to persons accessing the summary prospectus, and tables of contents of both the statutory prospectus and the SAI.
- Persons accessing the website must be able to permanently retain (i.e., by downloading), electronic versions of the summary prospectus, statutory prospectus, SAI and shareholder reports, at no cost.

Acknowledging that there may be times when, despite its best efforts, a fund will not be in compliance with the Internet posting requirements of the Amendments, the SEC has included a safe harbor provision addressing such circumstances. A fund may rely on the safe harbor provision provided that:

- (i) it has reasonable procedures in place to ensure that fund documents are available on the website and in the required manner; and
- (ii) it takes prompt action to restore the accessibility of fund documents on the website as soon as possible after it knows or should have known of the documents’ inaccessibility.

Liability Issues Related to and Filing Requirements for the Summary Prospectus

Having the goal of providing investors with concise information, amended Rule 498 permits a fund to incorporate by reference into the summary prospectus information contained in its statutory prospectus and SAI, as well as any information from its most recent shareholder report *that the fund has incorporated by reference into its statutory prospectus*, subject to the following conditions:

- (i) the fund may not incorporate by reference any information that is required to be included in the summary prospectus;

- (ii) reference may be made only to another document that contains the information, and not to another document that incorporates the information by reference; and
- (iii) the fund documents incorporated by reference must be accessible in accordance with the rule's conditions addressing Internet accessibility of fund documents.

The ability to incorporate fund documents by reference into the summary prospectus reflects the SEC's approach to liability embodied in Rule 159 under the Securities Act. A fund is deemed to have conveyed those fund documents incorporated by reference into the summary prospectus at the time the investor receives the summary prospectus, provided that the conditions of the new rule are satisfied. Therefore, according to the SEC, a court considering an investor claim based on a material misstatement or omission made at the time of purchase (e.g., claims under Section 12(a)(2) or Section 17(a)(2) of the Securities Act) would likely consider the disclosures included in the summary prospectus and any document properly incorporated by reference into the summary prospectus if the summary prospectus was received by the investor prior to or at the time of purchase.

In its adopting release, the SEC stated that a person providing investors with a summary prospectus in good faith compliance with amended Rule 498 would be able to rely on Section 19(a) of the Securities Act in defense of 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*. This statement indicates that courts considering the matter will likely consider a fund's intent to rely on amended Rule 498, rather than the fund's strict compliance with the incorporation by reference requirements of amended Rule 498.

The SEC has amended Rule 497 under the Securities Act to require the summary prospectus to be filed with the SEC on EDGAR no later than the date that it is first used, rather than, as proposed, the fifth day after the date it is first used. In connection with the Amendments, the SEC has stated that the 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. Thus, a fund will not be subject to Section 11 liability with respect to the summary prospectus, but all of the information in the summary prospectus will be subject to Section 11 liability because it will be the same as the information included in the summary section of the statutory prospectus or will be incorporated by reference from the registration statement.

Conclusion

The Amendments will likely require mutual funds, especially multi-fund complexes that utilize combined prospectuses, to allocate extra time and incur additional costs to gathering, organizing and filing the required information in a separate summary section for each fund and posting the summary prospectus, statutory prospectus, SAI and shareholder reports on webpages. Mutual funds may experience cost savings if they can take advantage of the Internet for the relatively inexpensive mass dissemination of prospectus information to investors, including

fulfilling their annual update requirements. On the other hand, requiring a separate summary prospectus for each fund may impose cost and fulfillment issues that discourage the use of summary prospectuses.

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If you have any questions or need more information, please contact Kathleen Clarke or Paul Miller at (202) 737-8833. Ms. Clarke, while a member of the SEC staff, had substantial responsibility for the proposing and adopting releases for the last extensive revisions to the prospectus disclosure requirements and for the profile prospectus. She submitted a comment letter to the SEC on the current Amendments. Mr. Miller has extensive experience in disclosure issues.

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