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February 28, 2008

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Re: Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies: File No. S7-28-07

Dear Ms. Morris:

The Investment Company Institute¹ is pleased to express its strong support for the Commission's proposed concept of a new prospectus delivery option for mutual funds.² The proposal to permit funds to provide investors with a summary of key information (a "Summary Prospectus"), and make additional information, including the statutory prospectus, available on the Internet and in paper or by email upon request, represents an historic milestone in the ongoing quest to better serve fund investors' information needs.³

The Commission and the industry have invested substantial time and resources in continual efforts to improve mutual fund disclosure over nearly three decades.⁴ The importance of these efforts is

¹ The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$12.68 trillion and serve almost 90 million shareholders.

² See Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, SEC Release Nos. 33-8861 and IC-28064 (Nov. 21, 2007), 72 Fed. Reg. 67790 (Nov. 30, 2007) ("Proposing Release"). The Institute also supports the proposed changes to Form N-1A to provide investors with summary information at the front of the statutory prospectus, subject to our comments below on format, order, and content.

³ We agree with the Commission that, for the time being, a Summary Prospectus should be provided to investors in paper or electronic form at the investor's option. We expect that, over time, investors will become accustomed to seeking investment information on the Internet. We recommend that in the future the Commission revisit whether provision of such information solely on the Internet may be sufficient.

⁴ See, e.g., Registration Form Used by Open-End Management Investment Companies, SEC Release No. IC-13436 (Aug. 12, 1983), 48 Fed. Reg. 37928 (introduction of two-part disclosure concept, consisting of a simplified prospectus with more detailed information available upon request in the Statement of Additional Information, or SAI); Registration Form Used by Open-End Management Investment Companies, SEC Release Nos. 33-7512, 34-39748, and IC-23064 (March 13, 1998), 69 Fed. Reg. 13916 (March 23, 1998) (amendments to Form N-1A to focus prospectus disclosure on key

indisputable. With millions of U.S. investors choosing mutual funds to save for their retirement, for their children's education, and for other important financial goals, it is critical that those investors and the financial professionals who assist them have ready access to the information they want and need in a form they can use. Yet, despite all best intentions, past disclosure reform efforts have resulted in only limited or temporary improvements.

The Commission's proposed Summary Prospectus concept represents a possible breakthrough. The proposal is consistent with earlier Commission efforts to highlight for investors the most essential fund information, while making additional information available to those who want it. Previously, the Commission pursued this ideal by moving important information to the front of a lengthy document or set of documents. In the case of the fund profile, which like the Summary Prospectus culled out key information for investors in a shorter document, the long-form prospectus was still required to be sent to investors to supplement the profile document. Now that the vast majority of mutual fund investors have access to the Internet,⁵ it is finally possible to provide them with a streamlined document that presents key information in the concise, user-friendly format they prefer, without any net loss in the amount of information available to investors and the marketplace at large.⁶

Enhancing the financial literacy of fund investors is a shared goal of the Commission and the industry, and we believe that the Summary Prospectus has the potential to make disclosure documents more usable for the average investor. We also believe that such a document will make mutual fund information more accessible and understandable to 401(k) plan participants,⁷ and could provide a template for disclosure about other investment products offered in 401(k) and similar defined contribution plans.⁸ Importantly, the proposal also seeks to address the concerns over potential liability that dampened enthusiasm for the fund profile. In our view, discussed in more detail below, it largely succeeds in doing so.

By relying primarily on the Internet to make certain information available to investors, the proposal clearly reflects Chairman Cox's strong leadership and unrelenting commitment to regulatory

information to assist in investment decisions); New Disclosure Option for Open-End Management Investment Companies, SEC Release Nos. 33-7513 and IC-23065 (Mar. 13, 1998), 63 Fed. Reg. 13968 (Mar. 23, 1998) (fund profile rule); Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, SEC Release Nos. 33-8393, 34-49333, and IC-26372 (Feb. 27, 2004), 69 Fed. Reg. 11244 (Mar. 9, 2004) (amendments to improve disclosure in fund shareholder reports). The industry has been an active partner in these efforts. *See infra* note 9.

⁵ See Investment Company Institute, *Ownership of Mutual Funds and Use of the Internet, 2006*, Research Fundamentals, Vol. 15, No. 6, October 2006, available at <http://www.ici.org/pdf/fm-v15n6.pdf>.

⁶ As we previously indicated, the Commission should consider following a similar approach with respect to fund shareholder reports. *See* Securities and Exchange Commission Interactive Data Roundtable, Statement of the Investment Company Institute (June 9, 2006), available at http://www.ici.org/statements/tmny/06_sec_rdtbl.html.

⁷ As of June 2007, 18 percent of long-term (non-money market) mutual fund assets were held in 401(k) plans.

⁸ We recommend that the Commission continue to work collaboratively with the Department of Labor toward these goals.

approaches that take advantage of technology for the benefit of investors. At Chairman Cox's urging, the proposal aims even higher, attempting to provide enhanced features to improve the utility of disclosure through the use of technology. We commend the Commission for recognizing and seeking to capitalize on the advantages that technology can offer.

As evidenced in the Proposing Release, the proposal rests on a strong foundation. It reflects the strikingly broad consensus that investors would be best served by simplified, streamlined disclosure of essential fund information, and is supported by an extensive record, including empirical research conducted by the Commission, the Institute and others.⁹

The transformative possibilities presented by this proposal make it critically important for the Commission to seek to maximize funds' implementation of the Summary Prospectus. The proposed quarterly updating requirement, however, represents a significant barrier to broad adoption of the Summary Prospectus by the industry. Institute members firmly believe that quarterly updating of top ten portfolio holdings and performance information in the Summary Prospectus is neither necessary nor appropriate from a policy perspective. Additionally, the costs and burdens the requirement would involve – not only for funds but also for those who distribute fund shares and advise investors – will likely deter most industry participants from adopting the Summary Prospectus. Meanwhile, quarterly updated information is already widely available on the Internet and from other sources. In light of the ready availability of this information, we believe that requiring quarterly updating of the Summary Prospectus is not so important as to warrant risking the success of the whole initiative.

Certain other aspects of the proposal, including some aspects of the technology requirements for making additional information available on the Internet and the conditions for using the Summary Prospectus, may also limit the willingness of some fund complexes to participate. Each of these concerns and our recommendations for addressing them are discussed in more detail below. We also offer comments on the format, content, and order of the proposed Summary Prospectus, as well as the filing and compliance requirements and transition period. We hope our comments will help to

⁹ See, e.g., Investment Company Institute, *The Profile Prospectus: An Assessment by Mutual Fund Shareholders* (Summary of Research Findings) (May 1996), available at http://www.ici.org/stats/res/arc-rpt/rpt_profprspctus3.pdf; Investment Company Institute, *The Profile Prospectus: An Assessment by Mutual Fund Shareholders* (Volume 1) (May 1996), available at http://www.ici.org/stats/res/arc-dis/rpt_profprspctus.pdf; Investment Company Institute, *The Profile Prospectus: An Assessment by Mutual Fund Shareholders* (Volume 2) (May 1996), available at http://www.ici.org/stats/res/arc-dis/rpt_profprspctus2.pdf; Investment Company Institute, *Understanding Shareholders' Use of Information and Advisers* (April 1997), available at http://www.ici.org/stats/res/arc-dis/rpt_undstnd_share.pdf; Investment Company Institute, *Understanding Investor Preferences for Mutual Fund Information* (2006), available at http://www.ici.org/stats/res/rpt_06_inv_prefs_full.pdf; Investment Company Institute, *Ownership of Mutual Funds and Use of the Internet, 2006*, *supra* note 5; see also Barbara Roper and Stephen Brobeck, Consumer Federation of America, *Mutual Fund Purchase Practices* (June 2006), available at http://www.consumerfed.org/pdfs/mutual_fund_survey_report.pdf.

improve the quality and utility of the Summary Prospectus for investors, and increase the likelihood of its widespread use by mutual funds and fund distributors.

In summary, our comments are as follows:

- **Quarterly Updating.** We strongly oppose the quarterly updating requirement. We believe that it is unnecessary, offers possibilities for investor confusion, and creates substantial operational burdens and costs, as well as compliance, legal, and interpretive questions that, taken together, will deter the majority of funds from adopting the Summary Prospectus. We recommend instead that the required legend in the Summary Prospectus direct shareholders to a specified website for updated information. [*see pages 4-16*].
- **Liability and Compliance.** We applaud the Commission for its efforts to ensure that proper use of the Summary Prospectus does not subject funds to the threat of new or additional legal liability. We believe that the proposed approach largely achieves this goal, but some concerns remain. We offer suggestions that we believe will protect shareholders and promote the Commission's goals while limiting the potential risks to funds from using the Summary Prospectus. [*see pages 16-24*].
- **Technology Requirements.** We strongly support in concept the Commission's proposed framework for requiring the statutory prospectus, statement of additional information, and shareholder reports to be made available on the Internet and in paper or by email upon request. We offer comments to ensure that compliance with this framework is reasonably achievable using today's technology, without foreclosing alternative approaches or improvements based on future technology. [*see pages 24-31*].
- **Format, Order and Content.** We suggest modifications to the format, order and content of the Summary Prospectus to improve the overall quality and utility of the Summary Prospectus. [*see pages 32-41*].

I. Quarterly Updating Requirement

We strongly oppose the proposed requirement that a Summary Prospectus contain average annual total returns and yield (if applicable) as of the most recent calendar quarter, as well as quarterly updated top ten portfolio holdings information.¹⁰ The Commission's desire to have performance information updated on a frequent basis in a disclosure document signals to us a troubling shift toward focusing on short-term performance information rather than the regulator's traditional role of

¹⁰ As discussed below, members object to the inclusion of top ten portfolio holdings information in the Summary Prospectus.

encouraging investors to consider long-term performance.¹¹ The proposal also seems inconsistent with the stated purpose of the performance bar chart and table, which is to illustrate the variability of a fund's returns over time to show volatility and risks relative to the market – not current performance.¹²

Moreover, our survey of and extensive discussions with members make clear that a quarterly update requirement for this optional document will significantly reduce industry interest in using the Summary Prospectus.¹³ Institute members strongly question the benefits to shareholders of providing quarterly updated performance and holdings information in the Summary Prospectus. Members widely believe that the costs and burdens involved far outweigh any potential benefits, particularly given that updated performance information, along with portfolio holdings, is already widely accessible to investors through a number of sources, such as fund websites, third party sources, and fund fact sheets. Our analysis suggests 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.¹⁴ By contrast, if the quarterly updating requirement were eliminated, nearly 80 percent of funds *would* find it cost-effective to use the Summary Prospectus.

¹¹ See, e.g., “This Year in Funds: The Responsibilities of Prosperity,” Speech by Barry P. Barbash, Director, Division of Investment Management, Securities and Exchange Commission, before the 1996 ICI Securities Law Procedures Conference (Dec. 3, 1996) (“I see too many funds over-emphasizing their short-term performance by, for example, claiming to be number one among a peer group of funds since an arbitrarily selected date or since the funds’ inception. In many of these cases, the funds downplay that the performance results they are touting were achieved over a fairly short period, such as a year or less.”).

¹² See Registration Form Used by Open-End Management Investment Companies, March 23, 1998, *supra* note 4, at 13922. See also Form N-1A, Item 2(c)(2)(i) (requiring a fund to explain how the bar chart and table “illustrate[] 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)”).

¹³ In late 2007, the Institute conducted a survey of member firms on the costs and operational burdens of the rule proposal. Forty-two fund complexes responded to the survey. Together, those complexes offer 3,221 funds – approximately 37 percent of all funds – and account for 60 percent of industry assets as of December 2007. Our survey responses reflect the views of fund complexes of a range of sizes. Thirty-eight percent of respondents were fund complexes with assets greater than \$100 billion; 29 percent had assets between \$10 billion and \$100 billion; and 33 percent had assets of less than \$10 billion. A copy of the survey questionnaire is provided in Appendix A to this letter. The survey also formed the basis for the Institute’s cost-benefit analysis of the proposal, which is provided in Appendix B.

The Institute also conducted a survey of about 500 investors requesting general feedback on the Summary Prospectus proposal and inquiring about preferences regarding certain presentation elements. The results of the investor survey are not discussed in this letter. We expect to file a supplemental submission discussing the findings in the near future.

¹⁴ An analysis of our member survey shows that about 55 percent of funds covered by the survey would not find it cost-effective to adopt the Summary Prospectus with a quarterly updating requirement. Our analysis suggests that an additional 15 percent would opt not to use the Summary Prospectus because of operational concerns such as heavy workflow and staffing considerations during quarter-end periods (“bottlenecks”), despite any cost savings. See Appendix B, pp. 14-16 (“Net Savings When Funds Elect to Adopt the Summary Prospectus”).

Regularly updated performance and portfolio holdings information is already widely available on the Internet and from other sources. Thus, the benefit to shareholders of requiring this information in the Summary Prospectus seems minimal, particularly given the impact the requirement would likely have on funds' use of the Summary Prospectus. Because a quarterly updating requirement would likely prevent many funds from adopting – and shareholders from receiving – the Summary Prospectus, we urge the Commission to eliminate this requirement.¹⁵ We propose instead that the legend in the Summary Prospectus direct investors to a specified website for updated performance information, as well as portfolio holdings information if such information is required to be provided in the Summary Prospectus. Our concerns and our suggested alternative approach are discussed in more detail below.

A. Possibilities for Investor Confusion

We are concerned that the proposed quarterly updating requirement could unintentionally generate investor confusion in at least two ways. First, a single quarterly Summary Prospectus could contain information from four or more time periods, which could confuse an investor. The fact that a Summary Prospectus may contain different information from the statutory prospectus for the same fund may also result in investor confusion.

1. *Proliferation of Time Periods Within the Summary Prospectus*

Quarterly updated Summary Prospectuses may contain information reflecting at least four time periods. Form N-1A currently requires performance information to be displayed in the bar chart and performance table as of the most recently ended calendar year. Following the bar chart, a fund must disclose its best and worst quarter in the last 10 years (or period of the bar chart). A fund with a fiscal year other than the calendar year must include a footnote to the bar chart providing year-to-date information as of the most recent quarter at the time the registration statement is filed. Fee table information is presented on a fiscal year end basis. As proposed, a Summary Prospectus would also contain updated performance information from the most recently ended calendar quarter (in the performance table) and, in many cases, portfolio holdings information as of the immediately prior calendar quarter.¹⁶ This confusing array of time periods, covering a much smaller number of items than

¹⁵ Notwithstanding our reservations about the Commission's apparent shift in focus toward short-term performance information and the possibilities of investor confusion, we are primarily concerned that, because of the costs and burdens imposed by a quarterly updating requirement, Institute members will not use the Summary Prospectus. We recommend that the Commission seek to maximize adoption of the Summary Prospectus in the first instance; once that has been achieved – and some of the operational hurdles have been cleared – the Commission might reexamine the feasibility of requiring quarterly updating.

¹⁶ As proposed, the Summary Prospectus must provide portfolio holdings as of the end of the most recent calendar quarter, or as of the immediately prior calendar quarter if the most recent quarter ended less than one month prior to the Summary Prospectus's first use. The proposed one-month lag for portfolio holdings is the minimum necessary to eliminate any potential harm to fund shareholders from predatory trading practices. Taken together with the performance updating requirement, however, the practical result is that a fund must either (1) issue its Summary Prospectus *exactly* one month after the end of the calendar quarter, so that portfolio holdings are withheld for a full month while quarterly performance information is available no later than one month after quarter end; or (2) use portfolio holdings information from the prior

in a statutory prospectus, seems excessively complicated for a document that is intended to simplify fund disclosure for investors.

2. Different Information in Summary and Statutory Prospectus

Another opportunity for confusion arises because the Summary Prospectus and summary section of the full prospectus are identical except for the updated information. A fund or intermediary could sell fund shares to two investors simultaneously, and provide them with otherwise identical documents containing different performance data and portfolio holdings (using a Summary Prospectus for one investor and the statutory prospectus for the other). The proposed rule evidently contemplates this scenario – it provides protection for funds against allegations that a statutory prospectus omitted material information by virtue of not containing the quarterly updated performance and portfolio holdings information contained in the Summary Prospectus.¹⁷

We applaud the Commission for its attention to potential liability concerns arising out of differences between the two documents, and we agree that this rule would provide substantial comfort to funds with respect to such allegations.¹⁸ Nevertheless, it does not address the possibility that investors may be confused by such differences. More importantly, it contravenes the Commission's attempts to enable investors to compare performance across multiple funds.

B. Operational Burdens and Costs

Institute members have voiced serious concerns about the impact a quarterly updating requirement would have at every stage of the Summary Prospectus' lifecycle, from creation, to distribution, to use by intermediaries at various points in the sales process. Members have assured us (including through our survey) that each of these concerns – financial, logistical, and compliance – will be factored into their consideration of whether and how to use the Summary Prospectus. Cost considerations are discussed in more detail in the Institute's cost-benefit analysis, attached as Appendix B. Members' operational, logistical and compliance considerations are described below.

quarter. As explained below in "Operational Costs and Burdens," many funds will face logistical constraints in updating their Summary Prospectuses in a timely fashion, rendering the first option impossible; thus, funds may not provide portfolio holdings and performance information as of the same quarter end. This result seems contrary to the Commission's desire to provide easy comparability across different funds.

¹⁷ See proposed Rule 498(e)(2).

¹⁸ Some members have expressed concerns that, while the rule would protect against an allegation of a material omission, it could be alleged that the presence of an updated Summary Prospectus renders a statutory prospectus with less current information materially misleading.

1. *Creating Updated Summary Prospectuses*

Institute members are extremely concerned about the difficulties of creating Summary Prospectuses every calendar quarter – that is, creating or updating the actual document. Putting aside costs, processing updated documents creates substantial logistical challenges, particularly with respect to staffing and workflow.

Quarter end is already an extremely busy time for fund companies.¹⁹ The compilation of quarter-end data and the review of fund fact sheets typically create a quarter-end rush for the legal and compliance departments, as well as for the design or desktop publishing and the web publishing groups. Institute members do not expect the Summary Prospectus to replace fund fact sheets.²⁰ Thus, the maintenance of Summary Prospectuses would be in addition to fact sheets and other existing quarter-end obligations.²¹

Moreover, as confirmed by most of our survey respondents, updating of Summary Prospectuses would likely require an entirely new process, one that would be more rigorous and complex than the one used for fund fact sheets. Several Institute members have explained that their marketing or communications departments are responsible for the design of fund fact sheets. These personnel pull and compile fund information from internal database systems, after which the resulting documents undergo compliance review; such documents are filed with FINRA only after first use and when there are material changes. Further, there is no mandated schedule for fact sheet updates, so holding up this process due to operational or other delays will not have any regulatory implications.

By contrast, Summary Prospectuses would likely originate and be overseen in the legal department, where they would be drafted, updated, reviewed, and prepared for filing with the SEC.²² In many cases, members anticipate that a variety of other parties or business units also will be involved in the updating and internal review of Summary Prospectuses. While the information that would be required to be updated – top ten portfolio holdings and performance – is generally readily available,

¹⁹ While the quarter-end rush might seem unique to complexes with many funds, these challenges are experienced quite broadly. Small fund complexes often outsource the preparation of disclosure documents to third-party administrators. These administrators, several of which are Institute members, have also expressed concerns that they would experience the same bottlenecks in completing such functions for their clients as larger funds would face.

