

CCOutreach Regional Seminars
Summary of Recent SEC Rulemaking Initiatives
by the Division of Investment Management*

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Mutual Fund Disclosure Reform (Release Nos. 33-8998; IC-285484)

The Commission adopted an improved mutual fund disclosure framework. To implement this disclosure framework, the Commission adopted amendments to Form N-1A, the registration form for mutual funds, and rule 498 under the Securities Act of 1933. Under the amendments to Form N-1A, every mutual fund is required to include a summary section at the front of its statutory prospectus. The summary section is required to contain key information in plain English in a standardized order. Specifically, the summary section is required to contain the following information in the following order: (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.

New rule 498 implements a layered disclosure framework. The rule permits a person to satisfy its mutual fund prospectus delivery obligations under the securities laws by sending or giving a “summary prospectus” and providing the statutory prospectus and other information on an Internet Web site. The summary prospectus is required to contain the same information in the same order as the summary required at the front of the statutory prospectus. Under the rule, a paper or electronic copy of the statutory prospectus and other information must be provided upon request.

The Internet posting conditions of the rule require a fund’s current summary prospectus, statutory prospectus, statement of additional information, and most recent annual and semi-annual reports to shareholders to be accessible, free of charge, at a Web site address specified in the summary prospectus. The online materials are required to be in a format that permits investors and other users to move readily back and forth between the summary prospectus and more detailed information in the statutory prospectus and statement of additional information. Under the rule, persons accessing the Web site must also be able to permanently retain an electronic version of the posted materials.

The rules became effective on March 31, 2009. Funds will be required to comply with the amendments to Form N-1A in registration statement filings made on or after January 1, 2010. A fund is not permitted to rely on the rule to deliver a summary prospectus in satisfaction of its statutory prospectus delivery obligations unless it is also in compliance with the amendments to Form N-1A. The adopting release is available at <http://www.sec.gov/rules/final/2009/33-8998.pdf>.

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Interactive Data for Mutual Fund Risk/Return Summary (Release Nos. 33-9006, IC-28617)

The Commission adopted rules requiring mutual funds to provide risk/return summary information in a form that would improve its usefulness to investors. Under the rules, risk/return summary information could be downloaded directly into spreadsheets, analyzed in a variety of ways using commercial off-the-shelf software, and used within investment models in other software formats. Mutual funds will provide the risk/return summary section of their prospectuses to the Commission and on their Web sites in interactive data format using the eXtensible Business Reporting Language (“XBRL”). The interactive data will be provided as exhibits to registration statements and as exhibits to prospectuses with risk/return summary information that varies from the registration statement. The rules are intended not only to make risk/return summary information easier for investors to analyze, but also to assist in automating regulatory filings and business information processing. Interactive data has the potential to increase the speed, accuracy, and usability of mutual fund disclosure, and eventually reduce costs. The Commission also adopted rules to permit investment companies to submit portfolio holdings information in the Commission’s interactive data voluntary program without being required to submit other financial information.

The first required submissions will be for initial registration statements and post-effective amendments that are annual updates to effective registration statements and that become effective after January 1, 2011. The adopting release is available at <http://www.sec.gov/rules/final/2009/33-9006.pdf>.

Disclosures under the Sudan Accountability and Divestment Act of 2007 (Release Nos. 34-57711, IC-28254)

The Commission adopted amendments to its forms under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 that require disclosure by a registered investment company that divests, in accordance with the Sudan Accountability and Divestment Act of 2007 (“Sudan Divestment Act”), from securities of issuers that the investment company determines, using credible information that is available to the public, conduct or have direct investments in certain business operations in Sudan. The Sudan Divestment Act limits civil, criminal, and administrative actions that may be brought against a registered investment company that divests itself from such securities, provided that the investment company makes disclosures in accordance with regulations prescribed by the Commission.

The amendments adopted by the Commission require each registered investment company that divests securities in accordance with the Sudan Divestment Act to disclose the divestment on the next Form N-CSR or Form N-SAR that it files following the divestment. Specifically, the amendments require disclosure of information that will identify the securities divested and the magnitude of the divestment. This includes the issuer’s name; exchange ticker symbol; Committee on Uniform Securities Identification

Procedures (“CUSIP”) number; total number of shares or, for debt securities, principal amount divested; and dates that securities were divested. In addition, if the registered investment company continues to hold any securities of the divested issuer, it is required to disclose the exchange ticker symbol; CUSIP number; and total number of shares or, for debt securities, principal amount of such securities, held on the date of filing.

The amendments were effective on April 30, 2008. The adopting release is available at <http://www.sec.gov/rules/final/2008/34-57711.pdf>.

Proposed Commission Guidance Regarding the Duties and Responsibilities of Investment Company Boards of Directors with Respect to Investment Adviser Portfolio Trading Practices (Release No. IC-28345)

On July 30, 2008, the Commission proposed Guidance to assist directors of registered investment companies in fulfilling their fiduciary responsibility to oversee investment advisers’ trading of fund portfolio securities, including advisers’ use of soft dollars. The proposed Guidance follows interpretive guidance issued by the Commission in 2006, which, among other things, clarified the scope of the safe harbor provided under section 28(e) of the Securities Exchange Act of 1934 when investment advisers use client commissions to purchase brokerage and research services for managed accounts. The proposed Guidance focuses on fund boards’ oversight of advisers’ best execution obligations and the conflicts of interest associated with advisers’ use of brokerage commissions. The proposed Guidance would not impose any new requirements on fund directors or advisers, but is intended to assist directors in fulfilling their existing oversight obligations. In this regard, the proposed Guidance suggests information directors should request from advisers to monitor the conflicts of interest advisers face in their trading activities and reminds directors that they have the authority to direct how an adviser uses fund brokerage.

