

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 230, 232, 239, 270, and 274

[Release Nos. 33-8929, 34-57942, 39-2457, IC-28298; File Number S7-12-08]

RIN 3235-AK13

### Interactive Data for Mutual Fund Risk/Return Summary

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

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

**DATES:** Comments should be submitted on or before August 1, 2008.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/proposed.shtml>);
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-12-08 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number S7-12-08. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission’s Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Alberto H. Zapata, Senior Counsel, or Tara R. Buckley, Branch Chief, Office of Disclosure Regulation, Division of Investment Management, at (202) 551-6784, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-5720.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission (“Commission”) is proposing amendments to Rule 485<sup>1</sup> under the Securities Act of 1933 (“Securities Act”), Rules 11,<sup>2</sup> 202,<sup>3</sup> and 401<sup>4</sup> of Regulation S-T,<sup>5</sup> Rule 8b-33<sup>6</sup> under the Investment Company Act of 1940 (“Investment Company Act”), and Form N-1A<sup>7</sup> under the Securities Act and the Investment Company Act. We are also proposing amendments to proposed Rule 405 of Regulation S-T.<sup>8</sup>

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<sup>1</sup> 17 CFR 230.485.

<sup>2</sup> 17 CFR 232.11.

<sup>3</sup> 17 CFR 232.202.

<sup>4</sup> 17 CFR 232.401.

<sup>5</sup> 17 CFR 232.10 *et seq.*

<sup>6</sup> 17 CFR 270.8b-33.

<sup>7</sup> 17 CFR 239.15A and 274.11A.

<sup>8</sup> See Securities Act Release No. 8924 (May 30, 2008) [73 FR 32794 (June 10, 2008)] (“Interactive Data Proposing Release”).

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## I. Introduction and Background

### A. Introduction

Over the last several decades, developments in technology and electronic data communication have significantly decreased the time and cost of filing disclosure documents with us. Technological developments also have facilitated greater transparency in the form of easier access to, and analysis of, financial reporting and disclosures. Most notably, in 1993 we began to require electronic filing on our Electronic Data Gathering, Analysis and Retrieval System (“EDGAR”).<sup>9</sup> Since then, widespread use of the Internet has vastly decreased the time and expense of accessing disclosure filed with us.

We continue to update our filing standards and systems as technologies improve. These developments assist us in our goal to promote efficient and transparent capital markets. For example, since 2003 we have required electronic filing of certain ownership reports filed on Forms 3,<sup>10</sup> 4,<sup>11</sup> and 5<sup>12</sup> in a format that provides interactive data, and recently we adopted similar rules governing the filing of Form D.<sup>13</sup> In addition, recently we have encouraged, and in some cases required, open-end management investment companies (“mutual funds”) <sup>14</sup> and

<sup>9</sup> In 1993, we began to require domestic issuers to file most documents electronically. Securities Act Release No. 6977 (Feb. 23, 1993) [58 FR 14628 (Mar. 18, 1993)]. Electronic filing began with a pilot program in 1984. Securities Act Release No. 6539 (June 27, 1984) [49 FR 28044 (July 10, 1984)].

<sup>10</sup> 17 CFR 249.103 and 274.202.

<sup>11</sup> 17 CFR 249.104 and 274.203.

<sup>12</sup> 17 CFR 249.105.

<sup>13</sup> 17 CFR 239.500.

<sup>14</sup> An open-end management investment company is an investment company, other than a unit investment trust or face-amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer. See

public reporting companies to provide disclosures and communicate with investors using the Internet.<sup>15</sup> Now, as part of our continuing efforts to assist filers as well as investors who use Commission disclosures, we propose to require that mutual fund risk/return summary information be provided in a format that makes the information interactive.

Our proposal builds on our voluntary filer program, started in 2005,<sup>16</sup> that allowed us to evaluate the merits of interactive data. The voluntary program allows companies to submit financial statements on a supplemental basis in interactive format as exhibits to specified filings under the Securities Exchange Act of 1934 (“Exchange Act”) and the Investment Company Act.<sup>17</sup> Over 75 companies have participated in the voluntary program. These companies span a wide range of industries and company characteristics, and have a total market capitalization of over \$2 trillion. Companies that participate in the program still are required to file their financial statements in American Standard Code for Information Interchange (“ASCII”) or HyperText Markup Language (“HTML”).<sup>18</sup>

In 2007, we extended the program to enable mutual funds voluntarily to submit in interactive data format supplemental information contained in the risk/return summary section of their prospectuses.<sup>19</sup> The risk/return summary contains key information about a fund’s investment objectives and strategies, costs, risks, and past performance.<sup>20</sup> Approximately 20 mutual funds from a wide variety of fund families have submitted risk/return summary information in interactive format.

In a recently issued release, we proposed to require companies, other than investment companies that are

registered under the Investment Company Act, business development companies,<sup>21</sup> and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S-X, to submit financial information to the Commission in interactive data format.<sup>22</sup> In this release, we propose to extend similar requirements to mutual fund risk/return summary information.