²⁰ Fact sheets are marketing documents, designed to target specific categories investors and tailored to meet those investors' needs. They often include information that would not (and should not) be permitted in the Summary Prospectus (*e.g.*, Morningstar ratings, peer group rankings, style boxes, performance over varied time periods, and portfolio statistics such as standard deviation, R², and beta comparisons). These documents serve a very different function than prospectuses, and will likely continue to be used.

²¹ As discussed below, many fund complexes stagger the fiscal year ends of their funds. As a result, any given calendar quarter end is likely to coincide with the fiscal year end of some funds, potentially an even busier time.

²² Based on the Institute's member survey, 50 percent of respondents, offering 2,284 funds (about 70 percent of the funds in our survey), noted that their legal departments would be more involved in the internal review process for the Summary Prospectus than they currently are for fund fact sheets.

members report that they would likely review the entire document before filing to ensure that all appropriate updates, such as any stickers filed during the previous quarter, were properly captured.²³

These updates would *all* be required within 30 days of quarter end, further complicating matters. Many fund complexes stagger the fiscal year ends of their funds to ensure a steady workflow for legal and other personnel involved with fund disclosure and annual and semi-annual financial reports. Even assuming the most cursory review, simply adding 20 or 40 or 150 documents to the queue for quarter-end review will create bottlenecks during those periods. Even if personnel were added to help with the increased volume of filings, the requirement would necessarily result in the very cyclical workflows that staggered fiscal years have successfully prevented.²⁴

Finally, once these documents are created, they must be formatted – for EDGAR, for printing, and for posting on the Internet (complete with embedded links to the statutory prospectus, SAI and shareholder reports).²⁵ Again, these tasks must be completed within a very short window, and in addition to all of the other materials that already must be formatted and uploaded at the end of the calendar quarter. And, in stark contrast to fact sheets and other literature, a delay or failure could result in a disruption of the ability to sell a fund's shares, or a violation of federal securities laws.²⁶

Over 70 percent of fund complexes that responded to our member survey reported that, as a result of the quarterly updating requirement, moderate to severe bottlenecking – impacting legal and compliance, marketing, production, IT, administration and accounting personnel – would occur in the month after calendar quarter end.²⁷ These complexes collectively offer 2,958 funds, or 92 percent of funds covered in our survey. About 60 percent of respondents (offering 2,636 funds, or 82 percent of funds in our survey) indicated that they do not have sufficient current staff to compile and update Summary Prospectuses for each fund within a 30-day window at calendar quarter end,²⁸ and many

²³ As shown in Appendix B, Exhibit 4, respondents to the Institute's member survey expect that, on average, each quarterly update will take about 10 hours per fund. By comparison, respondents estimate that it would take approximately 9 hours, on average, to complete the internal review process for the summary section of the statutory prospectus for each fund. See Appendix B, Exhibit 1. The additional hour for updating the Summary Prospectus likely accounts for the time necessary to file the document on EDGAR and to comply with Internet posting requirements.

²⁴ Third-party administrators for smaller fund complexes also benefit from staggered fiscal years among their fund clients, and have expressed similar concerns about the need to restructure their workforces to meet potential new client demand.

²⁵ Some members also expressed concerns about the capacity of the EDGAR system to accept over 8,000 filings in a very short timeframe at the end of each quarter, as well as the capacity of financial printers that process EDGAR filings.

²⁶ As discussed below, members believe that, for compliance purposes, intermediaries would likely establish policies requiring use of either the full or Summary Prospectus, and would not switch back and forth freely.

²⁷ Thirty-one percent of respondents (offering 38 percent of funds in our survey) reported that they expect to encounter severe bottlenecking. Twelve percent (offering 33 percent of funds in the survey) expect moderate to severe bottlenecking, and 31 percent (offering 21 percent of funds) expect moderate bottlenecking.

²⁸ Only 19 percent of responding complexes (offering only 3 percent of funds in our survey) indicated that they have sufficient staff. Most of these complexes are relatively small and therefore would likely have fewer funds and filings. In

noted that they would have to hire new staff, outsource job functions, and/or hire temporary staff. Forty-five percent of responding complexes (offering 1,758 funds or 55 percent of funds in our survey) stated that bottlenecking could be a significant factor in keeping them from opting to use Summary Prospectuses.²⁹

2. Printing and Distribution of the Updated Summary Prospectus

Institute members expect that a quarterly updating requirement would essentially require them to move to an “on demand” printing model for distribution of Summary Prospectuses, at least for purposes other than annual fulfillment.³⁰ We understand that it typically takes 10 to 15 business days for a statutory prospectus to be printed and delivered to fulfillment vendors. Even if this time were cut in half as a result of a shorter document,³¹ funds likely could not produce the Summary Prospectuses quickly enough to ensure the timely delivery of printed copies to the various destinations they would need to reach. Funds cannot take the risk that updated Summary Prospectuses might not be available when needed, because failure to deliver the printed copies in a timely fashion could result in an inability to sell the fund.³² As discussed below, shifting quickly to a print on demand regime 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 Prospectus.

a. Print On Demand for Post-Transaction Fulfillment

The use of print-on-demand technology for a wide variety of business and other purposes is steadily increasing due to its potential to improve the cost-effectiveness of certain document production and delivery processes. This trend is likely to continue as the technology continues to evolve. But the shift to a print-on-demand approach for mutual fund post-transaction fulfillment purposes is not a simple matter, even before costs are considered. Institute members have very elaborate systems – not to mention vendor contracts – to ensure that their prospectuses are printed and delivered to all of the

addition, several plan to outsource this function to a third-party administrator. The remaining respondents either did not respond to this question or answered “don’t know.” As noted above, third-party administrators themselves may not have sufficient current staff. *See supra* note 24.

²⁹ Only 24 percent of respondents (offering 23 percent of the funds in our survey) reported that bottlenecking would not be a factor. Of these complexes, half were smaller fund groups and/or have a small number of funds. The remaining respondents either did not respond to this question or answered “don’t know.”

³⁰ For annual fulfillment purposes, we believe that a Summary Prospectus could be offset print and shipped to a vendor, because annual mailings would not be required to happen within 30 days of quarter end. As noted above, some Institute members are considering using the Summary Prospectus *only* for annual mailings if quarterly updating is required.

³¹ This is a very generous estimate. While the Summary Prospectus is much shorter and might therefore be typeset and printed more quickly, printers would be overwhelmed with orders that would likely arrive and need to be completed and shipped within a very short time. Moreover, the 10 to 15 day estimate includes tasks that would not take less time as a result of a shorter document, such as shipping and stocking documents on the shelves of fulfillment vendors.

³² *See supra* note 26.

necessary locations in a timely manner for post-transaction fulfillment. For example, some larger fund complexes have their own print facilities, where they print some or all of their own materials, and then either use internal fulfillment centers or deliver the copies to other vendors for post-transaction fulfillment. Others outsource to a financial printer that prints in bulk and ships copies to needed locations – usually more than one – for fulfillment. And some use combined print/fulfillment vendors that either offset print and maintain stock, or print on demand.

Accommodating a print-on-demand environment on the fulfillment side would require a substantial initial investment.³³ A fund or vendor would not only need very expensive high-speed online printers, and the space to house them, but also a system for ensuring that, a month after each calendar quarter end, updated Summary Prospectuses for every fund they process are received and catalogued overnight to be put into use the following day. While we understand that a few large fulfillment vendors may be able to handle these tasks with relative ease, the in-house and smaller fulfillment vendors, as well as some broker-dealers that do not outsource post-transaction fulfillment, may not. As a result, many funds would need to reallocate internal resources currently devoted to printing, reconsider their vendor contracts, and potentially shift their business to the few, large vendors that have print-on-demand capabilities.³⁴ Broker-dealers that do not outsource fulfillment would either be forced to do so, because the volume of orders placed through them would be too high to be fulfilled through in-house printing, or would continue to use the statutory prospectus for fulfillment.

b. Print On Demand for Other Purposes

Institute members are also concerned about their ability to provide updated Summary Prospectuses for purposes other than post-sale and annual fulfillment. Many members currently send bulk copies of their statutory prospectuses to multiple proprietary or broker-dealer branch offices, for use in the pre-sale process (*e.g.*, to accompany marketing materials for purposes of Section 2(a)(10) of the Securities Act of 1933). Some also send prospectuses, either a single courtesy copy or bulk copies, to individual investment advisers who sell their funds.³⁵

³³ Fund complexes often make substantial investments to comply with changing regulations and business needs. In this case, however, use of the Summary Prospectus is optional, and so a fund complex may well defer adopting the more shareholder-friendly disclosure document – perhaps for several years – because of the need to allocate resources to build the necessary infrastructure to accommodate the quarterly updating requirements, particularly when faced with competing priorities for those resources.

³⁴ Twenty-nine percent of respondents to the Institute's member survey (accounting for 54 percent of funds in our survey) anticipate that their prospectus fulfillment process would change if they opted to use the Summary Prospectus. Representatives of smaller fund complexes have indicated to us that this is a particular concern for them, because they are currently more likely to use alternative fulfillment methods. These funds are justifiably concerned that they may not have the relationship leverage to obtain good prices or service from vendors that work primarily with much larger complexes.

³⁵ Over 65 percent of survey respondents, offering 77 percent of funds in our survey, reported that they shipped prospectuses to independent financial advisers.

Given the time limitations imposed by quarterly updating, funds would likely be unable to continue sending paper copies to these locations; instead, they would have to rely on making electronic copies available. Institute members are concerned that intermediaries would resist the cost shifting that would result if the intermediaries had to print their own copies. More importantly, broker-dealers, including those with branch locations or small offices, would have to develop internal systems or subscribe to a database or other system to ensure that updated Summary Prospectuses for all funds sold by the firm are received, catalogued and available for use at all locations on a timely basis.³⁶ This type of infrastructure does not exist today and would be very costly to implement, particularly for small, independent broker dealers. Ultimately, members believe that this compliance burden may result in limited or slow adoption of the Summary Prospectus by the broker-dealer community, with branches and independent broker-dealers in particular opting to use the statutory prospectus for pre-sale purposes.

C. Intermediary Compliance and Legal Concerns

A quarterly updating requirement may also create certain compliance and legal concerns for intermediaries. As discussed above, there is genuine concern about funds' ability to get the updated Summary Prospectuses to their destinations by one month after calendar-quarter end. If there were such a problem, ostensibly the intermediary could instead provide the statutory prospectus to new purchasers (assuming that the intermediary had a supply of statutory prospectuses on hand for this eventuality), at least until the Summary Prospectuses were completed. From a compliance perspective, however, there is a real concern that this substitution could be mistaken for an attempt to mislead shareholders by providing them with alternate information (such as more favorable performance information), and, therefore, it is not likely to be a viable solution. This concern may also lead some intermediaries to opt to use the statutory prospectus for pre-sale purposes.

As a related matter, Institute members are concerned that intermediaries may not want to use different documents for different funds (*i.e.*, Summary Prospectuses for those that provide them, and statutory prospectuses for those that do not), and that intermediaries' clients could be confused by receiving a statutory prospectus for some funds and a Summary Prospectus for others. Intermediaries might insist on using the statutory prospectus for all funds, particularly if a substantial number of funds opt not to use Summary Prospectuses, *e.g.*, if quarterly updating is required.³⁷

Intermediaries may also resist using Summary Prospectuses for the reasons described above, including: (1) the possible need to change existing business models (*e.g.*, broker-dealers that do not currently outsource post-transaction fulfillment may be forced to do so); (2) printing costs imposed by

³⁶ In addition, any remaining stock of the previous Summary Prospectus would need to be removed. While broker-dealers need to dispose of stale prospectuses today, the quarterly updating requirement would make this necessary on a more frequent basis, increasing the chances for error.

³⁷ See *supra* note 14 and accompanying text.

a print on demand environment may be shifted to broker-dealers and other intermediaries; (3) a new infrastructure would need to be developed to ensure that broker-dealers and other intermediaries have timely and convenient access to updated Summary Prospectuses; and (4) intermediaries may not want to run the risk that, if a quarterly update were unavailable and they delivered the statutory prospectus instead, this substitution might lead to allegations of improper sales practices. None of these concerns would exist if quarterly updating were not required.

D. Interpretive Questions and Technical Issue

The proposed quarterly updating requirement has generated several interpretive questions and at least one troublesome technical issue. In our view, these questions and issues are further evidence of the drawbacks of the quarterly updating requirement, because they illustrate that the requirement unnecessarily complicates the Commission's otherwise laudable proposal. We strenuously oppose the quarterly updating requirement; however, if the Commission nevertheless resolves to retain it, we offer the following comments and suggestions.

1. *Annual Updates*

Several Institute members and legal counsel have interpreted proposed Rule 498(e) to require, in certain circumstances, five updates. While we do not believe the Commission intended this result, there is some basis for the confusion. We understand that paragraph (e) is intended to allow a Summary Prospectus that has been "sent or given" to investors to be deemed valid for a year, in order to satisfy any annual delivery obligation.³⁸ To address the time at which a Summary Prospectus used for these purposes is no longer valid, this paragraph ties expiration to the date on which a fund is required to update its registration statement to satisfy Section 10(a)(3) of the Securities Act.

As written, however, Rule 498(e) could be read to imply that the Summary Prospectus currently in use would no longer be valid as of this date, which could be, under some circumstances, during a calendar quarter. For example, the annual update for a fund whose fiscal year ends November 30 must be filed by March 29.³⁹ At that time, the current Summary Prospectus, updated as of December 31, would be valid until April 30, when information from the quarter ended March 31 would be required. The proposed rule could be read to require the fund to update (and file on EDGAR) its Summary Prospectus on March 29, even though there would be no information to update.

³⁸ We recognize that the securities laws do not explicitly require funds to send annual updates to existing shareholders, but most Institute members follow this practice as a matter of course to ensure that their delivery obligations are continually met as to shareholders who make purchases of fund shares during the year.

³⁹ See Rule 8b-16 under the Investment Company Act of 1940, which provides that a fund must file an amendment to its registration statement on Form N-1A not more than 120 days after the end of each fiscal year ending on or after the date upon which the registration statement was filed.

We believe that a more appropriate reading of Rule 498(e) is that the expiration of the Summary Prospectus only applies to those that have been “sent or given” to investors, and not to the Summary Prospectus itself. We suggest that the adopting release make clear that a fund need not re-file an updated Summary Prospectus at the time its annual registration statement update is due. The end result would be that a fund using a Summary Prospectus to conduct its annual updating mailing would do so in conjunction with its registration statement update. We believe this is the intention of the rule as proposed.

This reading, however, presents two additional concerns. First, funds with off-calendar quarter fiscal year ends would be required to send or give duplicative Summary Prospectuses to certain investors. For example, in the scenario provided above, new investors in the fund between January 30 and March 29 would have received the December 31 quarterly Summary Prospectus following their purchase. On March 29, *all* Summary Prospectuses previously sent or given would become invalid; the fund would likely send out its current Summary Prospectus (as of December 31) to all shareholders. The recent investors would therefore receive the exact same information they received upon purchasing the fund.⁴⁰ Also, even if a fund filed its registration statement update early, it would have to wait to send an annual mailing until the date that the update was due to avoid a similar invalidation of just-sent Summary Prospectuses.

Funds should not be required to send these shareholders duplicate copies of a Summary Prospectus with the exact same content, updated as of the same quarter. If the final rule requires quarterly updating, we recommend that the Commission address this situation by adding the following language to the end of Rule 498(e)(1)(ii):

unless, on the date the Fund files an amendment to its registration statement for this purpose, the information contained in items [reference to top ten portfolio holdings and performance] of the Summary Prospectus that meets the requirements of paragraph (b) of this section, is identical to the information contained in items [same reference] of the Summary Prospectus that was sent or given.

Another problem is presented by this requirement with respect to funds with fiscal years that *do* coincide with calendar quarters. The due date for these funds’ registration statement updates will generally be two to three days prior to the deadline for a new Summary Prospectus. For example, a fund with a fiscal year end of March 31 is required to file an update to its registration statement by July 29. This would likely be the date on which it would send out a Summary Prospectus for annual update purposes. Its next updated Summary Prospectus, however, would not necessarily be available at least until July 31 (one month after quarter end). The result that existing shareholders might miss receiving more recent information by a few days seems unnecessary. This could be addressed by revising subparagraph (e)(1) to state that a Summary Prospectus is valid until the earlier of the time set forth in

⁴⁰ This assumes that there have not been any other material changes to the Summary Prospectus, in which case the Summary Prospectus would have already expired pursuant to proposed Rule 498(e)(1)(i).

(i), or a specified number of days *after* the fund is required to file an amendment to its registration statement. We recommend that the Summary Prospectus remain valid until 20 days after the registration statement update is due.

2. Incorporation by Reference – Updates to Summary Prospectus Legend

As proposed and as discussed further below, a Summary Prospectus may incorporate by reference information from certain additional documents, including the fund's statutory prospectus, SAI and most recent shareholder report. The legend in the Summary Prospectus must clearly identify the document or documents from which information is being incorporated, including the date of the document, and explain how that material can be obtained.

If quarterly updating were required, a Summary Prospectus for a fund with a fiscal year end that is other than a calendar quarter end would likely, at several points in any given year, incorporate outdated documents. For example, the annual registration statement update for a fund with a fiscal year end of October 31, 2007 is due February 28, 2008. Summary Prospectuses for that fund would be issued on January 31, 2008 (Q1), April 30, 2008 (Q2), July 30, 2008 (Q3), and October 31, 2008 (Q4). When first issued, the Q1 Summary Prospectus would incorporate by reference the 2007 statutory prospectus and SAI. But, during the period the Q1 Summary Prospectus is otherwise valid (on February 28), a new statutory prospectus and SAI would become available. Thus, between February 28 and April 30, 2008, when the Summary Prospectus was updated, the legend in the otherwise current (Q1) Summary Prospectus would incorporate by reference an outdated prospectus and SAI.⁴¹ The fund's annual and semi-annual reports would present a similar problem: these reports would be transmitted by June 29 and December 30,⁴² rendering the legends in the Q2 and Q4 quarterly Summary Prospectuses out of date.

As a practical matter, few if any funds would risk that they have incorporated by reference outdated information and be in technical violation of the incorporation by reference and other provisions of the proposed rule. Thus, a fund with an off-calendar quarter fiscal year could conceivably be required to file a total of *seven* "quarterly" updates each year, just to ensure its incorporation by reference remains valid.⁴³

⁴¹The website address required to be provided in the same legend will, as it should, lead investors to the updated versions of those documents.

⁴² See Rule 30e-1(a) and (c) under the Investment Company Act of 1940, which provide that a fund must transmit a report to stockholders semi-annually, within 60 days after the close of the period for which such report is being made.

⁴³ A fund with an October 31 year end would update its Summary Prospectus on or about the following dates: Jan. 31; Feb. 28; April 30; June 29; July 30; Oct. 31; and Dec. 31. As discussed below, *infra* note 64 and associated text, we recommend that a fund be permitted to incorporate by reference *both* its annual and semi-annual reports to shareholders. Doing so, however, would not fix this problem.