The comment period for the proposed Guidance closed on October 29, 2008. The proposing release is available at <http://www.sec.gov/rules/proposed/2008/34-58264.pdf>.

Proposed Amendments to Part 2 of Form ADV (Release No. IA-2711)

In March 2008, the Commission proposed amendments to Part 2 of Form ADV to require investment advisers to deliver to clients and prospective clients a narrative brochure written in plain English. If adopted, advisers would file their brochures with the Commission electronically on IARD. The brochure would address 19 disclosure topics, which would address conflicts of interest between the adviser and its clients (e.g., soft dollars and other brokerage practices, and financial service affiliations) and the business practices and background of the investment adviser. The proposal also would require investment advisers to deliver brochure supplements that provide information about certain of their advisory personnel.

The comment period closed on May 16, 2008. The proposing release is available at: www.sec.gov/rules/proposed/2008/ia-2711.pdf

Temporary Rule Regarding Principal Trades with Certain Advisory Clients
(Release No. IA-2653)

On September 19, 2007 the Commission adopted temporary rule 206(3)-3T. The rule provides an alternative method for investment advisers that are registered with the Commission as broker-dealers to meet the requirements of Advisers Act section 206(3) when they act in a principal capacity with respect to transactions with certain of their advisory clients. Specifically the rule permits an adviser, with respect to non-discretionary advisory accounts, to comply with section 206(3) by: (1) making certain prospective written disclosures; (2) obtaining written, revocable consent from the client prospectively authorizing the adviser to enter into principal transactions; (3) making certain oral or written disclosures and obtaining the client's consent orally or in writing before each principal transaction; (4) sending confirmation statements to the client disclosing specified information; and (5) delivering to the client an annual report itemizing the principal transactions.

The rule became effective on September 30, 2007 and will expire and no longer be effective on December 31, 2009. The adopting release is available at: www.sec.gov/rules/final/2007/ia-2653.pdf

Proposed Interpretive Rule Under the Advisers Act Affecting Broker-Dealers
(Release No. IA-2652)

The Commission published for comment an interpretive rule that would address the application of the Advisers Act to certain activities of broker-dealers. The proposal would reinstate the following interpretive provisions of a rule under the Advisers Act that was vacated by a court decision: (1) *separate fee or contract*: when a broker-dealer charges a separate fee for, or separately contracts for, advisory services, its advice would not be considered "solely incidental" to the business of brokerage; (2) *discretionary asset management*: when a broker-dealer provides discretionary investment advice it would not be considered to be providing advice that is "solely incidental" to the business of brokerage; and (3) *discount brokerage*: a broker-dealer would not receive "special compensation" solely because it charges a commission for discount brokerage that is less than it charges for full-service brokerage. Finally, the proposed rule would re-codify an interpretation that dually-registered broker-dealers and investment advisers are considered investment advisers solely with respect to those accounts for which they provide services that subject them to the Advisers Act.

The comment period closed on November 2, 2007. The proposing release is available at: www.sec.gov/rules/proposed/2007/ia-2652.pdf

Proposed Amendments to Regulation S-P (Release No. 34-57427)

The Commission proposed amendments to the rules for safeguarding and disposing of personal financial information under Regulation S-P. The proposed amendments would, among other things, (1) set forth more specific requirements to safeguard investors' information and respond to information security breaches, (2) apply the rules to a broader scope of personal information and to additional persons within the securities industry, and (3) permit a limited transfer of information to a nonaffiliated third party without the required notice and opt out when personnel move from one broker-dealer or registered investment adviser to another.

The comment period closed on May 12, 2008. The proposing release is available at www.sec.gov/rules/proposed/2008/34-57427.pdf

Proposal Regarding Exchange-Traded Funds (Release Nos. 33-8901; IC-28193)

The Commission proposed a new rule under the Investment Company Act of 1940 that would exempt exchange-traded funds (ETFs) from certain provisions of that Act and related rules. The rule would permit certain ETFs to begin operating without the expense and delay of obtaining an exemptive order from the Commission. The Commission also proposed amendments to the disclosure form for open-end investment companies, Form N-1A, to provide more useful information to investors who purchase and sell ETF shares on national securities exchanges. In addition, the Commission proposed a new rule to allow mutual funds (and other types of investment companies) to invest in ETFs to a greater extent than currently permitted under the Investment Company Act.

The comment period closed on May 19, 2008. The proposing release is available at www.sec.gov/rules/proposed/2008/33-8901.pdf

Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles (Release No. IA-2628)

In 2007, the Commission adopted rule 206(4)-8, which prohibits advisers to pooled investment vehicles from defrauding investors or prospective investors in those pooled vehicles. The rule makes it a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser to a pooled investment vehicle to make false or misleading statements to, or otherwise to defraud, investors or prospective investors in that pool. The rule applies to all investment advisers to "pooled investment vehicles."

Rule 206(4)-8 became effective on September 10, 2007. The adopting release is available at www.sec.gov/rules/final/2007/ia-2628.pdf