



February 28, 2008

Nancy M. Morris, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: Enhanced Disclosure and New Prospectus Delivery Option For  
Registered Open-End Management Investment Companies Release  
No. 33-8861, File No. S7-28-07**

Dear Ms. Morris:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> is particularly pleased to comment on the above referenced proposals (collectively, the “Proposal”) which is designed to permit mutual fund delivery requirements to be satisfied by sending or giving key plain English information in the form of a summary prospectus<sup>2</sup> directly to investors, and providing access to the statutory prospectus on an Internet Web site.

I. OVERVIEW

In the proposing release (the “Release”), the U.S. Securities and Exchange Commission (the “Commission”) states that the Proposal has:

“...the potential to revolutionize the provision of information to the millions of mutual fund investors who rely on mutual funds for their most basic financial needs. The proposals are intended to help investors who are overwhelmed by the choices among thousands of available funds described in lengthy and legalistic

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<sup>1</sup> 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.

<sup>2</sup> The summary prospectus is also sometimes referred to as a profile prospectus.

documents to readily access key information that is important to an informed investment decision...”<sup>3</sup>

SIFMA applauds and strongly supports these laudable goals. Through one of its predecessor organizations (Securities Industry Association), SIFMA and its members were active participants in the NASD’s Mutual Fund Task Force (the “Task Force”) whose recommendations included the development of a short-form user-friendly profile plus document utilizing the internet as a delivery mechanism.<sup>4</sup> We are pleased that the Proposal embraces many elements of the Task Force’s recommendations. We are also pleased that the Proposal through certain incorporation by reference provisions appears to significantly address legal liability concerns that resulted in very few fund families utilizing the fund profile document that was provided for under current Rule 498, which the Commission adopted in 1998.

Beyond the specific goals of the Proposal, we also wish to praise the process through which the Proposal was developed. In addition to carefully reviewing and considering the recommendations of the Task Force, the Commission also reached out to many interested parties, including consumer groups, SIFMA, the Department of Labor (the “DOL”) and others, to elicit their views and essentially utilize them as a “sounding board” for various possible components of the Proposal. This inclusive approach, incorporating consumer, industry, and regulatory constituencies, clearly enhanced the Commission’s ability to anticipate and address both the benefits to investors as well as potential implementation challenges prior to publication of the Proposal.<sup>5</sup> Additionally, a number of the questions contained in the Release on which the Commission has requested further input, are a reflection of issues discussed with, and in certain instances raised by, interested parties prior to publication of the Proposal. Thus, we believe that the approach taken by the Commission in developing the Proposal exemplifies the regulatory process at its best.

While a significant number of SIFMA members have affiliated proprietary mutual fund families, the primary role of most of our members with respect to mutual funds is as a distributor. Therefore, our comments below on various aspects of the Proposal generally reflect our members’ views from a distributor’s perspective.

We would also note that while we recommend a number of modifications to the Proposal, some of which we believe are critical to achieving its goals, we strongly support the adoption of a final rule that provides for a user-friendly summary prospectus

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<sup>3</sup> The Release at p.12

<sup>4</sup> “Report of the Mutual Fund Task Force: Mutual Fund Distribution,” pp. 4-14, April 4, 2005

<sup>5</sup> The Commission has consulted with the DOL which is drafting new regulatory guidance that will enhance the information that participants in individual account plans receive. With over one-third of all mutual fund assets invested in 401(k) plans, it would be useful to have disclosure materials that would satisfy both Commission and DOL regulatory requirements.

that investors will utilize and understand. Our comments and recommendations are as follows:

## II. CONTENT OF SUMMARY PROSPECTUS

The Proposal specifies that the summary prospectus contain the following seven categories of information<sup>6</sup> and that they be presented in a specific order:

- 1) Investment objectives
- 2) Fees and Costs
- 3) Principal investment strategies, risks and performance
- 4) Top ten portfolio holdings
- 5) Investment advisers and portfolio management
- 6) Certain purchase and sale and tax information
- 7) Financial intermediary compensation

SIFMA recognizes the difficulty of creating a document that is useful to investors and which strikes the right balance between brevity and providing essential information. For the most part we believe that the categories selected reflect the items that are of most interest to investors and this useful information can be clearly presented in a concise format. We do, however, have certain recommendations regarding the order in which the categories of information will be presented. We believe that adoption of these recommendations in the final rule will enhance the usefulness of the information for investors as well as more closely track the thought process investors do, or should, follow in making their investment decisions.