E. Alternative Approach

As an alternative to the quarterly updating requirement, we propose requiring that the legend at the beginning of the Summary Prospectus⁴⁴ specify that a shareholder can find updated performance and top ten portfolio holdings information (if required) on a specified website and at the toll-free number provided. We believe that this approach would maximize funds' use of the Summary Prospectus, as well as provide substantial cost savings, both of which accrue to investors' benefit, while providing investors who seek updated information with convenient access to it. Including this direction in the required legend would sufficiently draw investors' attention to the availability of the information, while avoiding the concerns expressed above that threaten to make the Summary Prospectus significantly less attractive for fund families.

II. Use of the Summary Prospectus: Addressing Liability and Compliance Concerns

As proposed, Rule 498 would allow funds to meet their prospectus delivery obligations under Section 5(b)(2) of the Securities Act by delivering only the Summary Prospectus, subject to certain conditions. In addition, the rule would permit the Summary Prospectus to incorporate by reference information from the statutory prospectus, SAI and shareholder reports – again, subject to certain conditions. The rule further provides that certain sales material will not be deemed a prospectus under Section 2(a)(10) of the Securities Act if it is accompanied or preceded by a Summary Prospectus, also subject to various conditions.

The applicable conditions in each case include requirements regarding the availability of fund documents on the Internet, as well as certain electronic formatting requirements. Under the proposal as currently structured, failure to meet these requirements could give rise to a private right of action under Section 12 of the Securities Act, potentially subjecting funds to strict liability. To our knowledge, none of the Commission's existing regulations imposing similar technological requirements (*e.g.*, Internet Availability of Proxy Materials) have implicated private rights of action under the federal securities laws. Given the novelty of the proposal's conditioning obligations enforceable by private rights of action on meeting prescribed technological requirements, we cannot stress enough the importance of due care and precision in formulating these requirements so as to ensure that funds are not subject to the distraction and costs of unwarranted litigation, notwithstanding their good faith efforts to satisfy the requirements.

The Institute believes that the Commission recognizes these concerns⁴⁵ and has gone to great lengths to seek to ensure that proper use of the Summary Prospectus does not subject funds to the threat of new or additional legal liability. We applaud the Commission's efforts. The proposed

⁴⁴ See Proposed Rule 498(b)(1)(iv).

⁴⁵ The fund profile floundered in large part because liability concerns discouraged most industry participants from using it. See, *e.g.*, Tom Leswing, "Profile Prospectus Rule Expected Soon," *Ignites*, Mar. 28, 2007.

approach largely achieves the Commission's goal, and thus goes a long way toward addressing the concerns surrounding liability that prevented many funds from using fund profiles.

We are concerned, however, that certain aspects of the rule may unintentionally increase funds' litigation risk and associated costs by potentially affecting whether a lawsuit against a fund will survive a motion to dismiss. We also suggest changes to certain of the conditions imposed by the rule, which we believe will adequately achieve the Commission's goals, without compromising investor protection, while decreasing the costs and potential risks of using the Summary Prospectus. The conditions relating to provision of the statutory prospectus, SAI and shareholder reports on the Internet are discussed in more detail in Section III.

A. Potential for Increased Litigation Risk and Associated Costs

1. *Risks Created by Certain Terms*

The Institute strongly supports the Commission's objectives of providing investors with "information that is easier to use and more readily accessible, while retaining the comprehensive quality of the information that is available today."⁴⁶ Subject to our comments in this letter, we believe the Commission's proposed requirements to achieve its goals are appropriate and reasonable. We believe, however, that certain terms used in the proposed requirements associated with the satisfaction of a fund's delivery obligations under Section 5(b)(2) of the Securities Act, its ability to incorporate by reference specified information from other fund documents, and its use of the Summary Prospectus to accompany or precede sales material, may create unintended litigation risk and associated cost.

As proposed, a fund may only rely on Rule 498 to meet its delivery obligations under Section 5(b)(2) if the Summary Prospectus is given "greater prominence" than any materials accompanying it,⁴⁷ if it meets the general requirements set forth in proposed Rule 498(b), and if the requirements surrounding availability of the fund's statutory prospectus and other materials, set forth in proposed Rule 498(f), are met.⁴⁸ The same requirements apply if a Summary Prospectus is provided along with sales material pursuant to Section 2(a)(10) of the Securities Act. They include: (1) the website on which materials required to be accessible under the rule (*i.e.*, statutory prospectus, SAI and shareholder reports), if it is a central site, must have "prominent links" to each document⁴⁹; (2) the Summary Prospectus legend must "clearly identify" any document from which information is incorporated by reference⁵⁰; (3) the materials required to be accessible must be presented on the website in a format or

⁴⁶ Proposing Release at 11.

⁴⁷ Proposed Rule 498(c)(1).

⁴⁸ We request that the Commission clarify that, if a statutory prospectus is delivered to a shareholder, that shareholder shall not have a valid claim against a fund for failure to comply with the requirements and conditions of Rule 498 after receiving the statutory prospectus, notwithstanding a fund's initial delivery of a Summary Prospectus in reliance on Rule 498.

⁴⁹ Proposed Rule 498(b)(1)(iv)(A).

⁵⁰ Proposed Rule 498(b)(1)(iv)(B).

formats that are “convenient for both reading online and printing on paper”⁵¹; and (4) if the Summary Prospectus includes links to the tables of contents in the statutory prospectus and SAI, rather than directly to sections of those documents, the tables of contents must “prominently display” the sections within the documents that provide additional detail concerning information contained in the Summary Prospectus.⁵²

The proposed rule further provides that a fund may incorporate by reference certain specified information into its Summary Prospectus if, among other things, it complies with requirements (2)-(4) above. Incorporation by reference is a critical element of liability protection because, even if a fund meets its delivery obligations under Section 5(b)(2), absent successful incorporation by reference it could be alleged to have omitted material information not contained in the Summary Prospectus itself.⁵³ A fund’s alleged failure to meet its delivery obligations, or its delivery of a document allegedly containing a material misstatement or omission,⁵⁴ could result in private litigation being filed under Section 12 of the Securities Act, under which a shareholder may have a right of rescission.

The Institute is concerned that by requiring funds to satisfy these requirements in order to meet their delivery obligations, incorporate specified information by reference into the Summary Prospectus, and avoid delivering deficient prospectuses in the form of supplemental sales literature, the proposed rule may increase funds’ risks and costs of litigation under Section 12. More specifically, the current wording of these requirements may leave some courts unwilling to resolve Section 12 lawsuits as a matter of law on motions to dismiss (*i.e.*, under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim on which relief can be granted). The assessment of a fund’s compliance with one or more of these requirements – and therefore, its compliance with its statutory delivery obligations, successful incorporation by reference, and/or use of the Summary Prospectus to accompany or precede sales material pursuant to Section 2(a)(10) – may be viewed by some courts as requiring a fact-based inquiry precluding resolution on a motion to dismiss. For example, some courts may be reluctant to determine, as a matter of law on a motion to dismiss, that a particular document has

⁵¹ Proposed Rule 498(f)(2)(i).

⁵² Proposed Rule 498(f)(2)(iii)(B).

⁵³ The Proposing Release suggests that incorporation by reference is not necessary in order for a Summary Prospectus to satisfy a fund’s statutory delivery obligations: “The Commission believes that a person that provides investors with a mutual fund Summary Prospectus in good faith compliance with the proposed rule would be able to rely on Section 19(a) of the Securities Act 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.” Proposing Release at 71. Even so, the Institute believes that many funds may seek the additional assurances associated with explicit incorporation by reference, and that it is therefore important to eliminate any imprecision in the requirements in the proposed rule relating to incorporation by reference.

⁵⁴ If a fund provides supplemental sales literature together with a Summary Prospectus, but fails to comply with the applicable conditions of proposed Rule 498, the sales material may be deemed a prospectus – potentially a materially deficient one.

“greater prominence” than another, or that a document is “convenient for viewing online and printing on paper.”

The Institute believes that a fund that takes reasonable steps to comply with the rule will be able to demonstrate its compliance with such requirements at some point during the course of litigation. If the effect of the requirements, however, is to permit lawsuits to proceed to discovery that otherwise would be terminated on a motion to dismiss, the impact of the rule will be highly detrimental, both in terms of the substantial additional defense costs accruing to the fund and possible reputational harm. Indeed, the costs associated with the defense of funds in litigation are ultimately borne by fund shareholders, as such costs are either paid directly by funds or can ultimately be expected to be reflected in the premiums paid by funds for insurance.

We do not believe that the risk of possible protracted litigation and associated costs outlined above, standing alone, will likely prevent widespread use of the Summary Prospectus. It is, however, another factor to be considered by Institute members as they weigh the costs and benefits of using the new document. Fortunately, we think this problem can be easily solved. Our proposed solutions are discussed below.

2. *“Greater Prominence” Requirement*

The “greater prominence” requirement presents the most serious concerns. At present, there is no similar standard to which funds may look for precedent on how such a requirement would be interpreted.⁵⁵ Institute members are concerned that regulatory and judicial views as to compliance with the standard would be extremely subjective and would vary widely. Absent clear guidance on how to approach such a requirement, funds may elect not to use the Summary Prospectus with supplemental sales literature, negating one of the benefits of the proposal. Further, having decided not to use the Summary Prospectus for these purposes, adopting it for other purposes may be less appealing.

Under proposed Rule 498, the standard requires a comparison between or among separate documents, each of which may have its own presentation and delivery requirements, and thus raises significant and novel compliance and interpretive questions. For example, would “greater prominence” require the Summary Prospectus to be printed in color, particularly if other materials that accompany it are in color? If so, this would have cost implications for many funds. Would funds have to use larger and/or bolder-face type for their Summary Prospectus than for any accompanying materials? How would a fund achieve compliance if the Summary Prospectus is mailed together with other important disclosure documents, such as the fund’s annual report, a trade confirmation, privacy notice, or Summary Prospectuses for other funds (which presumably should also be “prominent”)? And what would be necessary to comply in the electronic context?

⁵⁵ While other provisions of the securities laws include “prominence” standards, to our knowledge, these “prominence” standards only require comparisons of information presented within a single document. *See, e.g.*, Rule 482 under the Securities Act.

We strongly support permitting other materials to accompany the Summary Prospectus, as the Commission has proposed. We understand from members that they hope to use the Summary Prospectus along with other materials; therefore, continuing to allow this flexibility should add to the potential benefits, including cost savings, from use of the Summary Prospectus. We also understand the Commission's interest in assuring that the Summary Prospectus will not be the proverbial "needle in a haystack" when other materials accompany it. Still, we question the need for the "greater prominence" requirement. No such requirement exists today with respect to the statutory prospectus, including when it is provided along with sales material in accordance with Section 2(a)(10) of the Securities Act. It is our strong expectation that the Summary Prospectus will be more appealing to investors specifically because of its less daunting size, and therefore will be more likely to be read than the statutory prospectus.⁵⁶ Further, the prohibition on binding other materials together with the Summary Prospectus serves the same goal as the "greater prominence requirement" and, in our view, sufficiently accomplishes it.

If the Commission remains convinced that additional measures are necessary to call attention to the Summary Prospectus, we recommend that the Commission replace the greater prominence requirement with a more specific and objective approach. One such approach would be to require a bold legend at the top of the Summary Prospectus stating: **Important Information – Please Read.** Alternatively or in addition, the rule could provide that a Summary Prospectus may not be inserted between two pieces of sales literature, or that it must be on top of any sales literature.⁵⁷ For electronic documents, the rule could indicate that providing a link to the Summary Prospectus in an email will meet the requirement if that link precedes any other links provided in the same email. We do not believe that any such limitations are necessary when a Summary Prospectus is sent or given with other documents required by the Commission, such as transaction confirmations, shareholder reports, privacy notices, or other Summary Prospectuses.

Finally, if the Commission nevertheless retains the "greater prominence" requirement in the final rule, we strongly suggest that the Commission make the requirement a condition of compliance with Rule 498, but not a condition of satisfying delivery obligations under Section 5(b)(2), successful incorporation by reference, and/or use of the Summary Prospectus to accompany or precede sales material.⁵⁸ Doing so will protect funds that attempt in good faith to comply with the requirement from

⁵⁶ In addition, 38 percent of respondents to the Institute's member survey indicated that they expect to print Summary Prospectuses in color. *See* Appendix B at note 15.

⁵⁷ We note that a requirement that the Summary Prospectus be "on top" of all documents in an envelope could be problematic, because it may be mailed in a window envelope, necessitating an address slip or document with the recipient's address (such as a transaction confirmation) to be placed "on top" of the Summary Prospectus, in order for the address to show through the window.

⁵⁸ The current proposal treats certain delivery provisions – specifically, the requirement that a fund send a paper or electronic copy of the statutory prospectus, SAI, or shareholder reports to a requesting person within three days – as a condition of the rule, but one that does not determine compliance with the fund's statutory delivery obligations. *See* Proposed Rule 498(g).

the risk of unwarranted litigation. At the same time, we are confident that this change will not diminish investor protection, as the ability to satisfy delivery obligations, use the Summary Prospectus to accompany or precede sales material, and incorporate by reference will still be contingent on, among other things, compliance with most of the general requirements for the Summary Prospectus,⁵⁹ as well as the requirement that additional information be made available on the Internet. In addition, the SEC staff will be able to examine fund compliance with the rule, fund compliance programs under Rule 38a-1 under the Investment Company Act of 1940 will need to address compliance with the rule, and funds would face enforcement proceedings and related reputational harm if they fail to comply with the rule's terms.

We further request that the adopting release provide examples of what would constitute compliance in various common scenarios such as those described above. We believe this would help funds to develop industry practices for addressing other circumstances that might arise. We also request that the Commission clarify that the standard would not apply to multiple Summary Prospectuses provided together, either in paper or electronically – that is, the Summary Prospectuses would not have to meet the greater prominence standard relative to each other.

3. Proposed Revisions to Other Problematic Terms

We believe that certain terms contained in the other requirements described in Section II.A.1 are unnecessary, and could be deleted or rephrased to avoid creating potential ambiguity while still accomplishing the Commission's intent. First, the term "prominent," as used in "a central site with prominent links to each document," is potentially inaccurate⁶⁰ and, we believe, unnecessary to describe the envisioned site. Similarly, the word "clearly," in the requirement that the Summary Prospectus legend "clearly identify the document from which information is incorporated," does not seem useful or necessary, and should be deleted. If the Commission has in mind ways of identifying documents that either would or would not be sufficiently "clear," it would be more helpful to provide specific examples in the adopting release. Additionally, the requirement that a document be "convenient for both reading online and printing on paper" could be revised, without losing its meaning, to read: "capable of being both read online and printed in paper (*e.g.*, in PDF)."⁶¹ Finally, the requirement that a table of contents of a document "prominently" display the sections contained in that document seems unnecessary, since a table of contents by definition lists the sections that follow.

⁵⁹ These requirements include all of the content requirements set forth in Proposed Rule 498(b)(1)(i)-(iv) (except for the specific details regarding the legend), as well as the Internet availability requirement of 498(f)(1) and the requirement, under 498(f)(3), that the documents be capable of being saved.

⁶⁰ This requirement is discussed in more detail in Section III.A.1. below.

⁶¹ This change not only would eliminate the possible need for a fact-based inquiry on whether a format is "convenient," but would also offer a "safe harbor" for the technology that is most likely to be used in the near term, without precluding the use of other formats in the future.

If the Commission elects not to eliminate or revise these requirements as we propose, we recommend that the Commission make them conditions to compliance with the rule, rather than conditions of satisfying delivery obligations under Section 5(b)(2), successful incorporation by reference, and/or use of the Summary Prospectus to accompany or precede sales material.

B. Not Bound Together

As a general matter, we support the proposed requirement that, for purposes of statutory delivery obligations, the Summary Prospectus may not be bound together with any other materials. We agree with the Commission's intention to prevent the Summary Prospectus from "being obscured by accompanying sales materials."⁶² There are, however, several contexts in which Institute members believe that exceptions are warranted. We note that none of the suggested exceptions contemplates binding the Summary Prospectus with marketing material. Thus, we recommend that the Commission specifically prohibit the Summary Prospectus from being bound together with sales materials. Alternatively, we request specific carve-outs for the circumstances described below.

First, some Institute members currently bind the privacy notice required by Regulation S-P to their statutory prospectuses. They would like to do the same with their Summary Prospectuses. These members believe that binding the two documents together better ensures compliance with the privacy notice delivery obligation than simply sending the two documents together. Permitting a privacy notice to be attached to a Summary Prospectus should not implicate the concerns that are the basis for the prohibition.

Similarly, Institute members affiliated with variable insurance product issuers have suggested that those issuers would welcome the ability to bundle several Summary Prospectuses in place of the statutory prospectuses they currently use for disclosure purposes. They envision binding Summary Prospectuses of the underlying funds with the prospectus for the variable insurance product and other documents that must be delivered to consumers, such as the insurer's privacy notices. Such binding (using statutory prospectuses) is commonly done today in order to ensure that a registered representative of a broker-dealer selling the variable insurance product delivers all required documentation. These members have suggested that they would not use Summary Prospectuses in the insurance context if they could not bundle them with these materials.⁶³

Additionally, if the rule as ultimately adopted requires a separate Summary Prospectus for each fund, many members believe that it would be beneficial to investors to permit the binding of Summary Prospectuses for certain similar types of funds that an investor may wish to view as a set, such as money market, asset allocation or target date funds.

⁶² Proposing Release at 42.

⁶³ Variable annuity funds account for 22 percent of the total number of mutual funds as of December 2007.

Finally, we recommend that the Commission permit Summary Prospectuses to appear in a newspaper or magazine. So long as the Summary Prospectus meets the requirements of Rule 498, there does not appear to be any significant policy reason to prohibit such a presentation. If the Commission does not follow our recommendation above to eliminate the greater prominence standard, it would need to create an exception or address how compliance would be achieved when a Summary Prospectus is published in a newspaper or magazine.

C. Incorporation by Reference

We strongly support the Commission's proposal to permit incorporation by reference of certain enumerated information. Subject to the recommendations above for addressing litigation risks, we agree that it is appropriate to require that funds make any information that is incorporated by reference available on the Internet and in paper or by email upon request within three days. We have the following technical comments.

Under the proposal, a fund may incorporate by reference information from its statutory prospectus, SAI, or most recent report to shareholders. We recommend that funds be permitted to incorporate by reference information from *both* the most recent annual shareholder report and most recent semi-annual shareholder report. The annual and semi-annual reports are not interchangeable. Annual reports are required to contain audited information, for 12 months, while semi-annual reports may contain unaudited financials and cover only a six-month period. A fund should not be restricted to incorporating its 12-month, audited financials to just six months of the year.⁶⁴

We also commend the Commission for seeking to clarify, through its explicit statement in proposed Rule 498(b)(3)(C)(iii), that information that is incorporated by reference into the Summary Prospectus is deemed to be received no later than with the Summary Prospectus (*i.e.*, as part of the Summary Prospectus). Clarification of the relationship between Rule 159 and the proposed Summary Prospectus is important to eliminate some confusion in the mutual fund legal community about the effect of Rule 159. We suggest, however, that the explicit reference to Rule 159 in the Rule text be deleted, and that the language in the adopting release not limit the application to Rule 159. We believe that, as written, the statement could be read to imply that information incorporated by reference into the Summary Prospectus would *not* be deemed to be part of the Summary Prospectus for purposes *other* than Rule 159. This reading would be inconsistent with a previous statement by the Commission, when it adopted Form N-1A, that information incorporated by reference would be considered part of the document into which it is incorporated as a matter of law.⁶⁵

⁶⁴ We believe the Commission may have intended to permit incorporation by reference of both reports, as this would be consistent with the requirement under the proposed rule that a fund's most recent annual and semi-annual reports must be made available online and upon request.