### A. Fees and Costs

SIFMA agrees that fees and costs are important factors to fund investors, and such information should be given appropriate prominence in the summary prospectus. It is also important to recognize that to a major extent, the size of fees and costs are a function of a particular fund's investment strategies and performance objectives. Therefore, in order to provide a proper context within which the investor may evaluate the reasonableness of a fund's fees and costs, that information should follow, not precede the information on investment strategies, risk and performance. Also, we believe that fees and costs are closely linked in investors' minds with the issue of potential conflicts and incentives, and therefore, the discussion regarding payments to broker-dealers and other financial intermediaries should be folded into the fees and costs section, rather than appearing separately at the end of the summary prospectus. Furthermore, for that discussion to be fully informative and balanced, the section should also disclose any potential conflicts at the fund level, such as those that might arise from the use of affiliated service providers.

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<sup>6</sup> This information would also appear at the front of the fund's statutory prospectus

B. Sales Charge Discounts (Breakpoints)

SIFMA strongly supports the inclusion of information in the summary prospectus to alert investors to possible sales charge discounts (breakpoints) that may be available based on aggregate purchases of fund shares. In its report issued in July, 2003, a joint NASD/Industry Task Force noted that delivering a discount is a complicated endeavor where the discount is based upon a right of accumulation.<sup>7</sup> That task is complicated by the fact that discount policies vary widely across hundreds of fund families and fund shares may be purchased and held through multiple distribution channels. While such disclosure is important, the Commission's proposal to reference a specific discount level may not accommodate the complexity and variety of these policies. To address this concern, we recommend using more generic language that requests investors to inquire further regarding specific information.

While technological enhancements have improved methodologies for tracking discount opportunities, the fund investor remains a primary source for information to determine discount eligibility. Therefore, investor awareness remains critical to assuring that investors receive all of the volume discounts to which they are entitled.

C. Top Ten Portfolio Holdings

SIFMA members have expressed some concern, and even puzzlement, as to why the Commission has concluded that the ten largest portfolio holdings, information that is not even required to be included in the current prospectus, is an essential component of the summary prospectus. While such information might be useful in terms of adding some perspective on a fund's investment objectives and strategies, it would hardly seem to rise to the same level of significance as the other summary prospectus information mandated in the Proposal. As further discussed below in this letter, this proposed requirement also contributes to operational complexities which could have a deterrent effect on funds and distributors utilization of the summary prospectus.

III. USE OF INTERNET DELIVERY METHODOLOGY

SIFMA members welcome the Commission's embracing the concept of enabling delivery requirements of the statutory prospectus to be met by making the document accessible via an Internet Web site. This approach, coupled with certain incorporation by reference provisions included in the Proposal, should go a long way toward ameliorating many of the legal liability concerns that contributed to Rule 498 not being utilized on a widespread basis.<sup>8</sup>

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<sup>7</sup> Report of the Joint NASD/Industry Task Force on Breakpoints, p. 5 (July, 2003).

<sup>8</sup> The investor has the option to access the document electronically or request a hard copy.

The methodology under the Proposal for obtaining a statutory prospectus is essentially the functional equivalent of an access equals delivery standard. SIFMA understands that the Commission is reluctant to extend an access equals delivery standard to the summary prospectus, which, from a content perspective, presents a new and innovative means for providing important mutual fund information to investors. However, we respectfully suggest that there is an approach that can accommodate the Commission's concerns and still offer most of the benefit of an access equals delivery standard. Specifically, we recommend that investors be provided with electronic or hard copy delivery of the summary prospectus upon the initial purchase of the fund shares, but that the access equals delivery standard apply to the annual delivery requirement (of either the summary or statutory prospectus). We believe that by receiving the summary prospectus upon initial purchase, investors will become familiar with the informative and user-friendly nature of the document and will then be well-positioned to make informed judgments as to whether, and in what form<sup>9</sup> they wish to access additional information, when they receive notification regarding availability of such information.

Directing clients to a fund Web site to access the statutory prospectus raises significant issues for intermediaries. Fundamental issues of privacy and confidentiality are centered on the fact that the vast majority of fund transactions through intermediaries are effectuated on an omnibus basis, with intermediaries providing sub-accounting and communications to their clients. They view the identity of, and information relating to their clients as both proprietary and confidential. Directing such clients to a fund Web site would compromise the dynamics and confidentiality of that relationship. Additionally, it would potentially give clients access to on-line third-party marketing information from the fund. At a minimum this would prove confusing to many clients, and potentially expose intermediaries to client claims regarding the content of materials they neither produced nor disseminated.

The Proposal does not appear to clearly delineate the Web site through which clients could access the statutory prospectus. Assuming that it could be obtained on the intermediary's Web site to preserve client confidentiality, such an approach still has practical limitations. Intermediaries distribute hundreds and sometimes thousands of different funds across many fund families, and it may be operationally and economically unfeasible to download and maintain the vast quantity of information that would be required. Nor is it clear that the Proposal would even require funds to provide downloads to intermediaries.