⁶⁵ Registration Form Used by Open-End Management Investment Companies, Aug. 12, 1983, *supra* note 4, at 37930.

We further suggest that the rule state that “information is conveyed to a person not later than the time that a Summary Prospectus is “*conveyed to the person,*” rather than “*received by the person.*” A fund can only control when information is conveyed; it would have no way to document, for compliance or litigation purposes, when such information is received.

III. Provision of Statutory Prospectus, SAI and Shareholder Reports (Technology Requirements)

The Institute strongly supports in concept the Commission’s proposed framework for requiring the statutory prospectus, SAI and shareholder reports to be made available on the Internet, and in paper or electronically by request.⁶⁶ We commend the Commission for approaching this regulation in a technology-neutral manner. We recognize the importance, and difficulty, of drafting regulations that both work in the current technological environment and are flexible enough to adapt to future technology.

We stress, however, that while the possibilities for new and improved presentations of information are virtually limitless, widespread use of the Summary Prospectus in the near term depends on required technology changes being evolutionary, rather than revolutionary. First, many fund complexes have already voluntarily invested substantial resources in technology to develop and maintain websites that offer investors and intermediaries a wealth of fund and other investment and market information, educational materials, and interactive features such as expense calculators and retirement planning tools. While they are clearly committed to using electronic media in ways that benefit investors, our members have indicated that if the technology requirements for Summary Prospectuses make it necessary to radically revamp existing systems and formats, the costs involved will markedly dampen interest.⁶⁷

Second, while we agree that the Commission’s layered disclosure concept makes a great deal of sense and is worth pursuing, additional developments – beyond those that can be accomplished through the presentation requirements in the Summary Prospectus proposal – are necessary to fully realize the Commission’s vision. The current requirements for the content and structure of fund registration statements were not developed with layered, web-based presentations in mind; as a result, the logical relationships between summary and detailed disclosures are not well defined. Over the longer term, the Commission should consider rethinking and perhaps completely refashioning the

⁶⁶ Because the proposal provides ample means for individuals to obtain this information in paper or electronically, we believe that a provision allowing investors to opt out permanently, and thereafter receive a paper copy of the statutory prospectus, is unnecessary. Moreover, the resulting complications and associated costs of tracking and customizing investors’ annual mailings (which funds currently do not do), relying on intermediaries to do so for investors that do not purchase directly, and potentially facing different obligations for mailing prospectus stickers depending on whether an investor uses electronic mechanisms or opts for paper, add still more possible barriers to adoption of the Summary Prospectus. These complications are especially acute for omnibus accounts.

⁶⁷ Thirty-three percent of respondents offering 1,573 funds (49 percent of funds in our survey) noted that the proposed technology requirements either would be a significant impediment to adopting the Summary Prospectus or would account for more than 50 percent of their initial time burden to adopt the Summary Prospectus.

current requirements, such as by requiring funds to submit data, rather than forms. Efforts of this type will take time, but the Commission should not stall the important progress of the current proposal. Statements in the adopting release indicating the Commission's future intentions to further the use of technology to fully achieve the goals of layered disclosure will allow the fund industry to develop web-based tools over time that are in accord with the Commission's future rulemakings in this area.

The detailed comments that follow are generally intended to clarify the proposed requirements in light of the applications Institute members tell us they would use for initial implementation of the Summary Prospectus.

A. Posting Documents on the Web

1. *"Central Web Site With Prominent Links"*

We support the proposed requirement that the Summary Prospectus, statutory prospectus, SAI, and most recent annual and semi-annual reports be available free of charge on the Internet at a site other than EDGAR. We also agree that it is important to include an Internet address in the legend on the Summary Prospectus that will allow investors to find this additional information with ease. We expect that many fund groups would comply with this requirement by providing the address of a Web page from which an investor could select his or her fund from a list of funds.⁶⁸ Having selected a fund by clicking on it or selecting it from a drop down menu, the investor from there would be able to access the fund's documents.⁶⁹ Alternatively, the page could contain a list of funds as well as links to each of the required documents.

We believe that the process we describe is consistent with the Commission's vision. We are concerned, however, that the rule text requiring a "central site with prominent links to each document" may not accurately describe this initial Web page. For example, a complex comprising 25 funds may include in a Summary Prospectus legend a link to a page with each fund listed alphabetically and, in table format, links to each fund's Summary Prospectus, statutory prospectus, SAI, annual report and semi-annual report. Such a page would contain 125 links; while an investor should not have any difficulty finding what he is looking for, it may not be accurate to describe each of those links as "prominent."⁷⁰ We therefore propose removing the word "prominent." We further recommend that the adopting release provide examples of the types of processes that would satisfy the requirement, such as the one described above.

⁶⁸ See illustration, attached as Appendix C, Exhibit 1.

⁶⁹ Some fund groups require the viewer to consent to receiving the electronic version of the prospectus before viewing or downloading it.

⁷⁰ See also *supra* Section II.A of this letter, regarding potential increased litigation risks associated with this and certain other requirements.

2. “Current Versions”

The proposed rule would require funds using the Summary Prospectus to maintain “current versions” of the Summary Prospectus, statutory prospectus, SAI and shareholder reports on the Internet for at least 90 days after either the fund security is carried or delivered, or the communication is sent or given. We interpret “current” to mean updated as necessary, rather than “current” as of the date the security was carried or delivered or the communication was sent or given. That is, if during the course of the 90-day period after a Summary Prospectus was delivered, the fund filed an annual update to its registration statement, the fund would be required to maintain its *updated* statutory prospectus and SAI on the Internet, but not the version that was current when the Summary Prospectus was delivered (which has been superseded).⁷¹ Assuming our interpretation reflects the Commission’s intention, we support this requirement. We request that the Commission clarify, in the adopting release, that a fund would never be required to maintain stale content on the Internet.

B. Formatting Requirements for Documents Posted on the Web

1. *Links From a Table of Contents to the Referenced Sections of the Same Document (Internal Links)*

Proposed Rule 498(f)(2)(ii) would require a person accessing the statutory prospectus or SAI to be able to “move directly back and forth between the table of contents in such document (including from the table of contents required by § 230.481(c)) and each section of the document referenced in the table of contents.” We believe that, using current technology – specifically, Adobe Acrobat, the format most commonly used today for electronic versions of fund disclosure documents – the intent of the requirement could be achieved by either (1) “hyperlinks” (*i.e.*, links from specific words in a table of contents) or (2) “bookmarks” (*i.e.*, a document index replicating the table of contents, but displayed in a separate panel to the left of the document itself).⁷² The proposed rule text appears to permit only the first method. We suggest certain modifications to clarify that both of these alternatives comply with a literal reading of the rule.⁷³

⁷¹ Fund complexes typically overwrite old materials to ensure that superseded content is never accessible to the public. Thus, the new statutory prospectus would replace the old one in the identical location, so that links to the old prospectus would automatically lead to the current one.

⁷² See illustration, attached as Appendix C, Exhibit 2.

⁷³ We believe that, at present, bookmarks may be the preferred manner of implementing this requirement, because they can be visible at all times. Thus, a viewer would not have to go “back” from a section of text in order to find a link to another section of text. In addition, if a link from the Summary Prospectus takes the viewer to a hyperlinked table of contents in the statutory prospectus, the viewer could miss important stickers (which are typically placed before the cover page, because Rule 481(c) requires the table of contents to immediately follow the cover page). This problem will not occur if a fund uses a bookmark presentation, because the viewer can be taken simultaneously to *both* the table of contents (on the left side of the screen) and the sticker, which would appear as the first page of the document (on the right side).

While bookmarks typically replicate a document's table of contents as a matter of course, they are not technically "in" the document; rather, they sit in a separate frame on the side of a document, and do not appear when a document is printed.⁷⁴ This has two implications for the proposed rule text. First, the rule should require links from "*a* table of contents of such document," rather than "*the* table of contents *in* such document." These changes will make clear that either hyperlinks or bookmarks may be used.⁷⁵ Additionally, the requirement that there be links from the Rule 481(c) table of contents must be changed, because by definition the Rule 481(c) table of contents must be *in* the document, in a prescribed location. We do not think the cross-reference to Rule 481(c) is necessary, because the bookmark index would, as a matter of course, replicate the document's table of contents. We therefore suggest deleting it.⁷⁶

2. *Links From the Summary Prospectus to the Statutory Prospectus and SAI (External Links)*

The rule would also require a viewer to be able to move between sections of the Summary Prospectus and "A) any section of the statutory prospectus and SAI that provides additional detail concerning that section of the summary prospectus, or B) tables of contents in the statutory prospectus and SAI that prominently display the sections within those documents that provide additional detail concerning information contained in the summary prospectus."⁷⁷

As a preliminary matter, Institute members unanimously report that they would choose to comply with the second option, because of the interpretive questions raised by the first option ("*any* section that provides additional detail") and the number of links that could result. The sections of the Summary Prospectus are not designed to flow naturally into the statutory prospectus, nor the statutory prospectus into the SAI. As a result, it could be difficult to identify the specific sections of the larger documents that should be linked to any section of the Summary Prospectus. Moreover, even if those sections were identified, compliance might require three or more links at the end of a single section of the Summary Prospectus, which could make for a confusing graphical presentation and a frustrating number of clicks by a user.

⁷⁴ We note that the PDF bookmark screen can be closed and re-opened at the option of the viewer. The designer of the viewed document can mandate that the document open with the bookmarks in view, but cannot prevent a viewer from closing them. The ability of users to interact with their personal computers, such as by closing windows, is unavoidable, regardless of the technology used. The fact that a viewer can close the bookmark window, just as he can close any other document, should not raise any heightened investor protection concerns and should not preclude the use of this device.

⁷⁵ We note that, while our illustration above references Adobe Acrobat, "bookmarks" are not limited to Adobe – a navigational panel displayed to the left of a document can also be implemented in HTML. Our recommendation is not intended to be technology-specific.

⁷⁶ Alternatively, the rule could require links to "the sections described in the Rule 481(c) table of contents."

⁷⁷ As noted above, we do not believe that the word "prominently" is necessary here, as a table of contents by definition displays the sections within the document it describes.

We expect that the second option would be implemented by placing, at the end of each section of the Summary Prospectus, a statement to the effect of: “For more information, see the statutory prospectus or statement of additional information,” with the underlined or highlighted text linking to the table of contents of the described document.⁷⁸ While we believe that such a requirement is not particularly onerous, we note that this, too, would make for a cluttered presentation – particularly in the paper version that is delivered to investors.⁷⁹ Additionally, the appearance of so many links in so many places might create mistaken expectations about where the links would lead (*i.e.*, a reader might expect to link to specific sections within the prospectus and/or SAI, rather than to the same place – the table(s) of contents – over and over again). For all of these reasons, we suggest that the Commission not require links after every section. Alternatives might include requiring links at the beginning and end of the Summary Prospectus, or allowing funds the option of structuring the presentation so that the links are always clearly visible on the computer screen.⁸⁰

We would also like the Commission to clarify the meaning of the language “back and forth” as it relates to viewing two separate documents. When a viewer of the Summary Prospectus clicks on a link to the statutory prospectus, current best practices would dictate that a new window, or new screen in the same window, would open to display the statutory prospectus. The viewer could then navigate through the statutory prospectus using the links or bookmarks provided, as discussed above. The Summary Prospectus would remain open on the viewer’s computer in a separate window or screen, so he could easily return to it.⁸¹ He could not do so, however, by clicking a “back” button. We believe that the rule text adequately addresses this most likely scenario, but we suggest that the adopting release acknowledge that movement between multiple windows constitutes “back and forth.”

C. Saved Documents

We support the proposed requirement that a viewer must be able to permanently retain any of the required documents, in a format that is convenient for reading online and printing on paper and that maintains its internal links. As the Commission implicitly recognized with its questions, however, this requirement presents a complicated issue with respect to technology.

The proposal would not require that a saved document (in particular, the Summary Prospectus) maintain its links to other documents (*i.e.*, the statutory prospectus or SAI). We support this

⁷⁸ Presumably, there would be a link to either one or the other or both documents, depending on where additional information on a particular topic resides.

⁷⁹ Based on the requirements that the “current Summary Prospectus” be available online, and that the online version be “convenient for both reading online and printing on paper,” we do not believe the proposed rule envisions that funds would maintain two versions of the Summary Prospectus (*i.e.*, one for paper delivery and one for online presentation). Thus, any links included in the online version would be visible on the paper version.

⁸⁰ This could be accomplished through technological solutions such as frames.

⁸¹ See illustration, attached as Appendix C, Exhibit 3.

approach, because it would be difficult to ensure that such links would remain active and accurate in perpetuity. It is also not possible, however, to ensure that such links are deactivated when a viewer saves a document.⁸² Institute members report that typically such links would continue to direct a viewer to the *current* version of the target document.⁸³ Over time, though, this could change for any number of reasons, such as because a fund has changed its name or merged, or because the fund has redesigned its Web architecture or changed its file-saving protocol. In all likelihood, if the link did not direct a viewer to the current document, the viewer would reach an error page.

We have concerns about the potential for legal challenges, such as allegations of misstatements or omissions as a result of active links in saved documents. A viewer might expect, for example, that a link in a Summary Prospectus saved in 2008 would, in 2012, take him to the 2008 statutory prospectus, when in fact it would almost certainly take him to either the 2012 prospectus or an error page. Over time, we hope that other technology solutions for managing expired links will emerge. In the meantime, we request that the Commission include an express statement *in the rule* to the effect that, once a document is saved, a fund is not responsible for maintaining the external links it contains and that failure to maintain a link, or to notify a viewer of the date of the document to which he or she has been directed, will not be a basis for legal liability.⁸⁴

D. Provision of Documents by Email Upon Request

The proposed rule would require that a fund send, by email, an “electronic copy” of the fund’s statutory prospectus, SAI, or shareholder reports to any person requesting such a copy. We believe that sending, by email, a direct link to the requested document on the Internet should satisfy this requirement, and we request that the rule clarify this – otherwise, the word “copy” could be interpreted to mean that compliance could only be achieved by sending a copy of the file as an attachment to an email.

Under the current e-delivery regime, materials are typically delivered via an email with a link to the target document.⁸⁵ Institute members tell us that this is considered a best practice for electronic delivery for several reasons. First, it is more convenient for the recipients. Downloading attachments to emails takes bandwidth – a significant amount of bandwidth for large documents such as the statutory

⁸² To be clear, a fund could post a version of the document on the Internet without active links, and invite a viewer to “click here to save a copy of this document.” The fund could not, however, prevent a viewer from instead saving the version that meets the requirements of paragraph (f)(iii) relating to external links. If a viewer saves that version, the external links in the document will remain active for some period of time.

⁸³ See *supra* note 71.

⁸⁴ As discussed in more detail below with respect to e-delivery of links, an alternative solution could be to prescribe a timeframe during which a link must remain active, such as 90 days, after which there is no obligation to maintain it.

⁸⁵ This practice satisfies disclosure delivery requirements under the federal securities laws for investors who have consented to that form of delivery. See Use of Electronic Media for Delivery Purposes, SEC Release Nos. 33-7233, 34-36345, and IC-21399 (Oct. 6, 1995), 60 Fed. Reg. 53458 (Oct. 13, 1995).

prospectus, SAI and shareholder reports. In practical terms, this means that it could take a long time for an investor with a dial-up connection to receive a prospectus or SAI attached to an email. Using hyperlinks would allow users to control when the download occurs. Emails with attachments also are more likely to get caught in spam filters. Second, funds prefer to manage the electronic environment through a Web interface because it is easier to control content and disclosure; once a document is sent out, it is impossible to control what happens to it.

While we urge the Commission to continue to allow electronic delivery to be satisfied with links, we recognize that this creates complications similar to those described in the section above. If an e-delivery recipient saves an email containing a link to the target document, how long must the link remain active? Would a recipient have an expectation that, by saving the link, he or she would have perpetual access to the version of the target document that was current when the link was received, as opposed to an updated version?

Despite these concerns, we believe it is preferable to permit e-delivery using links, and we suggest that the Commission specify in the final rule that this form of e-delivery is acceptable, including for the purpose of responding to a request for an electronic copy of a document. To address the question raised in the prior paragraph about how long a link must remain active, we recommend that a link sent by email in response to a request for a statutory prospectus, SAI or shareholder report be required to link to the *then-current* (i.e., updated, if applicable) version of the target document until the later of (1) 90 days from the date the email is sent or (2) the date the target document is updated; after that there would be no continuing obligation to maintain the link.

The practical result of this would be that an investor would have access to the actual document they requested (for example, the 2008 prospectus) until it expired; but, if it expired sooner than 90 days from the date they requested it, they would have access to the updated version for at least the duration of the 90 days. As discussed above, in all likelihood the link would continue indefinitely to direct the viewer to the current version of the target document, barring a merger, name change, or similar event or possibly a website restructuring.⁸⁶

In addition, best practices might dictate (or the Commission could require) that the email containing the link should inform the recipient that if she wants to retain a copy of the target document, she should click on the link to open the document and save it.

E. Safe Harbor Provision

Proposed Rule 498(f) offers a safe harbor for funds that are temporarily out of compliance with the requirement, set forth in paragraph (f)(1), that certain documents be posted on the Internet,

⁸⁶ We believe that when one of these events occurs, a person attempting to access an old link would typically be automatically redirected to the appropriate location for a period of time; hence, for example, if a fund merged within the 90 day window, a link to the original fund's prospectus would take a viewer to the merged fund's prospectus for at least the remainder of the 90 days.

provided that the fund has “reasonable procedures in place” to ensure compliance, and that it takes “prompt action” to ensure that the documents become available as soon as practicable. We appreciate the Commission’s recognition that occasionally, despite its best efforts and reasonable procedures, a fund may find itself in violation of the rule due to circumstances beyond its reasonable control, and that this should not be deemed a failure of the fund’s prospectus delivery obligations or its ability to incorporate information by reference.

We strongly urge the Commission to similarly adopt a safe harbor for the requirements of paragraphs (f)(2) and (3). A fund’s statutory delivery obligations, as well as the ability to deliver supplemental sales literature and incorporate by reference additional information into the Summary Prospectus, depend on compliance with these and other technological requirements.

As proposed, the safe harbor applies only in situations in which the “materials specified in paragraph (f)(1)... are not available for a time in the manner required.”⁸⁷ Even if the specified documents are available, a fund with reasonable procedures in place may find itself temporarily out of compliance in some minor way for other reasons. For example, one of the required links from the table of contents in the SAI to the sections in that document may be inactive; or, a link from a Summary Prospectus to a statutory prospectus might unintentionally lead an investor to the first page of the statutory prospectus, rather than to the table of contents. Where a fund has reasonable procedures in place to prevent, detect and correct such errors, it should not be at risk for a private right of action for failure to meet prospectus delivery obligations under Section 5(b)(2), to properly incorporate by reference specified material into the Summary Prospectus, or for the delivery of a materially deficient prospectus (*i.e.*, because supplemental sales literature is deemed a prospectus under Section 2(a)(10)).

As a related matter, while the rule text does not limit the situations in which funds may rely upon this safe harbor, the Proposing Release specifically mentions “system outages or other technological issues.” We note that other events could also result in temporary non-compliance, including natural disasters, acts of terrorism, pandemic illnesses or, in the case of failure to comply with 498(f)(2) (such as a single inactive link), human error that was not detected despite reasonable procedures to do so. We request that the adopting release be worded to include a broader spectrum of unpredictable or undetected events.