Of obvious concern is that many intermediaries may see the loss of client confidentiality and potentially increased liability for third-party marketing materials as too great a trade-off for the ability to deliver a summary prospectus. Overcoming these

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<sup>9</sup> Presumably, either electronically through a Web site or in hard copy by calling a toll-free telephone number or salesperson.

concerns will most likely hinge on the ability to access statutory prospectuses through a neutral party such as an industry utility or vendor. Whether that is a viable approach, and whether it can be done on a cost-effective basis are matters that the Commission should further explore before adopting a final rule.

#### IV. QUARTERLY UPDATING REQUIREMENT

##### A. Rationale for Updating Requirement

The Commission's rationale for requiring updates of performance and portfolio holdings information in the summary prospectus on a quarterly basis is predicated on its belief that the inclusion of such information may contribute significantly to the usefulness of the document to investors and their intermediaries.<sup>10</sup> The Commission also analogizes to the quarterly update requirements for Rule 482 advertising materials. Unfortunately, even if one sees some merit in the Commission's rationale,<sup>11</sup> implementation of the quarterly update requirement also appears to be the primary contributor to funds' and intermediaries' reluctance to utilize the summary prospectus, due to the significant administrative and operational burdens it will engender.

SIFMA also respectfully disagrees that the summary prospectus quarterly update and Rule 482 are analogous. As we have pointed out in prior communication with the Commission staff, there is discretion as to when or whether to distribute advertising material, whereas the updating requirement would be a mandatory pre-condition for use of a summary prospectus, and one which is subject to specific time constraints.

Most fundamentally, SIFMA believes that it is incongruent and not a reflection of sound public policy for there to be inconsistency between information contained in the summary prospectus and the front of the statutory prospectus, as would be the case since only the former would be subject to the quarterly updating. This would likely result in confusion where the investor elected to obtain both documents. In other instances investors purchasing the same fund at the same time could be relying on different performance and portfolio holdings information, depending on which document they reviewed.

##### B. OPERATIONAL CONSIDERATIONS

The quarterly update requirement adds significant complexity to the prospectus delivery process and multiplies the legal/regulatory risk that a client will receive a document with, in part, stale information. This risk falls disproportionately on broker-

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<sup>10</sup> See Proposing Release at p. 49.

<sup>11</sup> As previously discussed, SIFMA does not believe that it is essential to include portfolio holding information in the summary prospectus.

dealers and other intermediaries since the vast majority of mutual fund transactions are effected through them on an omnibus basis, and they thus bear the responsibility for delivering the proper documents to purchasers. The ability of even large intermediaries to maintain and track a hard copy inventory of prospectuses which change multiple times per year is highly problematic.

Additionally, while building or enhancing a distributor's print on demand capability or outsourcing the delivery functions to a vendor, would reduce the likelihood of delivery of a stale document, the incremental cost of either of these approaches might well exceed the cost of continuing to deliver the statutory prospectus. These incremental costs may be prohibitive for intermediate and smaller broker-dealers as well as other intermediaries.

#### C. RECOMMENDATION

As previously indicated, and as discussed above, SIFMA strongly supports the Commission's efforts to adopt a rule that will result in providing investors with concise, useful information regarding funds through the summary prospectus. As also previously indicated, we do not, however, believe that portfolio holdings information is a necessary component of the summary prospectus. We also do not believe it is critical to update performance information in the summary prospectus on a quarterly basis since mutual funds are generally long-term investments. Since the performance and portfolio holding information is the only information that would have to be updated quarterly, and the administrative, operational and economic burdens associated with such quarterly updates may be significant deterrents to funds and intermediaries' use of summary prospectuses, we strongly urge the SEC to delete the quarterly update requirement from its final rulemaking. Instead, we suggest that the summary prospectus contain a brief narrative statement alerting the investor that more current performance and portfolio holding information (in the event the Commission determines to retain the portfolio holdings disclosure requirement in its final rulemaking) is available, and directing them to an appropriate Web site or their salesperson for additional information.

#### V. CONCLUSION

Our members' clients will greatly benefit from the Commission's adoption of rules that will result in the provision of concise, informative and user-friendly summary prospectuses, as well as from the Commission's recognition of the importance of the Internet as a vehicle for making available important additional information to investors. As such, we fully support the Commission's effort. At the same time, given the fact that use of the summary prospectus is voluntary, we urge the Commission to carefully consider the issues we have raised regarding certain provisions in the Proposal which might deter funds and intermediaries from utilizing the summary prospectus.

Nancy M. Morris  
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If you have any questions concerning the content of this letter, or there is any other way in which we can be of assistance, please contact the undersigned at (202) 962-7373 or Mike Udoff at (212) 313-1209.

Respectfully submitted,

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