⁸⁷ Proposed Rule 498(f)(4). As an alternative, this paragraph could read: “The conditions set forth in paragraphs (f)(1), (f)(2), and (f)(3) of this section shall be deemed to be met, notwithstanding the fact that such conditions are not met for a time in the manner required by such paragraphs, provided that...”

IV. Format, Order, and Content of the Summary Prospectus⁸⁸

Broadly speaking, there is widespread agreement – among fund industry participants, investor groups, analysts and others – about the key information that investors want and need. This includes information about a mutual fund’s investment objectives and strategies, risks, costs, and historical performance. Institute members also do not dispute the importance of including the identity of the investment adviser, basic information on how to purchase and sell fund shares, the proposed statement on dividends, capital gains, and taxes, and payments to intermediaries, when applicable.

Additionally, we agree that it is appropriate for the Commission to prescribe the content and order of information included in the Summary Prospectus, and to prohibit the inclusion of additional information. While flexibility can be useful in catering to different groups of investors,⁸⁹ the Institute and its members recognize that, for purposes of a primary disclosure document, standardization is important, both to promote comparability and to reduce litigation risk.⁹⁰

While there is general consensus on the key information investors need, we have some concerns about the content and presentation of the proposed Summary Prospectus. One concern involves the *volume* of content. The Commission envisions that a Summary Prospectus should be three to four pages in length. Several Institute members that have attempted to compose sample documents report that, including all of the proposed content and necessary footnotes, their samples are closer to six or seven pages.⁹¹ A Summary Prospectus of this length would be problematic. First, at some point it would cease to be a true summary; it would also substantially lengthen multi-fund statutory prospectuses. Additionally, printing a six or seven page document on demand would substantially increase the estimated costs. In view of the need to keep the document at a reasonable length, our suggestions regarding the content of the Summary Prospectus attempt to focus on the information that is most critical to investors.

⁸⁸ The format, order and content of the Summary Prospectus and the summary section of the statutory prospectus are envisioned as virtually identical. Therefore, except where otherwise noted, our comments apply to both summary presentations.

⁸⁹ We support the Commission’s proposal to allow a fund to modify the Summary Prospectus 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 (IRC), a tax-deferred arrangement under section 403(b) or 457 of the IRC, or a variable contract as defined in section 817(d) of the IRC, as applicable, and is not intended for use by other investors.

⁹⁰ Some members expressed concerns that, if optional information were permitted, the failure of some funds to include information provided by other funds could be the basis for allegations of material omissions.

⁹¹ While the Commission’s hypothetical Summary Prospectus is only three pages, it does not include several likely components of a real Summary Prospectus, including footnotes to the fee table and a break-out of “Other Expenses.” Additional share classes and more detailed descriptions of the fund’s objectives, strategies and risks could also lengthen the document. We understand that, once a Summary Prospectus is longer than four pages, printing costs are likely to increase 20 to 50 percent due to normal printing conventions. *See* Appendix B at 11.

We also offer several comments and suggestions, many in response to questions in the Proposing Release, regarding the format of the document, the order in which each item is presented, and the specific content of certain included elements. We believe the modifications we suggest would improve the overall quality and utility of the Summary Prospectus.⁹²

A. Format

1. *Multiple Fund Presentations*

As proposed, a Summary Prospectus would be permitted to include information only about a single fund or series. The corresponding summary section of the statutory prospectus would also be required to treat multiple funds sequentially and not integrate the information for more than one fund. A number of Institute members have noted that an integrated format may be more useful to investors in certain circumstances, in particular for groups of funds an investor may wish to compare, such as target date funds and asset allocation funds. Other members believe that requiring a separate document for each fund will better accomplish the Commission's goals of keeping the document short and facilitating comparisons across funds.

Given this split of opinion, we expect individual Institute members to comment on this issue. The Institute would likely support an exception that was narrowly designed to permit multiple fund presentations for those groups of funds that investors may benefit from viewing side by side.

2. *Duplicative Information in the Summary Section*

If the Commission ultimately requires that multiple funds be treated sequentially in the summary section of the statutory prospectus, there is likely to be significant duplication of information. In particular, for multiple funds in the same fund complex, the disclosure regarding purchase and sale of fund shares, tax information, and intermediary compensation are likely to be identical. Investment adviser information may also be the same. This could add many pages to the summary section. The repetition could be tedious for readers and cause the overall length of the document to be overwhelming.

We recommend that the Commission consider permitting funds to elect to provide this information only once, at the end of the entire summary section. Where the information would otherwise be included, a fund's summary section could have a cross-reference to the effect of: "For important information about this fund's investment adviser, purchase and sale of fund shares, tax information, and intermediary compensation, please turn to page []." We believe this is particularly important as some fund complexes that use combined prospectuses may elect not to use Summary

⁹² The following recommendations are based on the Institute's analysis and input from our members. As mentioned above, the Institute has also conducted an investor survey in which several of these suggestions were tested, and we expect to file a supplementary comment letter on our research as soon as possible.

Prospectuses, particularly if quarterly updating will be required. In that event, investors in those funds will receive a statutory prospectus that is even longer than the one that exists today.

3. Page Limits and Other Formatting Requirements

We support the Commission's proposal not to impose a page limit or other formatting requirements (*e.g.*, font size or layout) in the summary section or Summary Prospectus. Institute members appreciate some flexibility to create their own style. For example, many funds currently offer their prospectuses in "digest" size (5 ½ x 8 inches). Others have proprietary fonts or layouts. Additionally, some summaries may have longer disclosures than others (*e.g.*, because the fund has multiple share classes or more numerous or complex strategies or risks). It is more important that this information is clear and legible than that it fit precise page parameters. We believe that the Commission's proposed approach of prescribing the order and content of each item included is sufficient to address its goal of standardization.

We recognize that, if the final rule permits integration of information about multiple funds in the summary section or Summary Prospectus rather than requiring sequential presentations, an outside limit on the number of pages or funds included may be desirable. In this event, we would encourage the Commission to bear in mind the desire for flexibility in page size and other formatting parameters in setting any such limit.

B. Order

We recommend that the Commission reconsider its proposal to place the fee table after a fund's investment objectives, but before its strategies and risks. We believe the Commission's concerns about investor understanding of mutual funds costs are misplaced.⁹³ Institute data demonstrates that investors already gravitate toward low-cost funds.⁹⁴ This evidence suggests that efforts by the Commission and others to emphasize the importance of mutual fund fees have been successful.

More importantly, we do not believe that moving the fee table forward in the Summary Prospectus – and thereby divorcing the fund's objectives from the explanation of how it seeks to achieve those objectives – is appropriate or logical. First, the fee table will already be more prominent in the Summary Prospectus (or summary section) than in many current risk/return summaries, assuming that the final rules retain the requirement that only one fund may be presented in each. Also, if the Commission is concerned that the investors do not understand the fee table, simply moving the same

⁹³ See Proposing Release at 21.

⁹⁴ See Investment Company Institute, A Review of the SEC Office of Economic Analysis Board Independence Studies (March 2, 2007), available at http://www.ici.org/pdf/ppr_07_oea_study.pdf, at 9. See also 2007 Investment Company Fact Book, 47th Edition, Washington, DC: Investment Company Institute, 2007, available at www.icifactbook.org, at 50 (showing that, during the 10-year period from 1997 to 2006, 90 percent of net new cash flow to equity mutual funds went to funds with expense ratios below the market-wide average).

presentation forward will not solve this problem; the fee table itself should be improved.⁹⁵ Further, presenting the fee table before the strategies and risks inappropriately overemphasizes costs by suggesting that the price investors pay is more important than what, exactly, they are buying.

We believe that an essential quality for the Summary Prospectus is readability. The included information should, wherever possible, flow logically from one element to the next. The Commission carefully considered the order of presentation of much of the same information when it adopted the risk/return summary as part of the 1998 amendments to Form N-1A, and that order continues to make sense today.

As the Commission explained in 1998, the information contained in the risk/return summary should provide an “executive summary” of key information about the fund.⁹⁶ Investment objectives, strategies, and risks are the backbone of this story, as they define the fund. A fund must first identify its objectives – typically with a simple statement. The 1998 release explains how the next sections logically follow. The strategy section is intended to provide more detail, summarizing “how the fund intends to achieve those objectives,” and the risk disclosure “summarize[s] the risks of a fund’s anticipated portfolio as a whole” – that is, the risks of investing in a fund with the objectives and strategies previously described.⁹⁷ The Commission conceived the performance bar chart and table as an important part of the fund’s risk disclosure; as noted above, the Commission has consistently explained that the purpose of such information is to illustrate the variability of the fund’s returns,⁹⁸ and to “provide investors with some idea of the risk of an investment in the fund.”⁹⁹

Maintaining this cogent and logical progression of information will best serve investors reading the document. Only after the investor has obtained a more complete picture of the fund he or she is assessing should cost be a consideration. We therefore propose that the fee table continue to follow the performance table, as it currently does.¹⁰⁰

C. Content

1. *Fee Table – Summary Presentation*

The Proposing Release asks whether the full fee table should be included in the Summary Prospectus or whether it would be more useful to investors to require disclosure of total shareholder

⁹⁵ We offer suggestions for simplifying and clarifying the fee table below.

⁹⁶ See Registration Form Used by Open-End Management Investment Companies, March 23, 1998, *supra* note 4.

⁹⁷ *Id.*

⁹⁸ See Proposing Release at 25.

⁹⁹ Registration Form Used by Open-End Management Investment Companies, March 23, 1998, *supra* note 4, at 13922. See also *supra* note 12.

¹⁰⁰ A second, less preferable alternative would be to place the fee table following the narrative risk disclosure.

fees and total annual operating expenses. The Institute supports the concept of a summary fee table, with more detailed fee information provided elsewhere. We believe, however, that such a major change warrants additional consideration and possibly research regarding the most effective format and content for a summary presentation of fees. We recommend that, for the time being, the Commission require the full fee table to be included in the Summary Prospectus, but suggest that the possibility of a summary fee table be explored further.

2. Fee Table – Other Proposed Changes

a. Breakpoint Discount Disclosure

The Commission proposes to require that mutual funds that offer discounts on front-end sales charges for volume purchases (“breakpoint discounts”) include a brief narrative alerting investors to the availability of those discounts. The statement would read, “You may qualify for sales charge discounts if you and your family invest, or agree to invest in the future, at least \$[____] in the [name of fund family] funds.”

We agree that investors should be made aware of the possible availability of breakpoint discounts, and we support the inclusion of a statement to this effect. We suggest, however, that the statement not require disclosure of a minimum dollar amount to qualify for such discounts because this approach does not accurately capture the wide range of different sales charge reduction programs that are available to investors in share classes with front-end loads. The types of accounts, eligible relationships and discounts applied vary by fund and fund group. Typical fund sales charge reduction programs would include “Rights of Accumulation” programs that combine the value of existing investments in the fund group with the value of a new investment in the fund; “Combined purchase” programs that aggregate simultaneous or “concurrent” purchases of shares of funds (within a fund group) into a single “purchase”; and “Statements of Intention” or “Letters of Intent” that allow an investor to combine certain fund purchases for various share classes he or she intends to make over a certain time period to determine the applicable (discounted) sales charge.¹⁰¹ Other programs include reduced or eliminated sales charges for dividend reinvestment programs and reinstatement or reinvestment privileges where an investor may reinvest proceeds from a redemption into the same account or fund at NAV (within a certain period of time) without any sales charge.

Based on the variety of breakpoint arrangements and the difficulty of explaining them accurately in a single sentence, we propose that the narrative simply alert investors to the existence of such discounts and direct them to their intermediary for more information, such as: “You may qualify for sales charge discounts. Ask your financial professional for more information.”

¹⁰¹ The typical time period for this purpose is 13 months. A statement of intention allows the shareholder to take immediate advantage of the maximum quantity discount available.

b. Revised Heading Under “Annual Fund Operating Expenses”

The Commission proposes to change the parenthetical explanation under the “Annual Fund Operating Expenses” heading. The parenthetical, which currently reads “expenses that are deducted from Fund assets,” would instead read “ongoing expenses that you pay each year as a percentage of the value of your investment.”

While we recognize the concern that investors may not understand that a fund has ongoing costs every year, we think the proposed change does not accurately describe the nature of fund operating expenses, and in fact may confuse investors further. Our primary objection is that the statement “you pay” is simply not accurate. Investors do not pay these expenses directly; rather, the value of the fund they own is affected by those internal expenses.¹⁰² To address the Commission’s interest in clarifying that investors indirectly bear the cost of these expenses, we suggest either of the following two parenthetical statements: “expenses incurred by the fund and paid indirectly by shareholders,” or “annual costs of operating the fund, which are deducted before the fund computes its returns.”¹⁰³

c. Expense Reimbursements and Fee Waiver Arrangements

We support the Commission’s proposal to permit funds operating under fee waiver or expense reimbursement arrangements to include them in the fee table as described in the proposing release. The proposed change accurately reflects the industry’s understanding of the staff’s informal guidance on this issue, and we applaud the Commission for taking the opportunity to formalize its position.

¹⁰² The implication that investors pay these costs could also be interpreted to suggest that a lawsuit challenging fees could be brought directly, rather than as a derivative action. While it is generally accepted that actions under 36(b) of the Investment Company Act should be brought derivatively (*see, e.g., In re Salomon Smith Barney Transfer Agent Litig.*, No. 05-7583, 2007 U.S. Dist. LEXIS 70828, at *12 (S.D.N.Y. Sept. 26, 2007); *Zucker v. Federated S’holder Servs. Co.*, No. 06-241, 2007 U.S. Dist. LEXIS 15186, at *3 (W.D. Pa. Mar. 5, 2007); *Boyce v. AIM Mgmt. Group, Inc.*, No. 04-2587, 2006 U.S. Dist. LEXIS 71062, at *15 (S.D. Tex. Sept. 29, 2006); *In re Salomon Smith Barney Mut. Funds Fee Litig.*, 441 F. Supp. 2d 579, 597 (S.D.N.Y. 2006)), a change in the language regarding fees could be used in an effort to reach a new interpretation. We doubt that the Commission intends for the proposed change to lead to this result.

¹⁰³ Institute members also continue to strongly oppose the inclusion of “acquired fund fees and expenses” in the calculation of operating expenses, particularly for funds that are not funds of funds but may invest a small portion of their assets in other mutual funds, exchange-traded funds, or business development companies. Funds may invest in other mutual funds or ETFs simply as a more efficient – and cost-effective – means to buy the underlying securities, yet as a result of this requirement their fees appear higher. Funds typically select BDCs just as they would select other portfolio companies – because they are sound investments; the distinction between costs of running a BDC and the costs of running an underlying public company is arbitrary. Members are also concerned that the difference between the operating expenses percentage listed in the fee table and the one in the financial highlights section of the statutory prospectus could confuse investors.

d. Portfolio Turnover Disclosure

The Institute does not oppose the proposed inclusion of disclosure regarding portfolio turnover for funds other than money market funds. We agree that it can help investors better understand portfolio transaction costs. In the absence of any simple or agreed-upon way to quantify and disclose all transaction costs, providing portfolio turnover rate and the accompanying narrative disclosure is a reasonable and workable approach.¹⁰⁴ As the Institute previously commented:

While portfolio turnover rate is not a perfect proxy for fund trading costs, it is generally viewed as being highly correlated with transaction costs. In addition, it can easily be calculated by funds, and is easily understood by investors and readily comparable among funds. We believe that these advantages outweigh any imprecision of a portfolio turnover rate's correlation to trading costs.¹⁰⁵

3. *Performance Table*

The Proposing Release asks whether the Commission should consider any revision to the table disclosing a fund's returns. We suggest that the Commission not require disclosure regarding returns after taxes on distributions, and returns after taxes on distributions and sale of fund shares, in the Summary Prospectus. We recognize that investors may consider this information valuable. As explained in more detail in the Institute's comment letter when these after-tax disclosures were proposed, however, we believe that such information is more appropriately included in the tax section of the statutory prospectus.¹⁰⁶ Not only would this assure that the information would be presented in context, but it would also simplify and streamline the information in the Summary Prospectus.

We also continue to oppose the requirement that after-tax return numbers must be calculated using the maximum federal tax rate.¹⁰⁷ Less than five percent of mutual fund shareholders are in the top

¹⁰⁴ Portfolio turnover rate can fluctuate significantly from year to year; for example, due to a change in the fund's portfolio manager. We recommend that funds be permitted to include a footnote to explain significant aberrations in their portfolio turnover rate.

¹⁰⁵ See Letter from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, dated February 23, 2004, *available at* <http://www.sec.gov/rules/concept/s72903/ici022304.htm> (comments in response to the Commission's concept release on measures to improve disclosure of mutual fund transaction costs).

¹⁰⁶ See Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, dated June 30, 2000, *available at* http://www.ici.org/statements/cmltr/00_sec_after_tax_com.html#TopOfPage ("In order for investors to fully understand the information being conveyed by an after-tax return presentation, they need to first understand the basic tax consequences of investing in a fund.").

¹⁰⁷ See *id.*

marginal income tax bracket,¹⁰⁸ and 52 percent of mutual fund assets held by individual investors are in tax-deferred accounts.¹⁰⁹ Using the maximum federal tax rate therefore grossly overstates the impact of taxes on most investors. If the Commission requires after-tax disclosures in the Summary Prospectus, we recommend that the calculation be changed to reflect the tax rates paid by the median mutual fund shareholder.

4. *Portfolio Holdings*

Institute members strongly oppose the inclusion of top ten portfolio holdings information in the Summary Prospectus. This information simply does not rise to the level of importance that merits its inclusion in a document that the Commission has carefully designed to be short and contain the most salient information for investors. The Commission's rationale for including this information – that many funds and third party analysts include it in fund fact sheets and on their websites – is not convincing. Funds commonly include a variety of other information in their fact sheets, but the Commission does not (and should not) propose to require that this information also be included in the Summary Prospectus.¹¹⁰ The Summary Prospectus is a fund's primary disclosure document and it should not be viewed as a substitute for the sales literature many funds provide.

Members are also concerned that the top ten portfolio holdings may not be truly representative of a fund's holdings. A fund's top ten holdings could become stale very quickly.¹¹¹ Also, they may represent a relatively small portion of the portfolio's assets, making them a poor proxy for the fund's overall holdings.¹¹² In addition, many of the securities held by a fund – other than large-cap equity funds – may not be recognizable to most investors. There are also a number of circumstances in which a fund's top ten holdings do not reflect its true exposure. For example, in a master-feeder structure, the feeder fund (in which shareholders invest) may invest 100 percent of its assets in a single master fund. Similarly, a fund of funds may invest most of its assets in the securities of several underlying funds.¹¹³

¹⁰⁸ ICI tabulations of Internal Revenue Service Statistics of Income Division tax return data show that in both 1999, when there were high levels of capital gains distributions, and 2002, when capital gains distributions were much lower, approximately four percent of tax returns reporting capital gains distributions from a mutual fund were for taxpayers in the highest tax bracket.

¹⁰⁹ In 2006, 60 percent of capital gains distributions were paid to tax-deferred household accounts. See *2007 Investment Company Fact Book*, *supra* note 94, at 19, Figure 2.5.

¹¹⁰ See *supra* note 20.

¹¹¹ As discussed above, members view the proposed quarterly updating requirement as a serious obstacle to using a Summary Prospectus; in any event, the information in the summary section of the statutory prospectus would be updated only annually.

¹¹² For example, according to Morningstar data as of December 31, 2007, for half of all domestic equity funds, the top ten holdings comprise about one quarter or less of the total value of the portfolio.

¹¹³ We note that, in the event that such funds were instructed to look through to the underlying holdings, unaffiliated funds of funds may not have timely access to the holdings of the underlying funds in order to ascertain and disclose them in the prescribed timeframe. Funds of hedge funds may never know the holdings of the underlying hedge funds.

Still other funds use synthetic instruments to replicate their targeted exposure. For example, a fixed income fund may invest in a combination of U.S. Treasury securities and swaps to replicate a higher risk portfolio; yet its primary holdings would be Treasuries.

For these reasons, top ten portfolio holdings information does not easily lend itself to the largely prescriptive regulatory approach that is necessary to create a standardized document. The Commission apparently recognized the benefit of offering funds flexibility to display their portfolio holdings in their annual and semi-annual reports to shareholders (which may be incorporated by reference into the Summary Prospectus).¹¹⁴ Offering funds the flexibility to elect how best to present holdings information in a manner “reasonably designed to depict clearly the types of investments made by the Fund, given its investment objectives,” is preferable to a required list of top ten holdings, but such presentations may be too lengthy to include in a summary document.¹¹⁵

As the Commission has noted, portfolio holdings information is already widely available on funds’ websites and in materials funds and intermediaries provide. In addition to being updated on a regular basis, these sources have the benefit of flexibility in the presentation, based on the contours of the fund and its investments. We believe that the information that is already available to investors from these sources is preferable to any standardized format the Commission could prescribe for inclusion in the Summary Prospectus. We therefore recommend that top ten holdings not be included in the Summary Prospectus.

If the Commission nevertheless determines to require top ten portfolio holdings, we request that it provide guidance on proper disclosure in situations described above.¹¹⁶ We also recommend that certain types of funds be exempted from the requirement, including passive index funds, money market funds, exchange-traded funds, and new funds. Portfolio holdings of index funds and money market funds will not be meaningful to most investors. An investor in an index fund is attempting to replicate the underlying index, and an investor in a money market fund is likely concerned with the yield – in neither case are individual securities particularly relevant. As for ETFs, their holdings are already disclosed to the public on a daily basis; including information only quarterly – or annually – would seem counterproductive. Finally, an exception is needed for new funds because they would have no holdings to disclose.

¹¹⁴ See Item 22(d)(2) of Form N-1A, permitting in annual and semi-annual shareholder reports “one or more tables, charts, or graphs depicting the portfolio holdings of the Fund by reasonably identifiable categories...”.

¹¹⁵ *Id.*

¹¹⁶ We note that, as proposed, the instructions to Form N-1A require top ten portfolio holdings “as of the end of the most recent calendar quarter.” This seems to suggest that the information would have to be included without the one-month lag period that is contemplated for the Summary Prospectus. If the Commission does determine to require top ten portfolio holdings, we recommend that it include a one-month lag period for the portfolio holdings information in Form N-1A.

5. *Management*

We support the proposed inclusion of information on investment advisers and sub-advisers. We do not believe, however, that the identity and length of service of portfolio managers is so important as to warrant inclusion in the Summary Prospectus. Only in very rare circumstances do fund investors know or recognize the name of their portfolio manager. More often, a team of portfolio managers manages the fund, and the fund's strategy or direction will not change as a result of a change to the team.¹¹⁷ The Summary Prospectus should be reserved for information that is of primary importance to investors.

6. *Financial Intermediary Compensation*

The majority of Institute members do not object to the inclusion of the proposed statement regarding financial intermediary compensation, when applicable. While these members firmly believe that such disclosure is not their legal obligation, they recognize the importance of alerting shareholders to the possibility of such compensation. They are willing to include a general statement, such as the one proposed, that directs shareholders to their salespersons or intermediaries for more information. We recommend, however, that the statement not be required in Summary Prospectuses for funds or share classes for which the statement would never be true, *e.g.*, those that are sold directly and eligible to be marketed as "no load" funds, or funds included in variable insurance products. We also recommend that the Commission consider revising its suggested statement to state that "the Fund and its *service providers* may pay the intermediary for the sale of Fund shares and *shareholder servicing support*" (changes in italics). This would clarify any ambiguity about what constitutes a "related company," as well as what types of services are contemplated by this disclosure.

V. **Filing Requirements**

The Institute supports requiring that Summary Prospectuses be filed with the Commission no later than the fifth business day after first use. We agree that pre-use filing is not necessary because the content of a Summary Prospectus will be almost exactly the same as that of the summary section of the fund's statutory prospectus, which must be filed prior to its first use.

The Institute also strongly agrees that a Summary Prospectus should be filed as part of a fund's registration statement, but should not be deemed part of the registration statement for purposes of Section 11 of the Securities Act.¹¹⁸ As the Proposing Release indicates, Congress provided an exception

¹¹⁷ Based on Morningstar data, ICI estimates that nearly 66 percent of funds are team-managed. The average size of a team is 2.36 and the median number of team members is 2. Out of a total of 7,408 funds, 1,641 funds have four or more managers.

¹¹⁸ We request that the Commission clarify that the filing of a Summary Prospectus under Rule 498 that incorporates by reference a shareholder report containing audited financial statements would not trigger any obligation under Section 7 of the Securities Act to file a consent of the fund's independent accountant. Further, we request that the Commission clarify that the filing of a Summary Prospectus would not trigger any obligation under Section 3-18(c) of Regulation S-X to update the financial statements included in a fund's statutory prospectus.

from Section 11 liability for summary prospectuses under Section 10(b) of the Securities Act to encourage their use.¹¹⁹ We see no reason to depart from the treatment established by Congress in this instance.

VI. Compliance Date

The proposing release indicates that the Commission expects to require all initial registration statements on Form N-1A, and all post-effective amendments that are annual updates to Form N-1A, filed six months or more after the effective date, to comply with the amendments to Form N-1A. In addition, the Commission expects not to permit a fund to rely on Rule 498 to satisfy statutory prospectus delivery obligations unless the fund is in compliance with the Form N-1A amendments.

The Institute supports the Commission's plan to provide a transition period for compliance with any amendments to Form N-1A that it ultimately adopts.¹²⁰ We note that fund groups that choose to use Summary Prospectuses in reliance on Rule 498 may wish to coordinate the introduction of Summary Prospectuses with the revisions to their statutory prospectuses. Irrespective of the specific details of the final requirements, implementing the use of Summary Prospectuses will be a significant undertaking. For this reason, the Institute recommends that the Commission provide a transition period that will give funds a minimum of one year from the adoption of the amendments to comply.

* * *

The Institute appreciates the opportunity to comment on this important proposal. We believe the Summary Prospectus could have a positive impact on multiple fronts – providing shareholders the summary information they clearly desire, offering funds and their shareholders cost savings, and even reducing paper waste. We applaud the Commission for its efforts to make use of technology to better serve investors' needs. Our comments are intended to maximize these benefits by improving the likelihood that our members will elect to use the Summary Prospectus. If you have any questions about our comments or would like any additional information, please contact me at 202/326-5815, Frances Stadler at 202/326-5822 or Mara Shreck at 202/326-5923.

Sincerely,

/s/

Karrie McMillan
General Counsel

¹¹⁹ Proposing Release at n.140.

¹²⁰ We recommend that the Commission clarify that changes to a fund's registration statement to implement the amendments to Form N-1A would not, in and of themselves, preclude the fund from filing an amendment to its registration statement under Rule 485(b).

Ms. Nancy M. Morris

February 28, 2008

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cc: The Honorable Christopher Cox, Chairman
The Honorable Paul S. Atkins
The Honorable Kathleen L. Casey

Andrew J. Donohue, Director
Susan Nash, Associate Director
Division of Investment Management

James Overdahl
Chief Economist
Office of Economic Analysis

R. Corey Booth
Chief Information Officer and Director
Office of Information Technology

Appendix A



Questions for Fund Complexes Regarding Summary Prospectus Proposal

December 27, 2007

Please respond to as many questions as you can. Even if you are unable to provide complete answers to some questions, the information you can provide is still valuable. Please input your responses into this document and email to Shelly Antoniewicz at rantoniewicz@ici.org by January 11, 2008. If you have any questions regarding the questionnaire, please call Shelly Antoniewicz at 202-326-5910.

A. Current Printing & Mailing Costs for Prospectuses

For complex-wide questions, please aggregate across all of the funds for each one's most recent fiscal year.

1. How many mutual funds does your complex have?
2. How many prospectuses did the funds and their vendors mail in hard copy form to existing mutual fund shareholders for purposes of annual fulfillment?
 - a. If possible, please report separate figures for your smallest fund and for your largest fund.
3. How many prospectuses did the funds and their vendors mail in electronic form to existing mutual fund shareholders for purposes of annual fulfillment?
 - a. If possible, please report separate figures for your smallest fund and for your largest fund.
4. How many prospectuses did the funds and their vendors mail in hard copy form to investors for purposes of post-sale fulfillment?
 - a. If possible, please report separate figures for your smallest fund and for your largest fund.
5. How many prospectuses did the funds and their vendors mail in electronic form to investors for purposes of post-sale fulfillment?
 - a. If possible, please report separate figures for your smallest fund and for your largest fund.
6. How many copies of prospectuses for annual and post-sale fulfillment were printed for all the funds?
7. If you know from your distributors, how many fund prospectuses were mailed out with marketing materials?

8. What was the total printing cost, including any handling or other fees, for all of the funds' prospectuses?
 - a. Were the prospectuses printed with offset printing only?
 - b. Digital print on demand only?
 - c. Some combination of the two?
9. What was the total mailing cost for all of the funds' prospectuses?
 - a. Were annual fulfillment prospectuses sent by bulk mail?
 - b. Were post-sale fulfillment prospectuses sent by first class mail?
10. How do you manage your prospectus print inventory?
 - a. Print once each year
 - b. Print 6 months worth and then reprint
 - c. Print on demand
 - d. Some combination or other method
11. To whom do you ship prospectuses? Please check all that apply and list any that do not easily fit in one of the categories provided below.
 - a. Fulfillment vendors
 - b. Transfer agents
 - c. Independent financial advisors
 - d. Other intermediaries (e.g.; brokers/dealers, fund platforms)

B. Proposed Mandatory Form N-1A Changes

We understand that time estimates may be difficult to assess at this stage, please provide your best educated guess and describe any factors that may result in a higher or lower estimate.

1. How much time (in hours) would you estimate that it would take to comply **initially** with the proposed new requirements to Form N-1A for all of your funds? Please include in your estimate the amount of time:
 - a. To set-up the template, compile, and review the additional information required in the summary section of the statutory prospectus, and
 - b. Spent on any other tasks (e.g.; amending your funds' policies and procedures, if necessary).
2. 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?

C. Voluntary Use of Summary Prospectus

For purposes of gathering information, please assume that you would opt to use the summary prospectus as proposed when answering the following questions. Again, we understand that time estimates may be difficult to assess at this stage, please provide your best educated guess and describe any factors that may result in a higher or lower estimate.

1. How much time (in hours) would you estimate that it would take to comply initially with the proposed requirements for the summary prospectus for all of your funds? Please include in your estimate the amount of time:
 - a. To create a summary prospectus for each fund assuming that the information has already been collected for purposes of the summary section of Form N-1A,
 - b. To comply with requirements for electronic posting, including
 - i. Inserting hyperlinks from the table of contents to the respective sections for the statutory prospectus
 - ii. Creating hyperlinks between the summary prospectus to more detailed information in the statutory prospectus, SAI, and, if desired, the annual shareholder report, including time spent by legal and other staff to determine the appropriate links,
 - iii. Creating a website from which shareholders can easily find prospectuses and SAIs for all of your funds.
 - c. Spent on any other tasks (e.g.; amending your funds' policies and procedures for quarterly updating, if necessary).
2. How much time (in hours) would you estimate that it would take to complete all stages of producing the quarterly summary prospectuses, such as updating, reviewing, loading the summary prospectuses on the funds' website with updated hyperlinks for all of your funds, and completing the filings on EDGAR?
3. Please describe how different the internal review process for quarterly updating of the summary prospectuses would be, if at all, from the process used to update fund fact sheets.
4. Do you have sufficient current staff to compile and update the summary prospectus for each fund on calendar year quarters within the 30-day window?
 - a. If no, how will you staff the process? (e.g.; temps, new hires, outsource)
 - b. What degree of bottlenecking, if any, would occur at your complex in the month after the calendar quarter-end?
 - i. Little to none
 - ii. Moderate
 - iii. Severe
 - c. How would this bottleneck be different from that created by updating the fund fact sheets?
 - d. Which job functions would be the most impacted by any bottlenecking?
 - e. Would bottlenecking be a significant factor in keeping you from opting to use the summary prospectus?
5. At this stage, do you expect the summary prospectus for your funds will be in black and white or color?

6. Given the quarterly updating requirements as proposed, do you anticipate that your prospectus fulfillment process would change, if at all, for your direct/registered shareholders and/or your intermediated/omnibus shareholders?
 - a. If your complex contracts out to vendor(s) for any prospectus fulfillment (printing and/or mailing) for its funds, would you need to change the fulfillment process for the quarterly update of the summary prospectuses?
 - i. No change, current vendor capable of meeting quarterly requirements.
 - ii. Contract with new vendor as current vendor does not have capability to fulfill quarterly update. (Please describe limitations)
 - b. If your complex carries out any prospectus fulfillment (printing and/or mailing) for its funds on its own, how would you manage the fulfillment process for the summary prospectuses on the quarterly update?
 - i. Contract out to vendor
 - ii. Use offset printing (please explain how your complex will meet the 30-day deadline)
 - iii. Use digital print on demand
 1. Would you need to invest in new equipment?
 2. If yes, can you describe the equipment and estimate its cost?

7. As the proposal is written, do you expect to opt to use the summary prospectus for all or some of your funds?
 - a. If you expect to use the summary prospectus for some funds and not others:
 - i. Please describe the characteristics of the funds for which you do not anticipate using the summary prospectus.
 - ii. If you can, please tell us how many funds you would not use the summary prospectus for.
 - b. If you do not expect to use the summary prospectus for all or some of your funds, please describe the most significant impediments to adopting the summary prospectus.

Appendix B

Cost-Benefit Analysis of SEC Mutual Fund Disclosure Reform Proposal

Executive Summary

In this analysis, we describe the major costs and benefits of the Commission's mutual fund disclosure reform proposal that were detailed in the Proposing Release. The Commission requested comment on its cost-benefit analysis, and this study provides feedback to the Commission. Based on survey information gathered from our members and other information from various industry sources, we estimate the costs, benefits, and net savings of the two parts of the proposal: the mandatory Form N-1A changes and the voluntary use of the Summary Prospectus.¹ We also estimate the percentage of funds that would choose to use the Summary Prospectus (the "opt-in" rate) based on whether: (1) the funds in our sample and their shareholders would realize positive net savings from opting in; and (2) the complexes noted that it would be difficult to overcome the challenges of heavy workloads at quarter ends.

Our estimates of the costs of complying with the proposed Form N-1A changes are relatively close to those of the Commission. We differ significantly from the Commission in our assessment of the internal initial and ongoing costs associated with the Summary Prospectus. The Commission did not factor in any set-up costs in connection with opting to use the Summary Prospectus over and above the costs of conforming with the proposed changes to Form N-1A. Based on information from our members, we estimate that initial compliance will take a fund 23 hours, on average, to complete. Also, our estimate of the ongoing costs from updating the Summary Prospectus each calendar quarter is considerably higher than the Commission's.

Based on an analysis of the responses to our survey, we estimate that between 30 and 45 percent of funds would opt to use the Summary Prospectus as currently proposed. This is substantially lower than the 75 percent opt-in rate assumed by the Commission in the Proposing Release. Survey respondents noted that the major impediments to using the Summary Prospectus were costs and operational difficulties associated with the proposed quarterly updating requirements, complicated website linking requirements, and prohibitions against binding other materials with the Summary Prospectus (especially with respect to variable annuities) and integrating information for multiple funds into one Summary Prospectus.

¹ We received information from 42 fund complexes, which together offer 3,122 funds that accounted for nearly 60 percent of total mutual fund industry assets as of December 2007. Our survey responses reflect the views of fund complexes of a range of sizes. Thirty-eight percent of respondents were fund complexes with assets greater than \$100 billion; 29 percent had assets between \$10 billion and \$100 billion; and 33 percent had assets of less than \$10 billion.

While not analyzed in our study, the opt-in rate also will depend to some degree on intermediary acceptance of the Summary Prospectus. In 2006, nearly 90 percent of sales of stock, bond, and hybrid mutual funds were conducted through third parties.² Thus, even if a fund has opted to use the Summary Prospectus, intermediaries could decide not to send it to their clients and require, instead, the statutory prospectus. Consequently, the opt-in rate may be even lower than our estimated 30 to 45 percent range if intermediaries are reluctant to use the Summary Prospectus.

In our cost-benefit analysis of the individual complexes in our sample, the expense of quarterly updating prevented many funds from finding it cost-effective to adopt the Summary Prospectus. If updating were required annually rather than quarterly, we estimate that 80 percent of funds industry-wide would have positive net savings and be more likely to elect to use the Summary Prospectus. This opt-in rate is substantially higher than the 30 to 45 percent range we estimate would occur for the industry with the quarterly updating requirement.

² See *2007 Investment Company Fact Book*, 47th Edition, Washington, DC: Investment Company Institute, 2007 (www.icifactbook.org), at 69.

Cost-Benefit Analysis of SEC Mutual Fund Disclosure Reform Proposal

The discussion below is in three parts. The first section describes the survey the Institute conducted to gather information on the Commission's proposal. The second section provides detailed information on our estimates of the costs of the proposed Form N-1A changes and how they compare to the Commission's estimates. The third section provides a comparison of our estimates of the costs, benefits, net savings, and opt-in rate associated with the proposed Summary Prospectus with those of the Commission's. The third section also estimates the opt-in rate and the net savings of the Summary Prospectus if the quarterly updating requirement were eliminated.

I. Survey Description

In the Proposing Release, the Commission reported the results of its cost-benefit study of the disclosure reform proposal and requested comment on various aspects of its analysis. In response to the Commission's request, the Institute surveyed our members regarding operational and financial aspects of the rule proposal.³ The questionnaire requested information in three general areas: (1) current prospectus printing and mailing volumes and costs; (2) proposed Form N-1A proposed changes; and (3) voluntary use of the Summary Prospectus.

We received information from 42 fund complexes, which together offer 3,122 funds⁴ that accounted for nearly 60 percent of total mutual fund industry assets as of December 2007. All of the complexes provided aggregate figures on the number of prospectuses printed and mailed with their associated costs for annual fulfillment and post-sale fulfillment purposes for their funds' most recent complete fiscal year.⁵ Over 90 percent of responding complexes provided estimates of the number of hours necessary to comply with the proposed Form N-1A changes on an initial and ongoing basis, respectively. These complexes also provided estimates of the number of hours necessary to comply with the requirements of the voluntary Summary Prospectus. Complexes to varying degrees provided information on other issues related to the continued use and updating of the Summary Prospectus, such as "bottlenecking" (heavy workloads at calendar quarter ends), staffing needs, technology requirements, and other impediments to using the Summary Prospectus.

³ A copy of the questionnaire is provided in Appendix A to the Institute's comment letter.

⁴ The terms "portfolio" and "fund" are fully interchangeable. In its cost-benefit analysis, the Commission used the term "portfolio" instead of fund. The Commission estimated the number of portfolios to be 8,726, as reported in the ICI Fact Book, *supra* note 2, at 10. This figure is the number of mutual funds as of December 2006.

⁵ The responding complexes printed about 230 million prospectuses of which nearly 173 million were mailed to shareholders during their funds' most recent fiscal year (138 million were for annual fulfillment and 35 million were for post-sale fulfillment), for a total cost of about \$138 million.

II. Costs and Benefits Associated with Proposed Form N-1A Changes

Under the Commission’s proposal, all funds would have to comply with the proposed Form N-1A changes regardless of whether they opt to use the Summary Prospectus. As a result, the costs and benefits associated with the Form N-1A changes should be assessed independently from those related to the Summary Prospectus. As discussed in Section III, we believe the decision to use the Summary Prospectus will be based largely on whether the amount of the net savings from choosing to use the Summary Prospectus is positive and will not be affected by costs already paid in connection with the proposed Form N-1A changes.

Costs of Proposed Form N-1A Changes

Internal costs for the proposed Form N-1A changes include initial costs and ongoing costs. Initial costs include time spent to set up templates for, compile, and review the information required in the summary section of the statutory prospectus. Ongoing costs cover time spent to update and review the information in the summary section of the statutory prospectus each year after the initial year.

The Institute’s survey asked fund complexes to estimate the total number of hours needed for all of their funds to comply with the proposed changes initially and on an ongoing basis. For each complex, these aggregate hour burden estimates were scaled to a per fund basis by dividing by the number of funds at the complex. This scaling allows a direct comparison of the hour burden estimates from the Commission and those collected from the Institute’s survey (shown in Exhibit 1).⁶

Exhibit 1

Estimated Time Burden of Proposed Form N-1A Changes
Number of hours per fund

	SEC	ICI Respondents*
Initial compliance	16	17
Ongoing compliance	4	9

*Weighted average. Each complex’s per fund hours estimate was weighted by the ratio of the number of funds at the complex to the total number of funds in the sample.

Institute respondents estimated that it would take, on average, 17 hours per fund in the first year to comply with the proposed changes, about the same amount of time as estimated by

⁶ The Commission estimated the hour burden of an initial registration statement or the initial creation of a post-effective amendment to a registration statement and subsequent post-effective amendments on a per fund basis.

the Commission. For ongoing compliance, Institute respondents estimated an average of nine hours per fund, five hours more per fund than the Commission’s estimate.

We translated these initial and ongoing hour burden estimates to dollar costs using the blended hourly rate for legal staff and programming staff cited by the Commission in the Proposing Release and an updated figure for the number of funds.⁷ Initial and ongoing monetary costs for the proposed Form N-1A changes are shown in Exhibit 2. Based on responses to the Institute’s survey, we estimate that the industry will spend approximately \$38 million the first year and \$20 million each year thereafter to comply with the proposed requirements. We estimate that the annual costs of ongoing compliance will be somewhat more than twice the amount estimated by the Commission because of the additional hours to update and review the information in the summary section each year.

Exhibit 2

Estimated Industry Monetary Costs of Proposed Form N-1A Changes*
Millions of dollars

	SEC	ICI
Initial compliance	\$35	\$38
Ongoing compliance	\$9	\$20

*Calculated as (# of hours from Exhibit 1) x (wage rate = \$252.50) x (# of funds = 8,754).

Benefits and Net Savings of Proposed Form N-1A Changes

Benefits from the proposed Form N-1A changes are difficult to assess. All investors would receive key information about a fund at the front of the statutory prospectus, regardless of whether the fund opted to use the Summary Prospectus. This format design may increase accessibility and shareholder use, but neither the Commission nor the Institute has sought to measure this benefit.

Both the Commission and the Institute expect that the net savings associated with the proposed Form N-1A changes will be negative (*i.e.*, equal to the costs incurred in connection with the requirements), as shown in Exhibit 3. These additional costs apply to all funds irrespective of their use of the Summary Prospectus. In many cases, multi-fund statutory prospectuses will become longer and more costly to produce because, as proposed, they would contain a separate summary for each fund at the front of the prospectus.

⁷ The Commission estimated an hourly wage rate of \$252.50 for compliance attorneys and senior programmers. See Proposing Release at 92, n. 170. We believe this wage rate, including bonuses, benefits, and overhead, is in line with industry averages. As of December 2007, Institute data indicate that there were 8,754 mutual funds, slightly higher than the 8,726 figure used by the Commission and reported as of December 2006 in the ICI Fact Book, *supra* note 2, at 10.

Exhibit 3

Estimated Fund Industry Net Savings of Proposed Form N-1A Changes
Millions of dollars

	SEC	ICI
Initial compliance	-\$35	-\$38
Ongoing compliance	-\$9	-\$20

III. Costs and Benefits Associated with the Voluntary Use of the Summary Prospectus

In this section, we estimate baseline benefits and costs associated with the use of the Summary Prospectus. The Commission's baseline estimates were derived from information in the Proposing Release⁸ and the Institute's baseline estimates were derived from information gathered from fund complexes in our survey and from other industry sources. Our baseline calculations assume that all funds are required to use the Summary Prospectus. We then examine the potential opt-in rate,⁹ which is based on fund companies' assessments of the costs and benefits of using the Summary Prospectus.

Fund complexes with the greatest net savings from using the Summary Prospectus would be the most likely to adopt it. Those fund complexes with negative net savings or little net savings from using the Summary Prospectus likely would not choose to use it. For many fund complexes, a large part of the decision whether to use the Summary Prospectus will be based on a cost-benefit analysis at the complex level or on a fund-by-fund basis within the complex. We estimate the probable opt-in rate for the industry based on a cost-benefit analysis of each of the complexes that responded to the Institute's survey. Our analysis indicates that given a choice, only about 30 to 45 percent of funds will voluntarily adopt the Summary Prospectus because of the high cost of quarterly updates. As noted earlier, the opt-in rate may be even lower if intermediaries are reluctant to use the Summary Prospectus. The Commission assumed that 75 percent of funds would opt to use the Summary Prospectus.

Baseline Costs of the Summary Prospectus

The baseline costs of opting to use the Summary Prospectus can be grouped into two main categories: internal costs and external costs. Both these costs are reviewed in detail in the following sub-sections.

⁸ We updated the Commission's costs estimates with more recent information on the number of mutual funds and did not scale the cost and benefit estimates of the Summary Prospectus by the 75 percent opt-in rate assumed by the Commission in the Proposing Release.

⁹ The opt-in rate is defined as the percentage of funds that would elect to use the Summary Prospectus.

Internal Costs

Internal costs for the proposed Summary Prospectus requirements include initial costs and ongoing costs. The Commission estimated that initial costs to comply with the requirements of the Summary Prospectus “beyond those discussed [...] in connection with the collection of information for Form N-1A” would be minimal. Many Institute members reported that there would be start-up costs associated with using the Summary Prospectus. These costs include: a document design process to create the Summary Prospectus that is different from that used for the statutory prospectus; technology requirements for posting documents on the funds’ websites and providing hyperlinks within and between certain documents; and communication with distribution channels regarding the use of the Summary Prospectus. In our survey, the Institute asked fund complexes to estimate how many hours it would take to comply initially with the proposed requirements for the Summary Prospectus for all of their funds. On average, Institute respondents estimated that it would take 23 hours per fund to comply initially with the requirements for the Summary Prospectus (Exhibit 4).

To gauge the time burden associated with ongoing compliance, the Institute’s survey also requested an estimate (in hours) for completing all stages of producing an update of the quarterly summary prospectus for all the funds in the complex. On average, Institute respondents estimated about 10 hours per fund to update and review the information, load the Summary Prospectus on the fund’s website with updated hyperlinks, and complete the filing on EDGAR. The Commission estimated that a quarterly update of the Summary Prospectus would take approximately five hours per fund to complete.

Exhibit 4

Estimated Time Burden of Summary Prospectus

Number of hours per fund

	SEC	ICI Respondents ¹
Initial compliance	0	23
Ongoing compliance ²	5	10

1. Weighted average. Each complex’s per fund hours estimate was weighted by the ratio of the number of funds at the complex to the total number of funds in the sample.

2. Number of hours per fund per update.

Estimated initial and ongoing monetary costs for the Summary Prospectus requirements are shown in Exhibit 5. Based on responses to the Institute’s survey, we estimate that if all funds opted to use the Summary Prospectus, the industry would spend approximately \$51 million in initial costs and \$66 million each year thereafter to comply with the proposed requirements. The Institute’s estimate of the ongoing annual cost of the Summary Prospectus assumes that funds would be required to complete four quarterly updates, one of which would

also be used as the summary section of the fund’s statutory prospectus. Our estimate of the frequency of the updates each year is three quarterly updates, which is the same as the Commission’s.¹⁰

Exhibit 5

Estimated Industry Annual Monetary Costs of Summary Prospectus

Millions of dollars

	SEC	ICI
Initial compliance ¹	\$0	\$51
Ongoing compliance ²	\$33	\$66

1. Calculated as (# of hours from Exhibit 4) x (wage rate = \$252.50) x (# of funds = 8,754).

2. Calculated as (# of hours from Exhibit 4) x (wage rate = \$252.50) x (# of funds = 8,754) x (# of updates = 3)

External Costs

As noted by the Commission in the Proposing Release, external costs of opting to use the Summary Prospectus will be largely those associated with printing and mailing.¹¹ In the Commission’s estimate of the printing and mailing costs, the staff considered several factors (shown in Exhibit 6). For the most part, the Institute agrees with the Commission’s estimated values of these factors. Our estimate of printing and mailing costs for the Summary Prospectus (\$180 million) is only moderately higher than the Commission’s estimate (\$147 million).

In our assessment of the Commission’s estimated values of the factors, we examined relevant responses to our survey and gathered general printing costs from various industry sources.¹² We agree with the Commission’s estimates of mailing costs and number of Summary

¹⁰ Based on data from the Strategic Insight Simfund mutual fund database, we estimate that almost half of funds do not have fiscal year ends that fall on calendar quarters. As noted in our comment letter at pp. 13-15, the proposed rule could be read to require that these funds file an additional update to their summary prospectus on the date that the annual update to their registration statement is due. Similarly, as discussed on p. 15 of the Institute’s comment letter, the proposed rule could necessitate that these funds file an additional three updates to ensure that the Summary Prospectus legend incorporates by reference the updated statutory prospectus, statement of additional information, and shareholder reports. We do not believe, however, that the Commission intended to create these extra filings, and thus have assumed in our analysis that the Commission will eliminate the need for them in its final release.

¹¹ In the Institute’s survey, two fund complexes noted that they would utilize outside counsel in approving the design/template of their Summary Prospectuses. We have no indication that use of outside counsel will be widespread for the industry as a whole. As a result, we have not incorporated any outside legal costs.

¹² We estimated print costs by averaging individual print charges gathered from Institute members and print vendors.

Prospectus mailings, but disagree with the estimates for printing costs of the Summary Prospectus and the number of statutory prospectuses that will be printed by individuals in their homes. More detail on specific estimates is provided following Exhibit 6.

Exhibit 6

Factors Underlying Estimated Printing and Mailing Costs of the Summary Prospectus

	SEC	ICI
Annual Fulfillment		
Print cost per summary	\$0.11	\$0.17
Mail cost per summary	\$0.255	\$0.255
Number of summary prospectuses	290 million	290 million
Total cost for annual fulfillment ¹	\$106 million	\$123 million
Post-Sale Fulfillment		
Print cost per summary	\$0.11	\$0.26
Mail cost per summary	\$0.41	\$0.41
Number of summary prospectuses	64.5 million	64.5 million
Total cost for post-sale fulfillment ¹	\$34 million	\$43 million
Printing by Individuals		
Print cost per statutory prospectus	\$2.03	\$2.03
Number of statutory prospectuses	3.2 million	7.1 million
Total cost to individuals ²	\$7 million	\$14 million
Estimated Total Printing & Mailing Cost³	\$147 million	\$ 180 million

1. Calculated as (print cost + mail cost per summary prospectus) x (# of summary prospectuses).

2. Calculated as (print cost per statutory prospectus) x (# of statutory prospectuses).

3. Sum of total costs for annual fulfillment, post-sale fulfillment, and printing by individuals.

Mailings Costs: We believe the Commission's estimates of mailing costs are appropriate. Over 90 percent of funds in the Institute's survey indicated that statutory prospectuses for annual fulfillment are sent via bulk mail and those for post-sale fulfillment are sent via first class mail. We would expect this pattern to continue with the Summary Prospectus.

Number of Summary Prospectus Mailings: We believe the Commission's estimates of 290 million prospectuses mailed for annual fulfillment and 64.5 million mailed for post-sale fulfillment are reasonable based on the data provided by the fund companies in our survey.¹³

¹³ In our sample, fund companies mailed directly or through their intermediaries 138 million statutory prospectuses for annual fulfillment and 35 million for post-sale fulfillment. These firms represent close to 60 percent of industry assets and 37 percent of the total number of funds. Assuming a proportional relationship between industry assets and the number of prospectuses mailed, industry totals would equal 230 million for annual fulfillment and 58 million for post-sale fulfillment. Respondents to the Institute's survey, however, have somewhat higher average account balances and a larger share of their assets coming from 401(k) plans, suggesting that the number of prospectuses per dollar of assets could be lower for respondents than for non-respondents. If we were to

Printing Cost Per Summary Prospectus: We believe the Commission's estimate of the average cost of printing a Summary Prospectus consisting of four pages¹⁴ in black and white with digital print on demand at \$0.11 is on the low side. The Commission assumed that digital print on demand would be used for both annual and post-sale fulfillment. We agree with the Commission that use of digital print on demand for post-sale fulfillment will be widespread due to the proposed one-month deadline for the quarterly update. We estimate, however, that the print cost for post-sale fulfillment will be \$0.26 per Summary Prospectus.¹⁵ For annual fulfillment, we believe that about half of the funds will have sufficient print volumes to use offset printing, which can be considerably less expensive per document than digital print on demand.¹⁶ Nevertheless, our estimate is higher than the Commission's. Using a weighted average, we estimate the average print cost for annual fulfillment to be \$0.17 per Summary Prospectus.¹⁷

assume a proportional relationship between number of funds and the number of prospectuses mailed, we would obtain 373 million prospectuses for annual fulfillment and 95 million for post-sale fulfillment. We believe that these figures are too high. The Commission's estimates, which fall between the two data points, appear to be a good indicator of industry-wide prospectus mailings.

¹⁴ The Institute's survey did not ask members about an anticipated average length of the Summary Prospectus for their funds. In our analysis, we assumed an average length of four pages, the same as the Commission. Several Institute members that have experimented with creating and formatting a Summary Prospectus for some of their funds, however, tell us that it is difficult to fit all the required information onto four pages, particularly for funds with multiple share classes. Therefore, the printing costs per Summary Prospectus that we report in Exhibit 6 should be viewed as a minimum cost.

¹⁵ We estimate the average cost of a four-page (standard 8-1/2" X 11") document in black and white produced with digital print on demand to be \$0.14, slightly higher than the Commission's estimate of \$0.11. In addition, according to those funds that answered the question in our survey, 47 percent expect to use color for the Summary Prospectus, which has a substantially higher cost than black and white in a digital print on demand environment. Estimates for a four-page color document with print on demand average \$0.40. We, therefore, used a weighted average of the color and black and white prices ($.47 \times \$0.40 + .53 \times \$0.14 = \$0.26$, rounded to the nearest penny).

¹⁶ In the absence of time constraints, the decision between digital print on demand and offset printing largely hinges on volume. In conversations with Institute members and print vendors, we understand that as a general rule of thumb, volumes greater than 5,000 documents appear to be more economical per unit in offset printing than in digital print on demand. In part for this reason, funds with a smaller number of shareholders tend to be included in multi-fund statutory prospectuses in order to realize the economies of scale in offset printing. Under the proposal, each fund would be required to have a separate Summary Prospectus. Based on confidential data submitted to the Institute on the number of shareholder accounts for retail mutual funds (excluding variable annuities), we estimate that approximately half of mutual funds would still have sufficient volumes for offset printing for annual fulfillment.

¹⁷ We estimated the average cost by assuming that half of funds would offset print at a blended color/black and white cost of \$0.08 per Summary Prospectus and half of funds would use digital print on demand at a blended color/black and white rate of \$0.26 per Summary Prospectus (*see supra* note 15). The calculation is ($.5 \times \$0.08 + .5 \times \$0.26 = \$0.17$, rounded to the nearest penny). The offset blended color/black and white rate was estimated as 47 percent of the average color offset rate of \$0.09 and 53 percent of the average black and white offset rate of \$0.07 ($.47 \times \$0.09 + .53 \times \$0.07 = \0.08, rounded to the nearest penny). The offset print costs include costs for typesetting.

Our print cost estimates are conservative because they do not consider increased costs for funds whose Summary Prospectus information requires more than four pages.¹⁸ We understand that these funds could face print costs that are anywhere from 20 to 50 percent higher because a printing form has to be configured in multiples of four regardless of how many pages are filled with copy (*e.g.*, even if a Summary Prospectus only has copy that fills five pages, the fund pays for eight pages with three of the pages blank).

Printing by Individuals: We commend the Commission for considering the cost to those individuals who would choose to print the statutory prospectus on their own. This cost is difficult to assess because of the uncertainty about which type of shareholders and how many of each group will print the statutory prospectus. Like the Commission, we estimate that a small percentage of new investors will print the statutory prospectus.¹⁹ In contrast to the Commission, we expect that some percentage of existing shareholders will print statutory prospectuses.²⁰ We assume this will be two percent, the same rate as new shareholders. As shown in Exhibit 6, we estimate that 7.1 million shareholders will print the statutory prospectus at home, somewhat higher than the Commission's estimate of 3.2 million.²¹

Baseline Benefits of the Summary Prospectus

As stated above, the Institute strongly agrees with the Commission that the Summary Prospectus will significantly benefit investors by providing them with a streamlined document that presents key information in a concise, user-friendly format. While this benefit to investors is impossible to quantify, it may manifest itself in a fund's decision to use the Summary Prospectus. Another unquantifiable, but also important, social benefit to the proposal is the positive impact on the environment from a reduction in paper consumption and waste.

¹⁸ See *supra* note 14.

¹⁹ The Commission estimated that 5 percent of new shareholders would print the statutory prospectus. We would approximate the at-home printing rate by individuals to be no more than 2 percent. This estimate is based on information from Broadridge Financial Solutions; investor requests for written materials under the Commission's notice and access e-proxy model have averaged around 2 percent. While this is not a direct comparison to the propensity to print statutory prospectuses, it may provide an indication of investors' preferences for printed information.

²⁰ Institute research shows that 12 percent of individuals, while they do not read the prospectus, save it—most likely filing it away for possible future reference. See Investment Company Institute, *Understanding Investor Preferences for Mutual Fund Information* (2006), available at http://www.ici.org/stats/res/rpt_06_inv_prefs_full.pdf, at 9. Presumably, some fraction of existing shareholders will print the statutory prospectus on their own.

²¹ We estimate the amount printed by individuals as $.02 \times (290 \text{ million} + 64.5 \text{ million}) = 7.1 \text{ million}$. The Commission's estimate is $.05 \times 64.5 \text{ million} = 3.2 \text{ million}$.

The major quantifiable benefit from the Summary Prospectus is the cost savings to funds and their shareholders from no longer printing and mailing statutory prospectuses for annual and post-sale fulfillment. The Commission’s estimate of these eliminated costs takes into consideration several factors (shown in Exhibit 7). For the most part, the Institute agrees with the Commission’s estimated values of these factors, and our estimate of the eliminated costs (\$236 million) is virtually the same as that of the Commission (\$243 million).

As noted in more detail following Exhibit 7, our estimates of current printing and mailing costs for statutory prospectuses are consistent with those of the Commission. We expect satisfying investor requests for hard copies of the statutory prospectus to be somewhat more costly than the Commission estimated.

Exhibit 7

Factors Underlying Estimated Eliminated Costs of Statutory Prospectuses

	SEC	ICI
Annual Fulfillment		
Print cost per statutory prospectus	\$0.27	\$0.26
Mail cost per statutory prospectus	\$0.255	\$0.255
Number of statutory prospectuses	290 million	290 million
Total savings for annual fulfillment ¹	\$152 million	\$149 million
Post-Sale Fulfillment		
Print cost per statutory prospectus	\$0.35	\$0.26
Mail cost per statutory prospectus	\$1.21	\$1.39
Number of statutory prospectuses	64.5 million	64.5 million
Total savings for post-sale fulfillment ¹	\$101 million	\$106 million
Hard Copy Investor Requests		
Print cost per statutory prospectus	\$0.35	\$1.35
Mail cost per request	\$1.21	\$1.39
Number of requests	6.5 million	7.1 million
Total cost of investor requests ²	\$10 million	\$19 million
Estimated Total Eliminated Costs³	\$243 million	\$236 million

1. Calculated as (print cost + mail cost) x (# of statutory prospectuses).
2. Calculated as (print cost + mail cost) x (# of requests).
3. Sum of total savings for annual and post-sale fulfillment less total cost of investor requests.

Print Cost Per Statutory Prospectus: We believe the Commission’s estimate of the average print cost of a statutory prospectus at \$0.27 for annual fulfillment is accurate. Based on responses to our survey, the average cost to print a statutory prospectus is \$0.26. This estimate reflects print costs for full offset production runs and digital print on demand documents and is somewhat lower than the estimate of \$0.35 used by the Commission for post-sale fulfillment. Some small funds currently only use print on demand in the production of their statutory prospectuses because they have insufficient

volume for offset printing and other funds may run out of offset print statutory prospectuses and need to print additional ones using print on demand. We used our average cost estimate of \$0.27 in the determination of the cost savings for both annual fulfillment and post-sale fulfillment.

Mailing Costs: As noted above, we agree with the Commission that the vast majority of funds mail statutory prospectuses for annual fulfillment at the bulk rate and those for post-sale fulfillment at the first class or equivalent expedited rate. Based on responses to our survey, we estimate the average mailing cost to be \$1.39 per post-sale statutory prospectus, modestly higher than the Commission's estimate of \$1.21.

Hard Copy Inventory/Investor Requests: The Commission noted in the Proposing Release that funds and/or their intermediaries would likely maintain some level of paper inventory of statutory prospectuses to fulfill any requests from investors for a hard copy within the 3-day deadline. The Commission estimated that approximately 10 percent of investors that make fund purchases would request a hard copy of the statutory prospectus to be mailed to them, resulting in about 6.5 million in hard copy inventory and investor requests. In estimating the printing costs of these statutory prospectuses, the Commission assumed a \$0.35 per statutory prospectus charge. We believe this estimate is too low because it largely reflects economies of scale from high volume offset printing that are not realistic even at the level of investor requests the Commission has proposed. The more likely scenario is that investor requests for statutory prospectuses will be met by using print on demand. We estimate the average digital print on demand cost for a statutory prospectus to be \$1.35.²² Also, we expect that, at most, 2 percent (7.1 million) of new and existing shareholders will request a hard copy of the statutory prospectus.²³

Baseline Net Savings of the Summary Prospectus

The baseline net savings to funds and their shareholders is summarized in Exhibit 8. If all funds were required to adopt the Summary Prospectus, we estimate that they would incur net costs of \$47 million in the first year. Our estimate is substantially lower than the Commission's estimate due to our consideration of the initial costs in setting up the Summary Prospectus and our higher estimates of the costs of quarterly updating. After the first year, we estimate industry annual net savings to be only \$4 million if every fund were required to use the Summary Prospectus. Again, our estimate of the cost of quarterly updating indicates that annual net savings will be considerably lower than the Commission's estimate of \$70 million.

²² This calculation is based on an average charge of \$0.03 per page in black and white print on demand for an average prospectus length of 45 pages that is cited in the Proposing Release ($\$0.03 \times 45 = \1.35 , rounded to the nearest penny).

²³ See *supra* notes 19 and 20.

Exhibit 8

Estimated Baseline Fund Industry Costs, Benefits, and Net Savings of the Summary Prospectus
Millions of dollars

	SEC	ICI
Benefits		
Ongoing eliminated costs (Exhibit 7)	\$243	\$236
Costs		
Initial internal costs (Exhibit 5)	\$0	\$51
Ongoing annual internal costs (Exhibit 5)	\$33	\$66
Ongoing printing/ mailing costs (Exhibit 6) ¹	\$140	\$166
Net Savings		
First year ²	\$70	-\$47
Annual thereafter ³	\$70	\$4

1. Does not include costs of printing by individuals because this is not considered a fund industry cost.

2. Calculated as (ongoing eliminated costs – initial internal costs – ongoing annual internal costs – ongoing printing/ mailing costs).

3. Calculated as (ongoing eliminated costs – ongoing annual internal costs – ongoing printing/ mailing costs).

Net Savings When Funds Elect to Use the Summary Prospectus

As noted earlier, the rate at which funds voluntarily elect to use the Summary Prospectus (the opt-in rate) will be heavily influenced by the amount of net savings that funds realize and pass through to their shareholders. Funds with the greatest net savings will be more likely to adopt the Summary Prospectus than those with little or negative net savings.²⁴

We believe it is unlikely that the industry opt-in rate for the current proposal, which requires quarterly updating, will be as high as the 75 percent assumed by the Commission in its Proposing Release. Based on our analysis of data provided by respondents to the Institute’s survey, we estimate that between 30 and 45 percent of all funds industry-wide would choose to use the Summary Prospectus. We estimated this range for the opt-in rate by carrying out a cost-benefit analysis using a similar approach to that outlined in this study on each complex in our sample.²⁵ The upper bound of the range included funds that had cumulative positive net

²⁴ As also previously noted, funds may seek to use the Summary Prospectus because of the benefits it could offer to investors. These benefits are difficult to quantify, and as such are not reflected in this analysis.

²⁵ We estimated the net savings of adopting the Summary Prospectus for each complex using its confidential individual responses. In general, we determined that the complex would opt to use the Summary Prospectus if the cumulative net savings from doing so over a period of five years were positive. There were some exceptions to this “rule.” If a complex had positive net savings, but noted that it would not use the Summary Prospectus for certain types of funds (*e.g.*, variable annuities, target date funds, or funds in multi-fund prospectuses), we excluded these funds in the calculation of the opt-in rate. If a complex had negative net savings, but noted that they were planning to use the Summary Prospectus, we included these funds in the calculation of the opt-in rate. To estimate the lower bound of the range, we excluded funds based on whether a fund complex indicated that bottlenecking for

savings over a period of five years. The lower bound of the range considered that some funds, despite having cumulative positive net savings, still would not opt to use the Summary Prospectus because of severe bottlenecks at calendar quarter ends.

This individual complex-level analysis revealed several general findings. Large fund complexes with many funds tended to have negative net savings if they opted to use the Summary Prospectus. These fund complexes generally did not experience as significant of savings on a percentage basis of their printing costs because they already have fairly low per copy print costs for their statutory prospectuses because of their large volumes. Also, the internal costs of initially creating and updating the Summary Prospectus quarterly for each of their numerous funds outweighed any savings from lower print costs. Small fund complexes tended to realize on a percentage basis substantial print savings from using the Summary Prospectus. Nonetheless, for more than half of small fund complexes, the internal costs of the Summary Prospectus more than offset these savings.

In calculating the overall cost savings to the industry, the SEC multiplied their baseline net savings by an assumed 75 percent opt-in rate (Exhibit 9). A literal interpretation of this result is that the Commission could increase net savings for the industry by *requiring* funds to adopt the Summary Prospectus. We believe that the Commission did not intend to imply this result, but rather used a mechanical scaling mechanism to reduce overall net savings for the industry if there were less than a 100 percent opt-in rate.

We believe that the funds most likely to adopt the Summary Prospectus will be those with positive net savings, precluding us from multiplying the Institute's baseline net savings by the endpoints of our estimated range of 30 to 45 percent for the opt-in rate. We estimate that industry net savings for the current proposal will be between \$8 million and \$10 million in the first year and between \$20 million and \$25 million in each year thereafter with only 30 to 45 percent of funds opting to use the Summary Prospectus (Exhibit 9).²⁶ The complexes with positive net savings would tend to have lower hours for initial set-up of the Summary Prospectus and fewer funds so that the total hours required for quarterly updating would be less burdensome and bottlenecks would be less of an issue.

quarterly updating would be a significant factor in opting against using the Summary Prospectus. Our estimate of the industry-wide opt-in rate is determined from our sample, which we believe is representative of the industry as a whole.

²⁶ For non-respondents, we estimated the aggregate number of funds that would adopt the Summary Prospectus by multiplying the expected opt-in rate by the number of non-responding funds within three categories: (1) large complexes with greater than \$100 billion in assets; (2) medium complexes with less than \$100 billion and greater than \$10 billion in assets; and (3) small complexes with less than \$10 billion in assets. We then applied the average net savings per fund from our sample for large, medium, and small fund complexes to the estimate of the number of adopting funds for non-respondents within each size category. Essentially, we assumed that funds at complexes that did not respond would have average net savings per fund similar to those that responded.

Exhibit 9

Estimated Fund Industry Net Savings of Summary Prospectus at Estimated Opt-In Rates
Millions of dollars

	SEC ¹	ICI ²	
	Opt-In Rate = 75%	Opt-In Rate = 30%	Opt-In Rate = 45%
First year	\$53	\$10	\$8
Annual thereafter	\$53	\$20	\$25

1. Calculated as .75 x net savings for SEC from Exhibit 8.

2. Estimated based on average net savings per fund of complexes with positive net savings from opting to use the Summary Prospectus. For more detailed information, see notes 25 and 26 above.

Requiring or forcing all funds to adopt the Summary Prospectus does not increase or maximize industry net savings. As shown in the Institute's baseline case in Exhibit 8, industry net savings is negative in the first year and significantly smaller for each year thereafter when funds are required to adopt the Summary Prospectus. This result occurs because funds that would not voluntarily adopt the Summary Prospectus would tend to have high initial set-up costs and ongoing compliance costs from quarterly updating, which would outweigh the cost savings from no longer printing and mailing the statutory prospectuses.

Net Savings of Summary Prospectus Without Quarterly Updating Requirement

In our cost-benefit analysis of the individual complexes in our sample, the expense of quarterly updating would prevent many funds from finding it cost-effective to adopt the Summary Prospectus. If the quarterly updating requirement were removed, we estimate that 80 percent of funds would elect to use the Summary Prospectus, up from the 30 to 45 percent range estimated with the quarterly updating requirement.²⁷ The opt-in rate will not be 100 percent because the elimination of quarterly updating still would not result in positive net savings for some funds and does not address the concerns of fund complexes that offer certain types of funds (*e.g.*, variable annuities, target date funds, or funds in multi-fund prospectuses).

At an 80 percent opt-in rate, the Institute estimates industry net savings of the proposal to be \$12 million in the first year (Exhibit 10). This estimate remains below the Commission's estimate of \$69 million because we believe funds would bear the initial costs of creating the Summary Prospectus and meeting the technological requirements for linking within and between documents on their websites. For each year thereafter, the Institute estimates that the net savings of adopting the Summary Prospectus would be \$43 million—also lower than the

²⁷ See *supra* note 25.

Commission's estimate of \$69 million. Our estimate of the ongoing costs for reviewing, updating, and posting to the web on an annual basis is higher than the Commission's.²⁸

Exhibit 10

Estimated Fund Industry Net Savings of Summary Prospectus Without Quarterly Updating
Millions of dollars

	SEC ¹	ICI ²
	Opt-In Rate = 75%	Opt-In Rate = 80%
First year	\$69	\$12
Annual thereafter	\$69	\$43

1. Calculated as $.75 \times$ (ongoing eliminated costs $- .33 \times$ (ongoing annual internal costs) $-$ ongoing printing/ mailing costs) for the SEC from Exhibit 8.

2. Estimated based on average net savings per fund of complexes with positive net savings from opting to use the Summary Prospectus without quarterly updating. For more detailed information, see note 26 above.

²⁸ In our estimation of the net savings without the quarterly update, we assumed that ongoing internal cost for the Summary Prospectus were equivalent to the cost of one quarterly update.

Appendix C, Exhibit 1

Putnam Investments - Microsoft Internet Explorer

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Mutual Funds

Prospectuses and fund documents

- Mutual fund documents
- Variable Trust prospectus
- CollegeAdvantage offering statement

ABCDEFGHIJKLMNOPQRSTUVWXYZ

Mutual fund documents

Fund name	Prospectus	Statement of Additional Information (SAI)	Semiannual report	Annual report
American Government Income Fund	Prospectus	SAI	March	September
AMT-Free Insured Municipal Fund	Prospectus	SAI	January	July
Arizona Tax Exempt Income Fund	Prospectus	SAI	November	May
Asset Allocation : Balanced Portfolio	Prospectus	SAI	March	September
Asset Allocation : Conservative Portfolio	Prospectus	SAI	March	September
Asset Allocation : Growth Portfolio	Prospectus	SAI	March	September
California Tax Exempt Income Fund	Prospectus	SAI	March	September
Capital Appreciation Fund	Prospectus	SAI	November	May
Capital Opportunities Fund	Prospectus	SAI	October	April
Classic Equity Fund	Prospectus	SAI	May	November
Convertible Income-Growth Trust	Prospectus	SAI	April	October

Start | Putnam Investments - Micr... | 10:35 AM

Fund List with Links to Prospectus and Other Documents

Appendix C, Exhibit 2

Fidelity HTML PROS - Microsoft Internet Explorer

76%

Bookmarks

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The contents of all mutual funds are not approved or disapproved by the Securities and Exchange Commission, and the Securities and Exchange Commission does not pass judgment on the accuracy or completeness of any representation in the prospectus.

Fidelity®
Capital
Appreciation
Fund
(Inherits: 03:cdappfund100)

Prospectus
December 29, 2007

17 Riverside Street, Boston, MA 02109

PDF Prospectus with Bookmark Panel

Fidelity HTML PROS - Microsoft Internet Explorer

Investment Products
Mutual Funds

Like securities of all mutual funds, these securities have not been approved or disapproved by the Securities and Exchange Commission, and the Securities and Exchange Commission has not determined if this prospectus is accurate or complete. Any representation to the contrary is a criminal offense.

Fidelity®

Capital Appreciation
Fund
(fund number 307, trading symbol FDCAX)

Prospectus
December 29, 2007

82 Devonshire Street, Boston, MA 02109

Fidelity®
INVESTMENTS

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Not part of the prospectus

HTML Prospectus with Links in Table of Contents

The image shows a computer desktop with two windows open. The top window is Adobe Acrobat Pro, displaying a document titled "Hypothetical Summary Prospectus - Prepared By SEC Staff - For Illustrative Purposes Only". The document content includes the title "SUMMARY PROSPECTUS" and a red-bordered text box that reads: "Before you can find recent rep 2007, and". The bottom window is Microsoft Internet Explorer, displaying the same document as a PDF. The browser's address bar shows "Fidelity HTML PROS - Microsoft Internet Explorer". The browser's toolbar includes a "Text Select Tool (W)". The document content in the browser window includes a table of contents and a disclaimer.

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

SUMMARY PROSPECTUS

Before you can find recent rep 2007, and

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Financial Highlights

Like securities of all mutual funds, these securities have not been approved or disapproved by the Securities and Exchange Commission, and the Securities and Exchange Commission has not determined if this prospectus is accurate or complete. Any representation to the contrary is a criminal offense.

Fidelity®
Capital
Appreciation
Fund
(Qual under SEC Rule 19c-1(f))
Prospectus
December 29, 2007

Fidelity
EX-DIVIDENDS STATE SEPARATE VALUATION

Demonstration of Sample Summary and Statutory Prospectuses in Separate Windows

February 28, 2008

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Re: Mutual Fund Summary Prospectus Proposal (File No. S7-28-07)

Dear Ms. Morris:

The Investment Company Institute¹ and the Securities Industry and Financial Markets Association² commend the Commission's efforts to improve fund disclosure by permitting the use of a summary prospectus that provides investors with key information in plain English in a clear and concise format. We strongly support the summary prospectus concept and believe that it has the potential to enhance investor use and understanding of important fund information. We also support the Commission's proposal to require that additional information, including a fund's statutory prospectus, be available online and by mail or email upon request. This approach will assure that investors, their financial advisers, analysts, and other market participants will continue to have ready access to a large body of more detailed fund information should they so desire.

¹ The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$12.68 trillion and serve almost 90 million shareholders.

² SIFMA brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C. and London, and its associated firm, the Asian Securities Industry and Financial Markets Association, is based in Hong Kong. SIFMA members account for a significant percentage of all mutual fund shares sold through intermediaries.

The success of the summary prospectus initiative, and the resulting benefits to investors, depend heavily on both funds and fund distributors broadly embracing it. It is therefore critical that the Commission avoid unintentionally creating any significant disincentives to widespread use, such as by requiring funds to update performance and top ten portfolio holdings information in summary prospectuses on a calendar quarter basis. The quarterly updating requirement would involve, for funds and fund distributors alike, substantial administrative and operational burdens and costs, as discussed in greater detail in our individual comment letters. If adopted, the requirement will discourage many funds and intermediaries from using summary prospectuses and as a result, fewer investors will benefit from the summary prospectus initiative.

It would be most unfortunate if a requirement that seems tangential to the proposal's laudable goal of getting useful information into investors' hands were to cause the initiative to fail to meet its objectives. We believe there are other, less burdensome ways to achieve the goals of the quarterly updating requirement. We urge the Commission to move swiftly to adopt a summary prospectus rule that does not introduce undue operational complexities, so that investors will be able to reap the benefits of streamlined mutual fund disclosure as soon as possible.

Our organizations would be pleased to assist the Commission in any way possible as the summary prospectus proposal continues to advance.

Sincerely,

/s/ Karrie McMillan
Karrie McMillan
General Counsel
Investment Company Institute

/s/ Ira D. Hammerman
Ira D. Hammerman
Senior Managing Director and General Counsel
Securities Industry and Financial Markets Association

cc: The Honorable Christopher Cox, Chairman
The Honorable Paul S. Atkins
The Honorable Kathleen L. Casey

Andrew J. Donohue, Director
Division of Investment Management

Susan Nash, Associate Director
Brent J. Fields, Assistant Director
Tara R. Buckley, Branch Chief
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