The submission of mutual fund risk/return summary information based on interactive data would create new ways for investors, analysts, and others to retrieve and use the information. For example, users of risk/return summary information could download cost and performance information directly into spreadsheets, analyze it using commercial off-the-shelf software, or use it within investment models in other software formats. Through interactive data, what is currently static, text-based information can be dynamically searched and analyzed, facilitating the comparison of mutual fund cost, performance, and other information across multiple classes of the same fund and across the more than 8,000 funds currently available.<sup>23</sup>

Interactive data also could provide a significant opportunity to automate regulatory filings and business information processing, with the potential to increase the speed, accuracy, and usability of mutual fund disclosure. Such automation could eventually reduce costs. A mutual fund that uses a standardized interactive data format at earlier stages of its reporting cycle could reduce the need for repetitive data entry and, therefore, the likelihood of human error. In this way, interactive data may improve the quality of information while reducing its cost.

Also, to the extent investors currently are required to pay for access to mutual fund risk/return summary information that has been extracted and reformatted into an interactive data format by third-party sources, the availability of interactive data in Commission filings could allow investors to avoid additional costs associated with third-party sources.

We believe that requiring mutual funds to file the risk/return summary section of their prospectuses using

interactive data format would enable investors, analysts, and the Commission staff to capture and analyze that information more quickly and at less cost than is possible using the same information provided in a static format. Any investor with a computer would have the ability to acquire and download interactive data that have generally been available only to intermediaries and third-party analysts. The proposed interactive data requirements would not change what is currently disclosed, but would add a requirement to include risk/return summary information in a new format as an exhibit. Thus the proposal to require that filers provide risk/return summary information using interactive data will not alter the disclosure or formatting standards of mutual fund prospectuses, which would continue to be available as they are today for those who prefer to view the traditional text-based document.

Throughout this release, we solicit comment on many issues concerning the use of interactive data, including specifically whether mutual fund risk/return summary information in interactive data format should be required as exhibits to Securities Act registration statements filed with us. We are seeking comment from investors, mutual funds, financial intermediaries, analysts, accountants, and any other parties or individuals who may be affected by the use of interactive disclosure in Commission filings, and any other members of the public.

#### B. Current Filing Technology and Interactive Data

Companies filing electronically are required to file their registration statements and periodic reports in ASCII or HTML format.<sup>24</sup> Also, to a limited degree, our electronic filing system uses other formats for internal processing and document-type identification. For example, our system uses eXtensible Markup Language (“XML”) to process reports of beneficial ownership of equity securities on Forms 3, 4, and 5 under section 16(a) of the Exchange Act.<sup>25</sup>

<sup>24</sup> Rule 301 of Regulation S-T [17 CFR 232.301] requires electronic filings to comply with the EDGAR Filer Manual, and Section 5.2 of the EDGAR Filer Manual requires that electronic filings be in ASCII or HTML format. Rule 104 of Regulation S-T [17 CFR 232.104] permits filers to submit voluntarily as an adjunct to their official filings in ASCII or HTML unofficial PDF copies of filed documents. Unless otherwise stated, we refer to filings in ASCII or HTML as traditional format filings.

<sup>25</sup> 15 U.S.C. 78p(a).

Sections 4 and 5(a)(1) of the Investment Company Act [15 U.S.C. 80a-4 and 80a-5(a)(1)].

<sup>15</sup> See, e.g., Exchange Act Release No. 57172 (Jan. 18, 2008) [73 FR 4450 (Jan. 25, 2008)]; Securities Act Release No. 8861 (Nov. 21, 2007) [72 FR 67790 (Nov. 30, 2007)] (“Summary Prospectus Proposing Release”); Exchange Act Release No. 56135 (July 26, 2007) [72 FR 42222 (Aug. 1, 2007)]; Exchange Act Release No. 55146 (Jan. 22, 2007) [72 FR 4148 (Jan. 29, 2007)]; Securities Act Release No. 8591 (July 19, 2005) [70 FR 44722 (Aug. 3, 2005)].

<sup>16</sup> Securities Act Release No. 8529 (Feb. 3, 2005) [70 FR 6556 (Feb. 8, 2005)] (“Voluntary Program Adopting Release”).

<sup>17</sup> 15 U.S.C. 80a-1 *et seq.*

<sup>18</sup> HTML is a standardized language commonly used to present text and other information on Web sites.

<sup>19</sup> Securities Act Release No. 8823 (July 11, 2007) [72 FR 39290 (July 17, 2007)] (“Risk/Return Voluntary Program Adopting Release”).

<sup>20</sup> Items 2 and 3 of Form N-1A.

<sup>21</sup> Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act. 15 U.S.C. 80a-2(a)(48).

<sup>22</sup> See Interactive Data Proposing Release, *supra* note 8.

<sup>23</sup> Investment Company Institute, *2008 Investment Company Fact Book*, at 15 (2008), available at: [http://www.icifactbook.org/pdf/2007\\_factbook.pdf](http://www.icifactbook.org/pdf/2007_factbook.pdf) (as of year-end 2007, there were 8,752 mutual funds).

Electronic formats such as HTML, XML, and XBRL are open standards<sup>26</sup> that define or “tag” data using standard definitions. The tags establish a consistent structure of identity and context. This consistent structure can be recognized and processed by a variety of different software applications. In the case of HTML, the standardized tags enable Web browsers to present Web sites’ embedded text and information in predictable format. In the case of XBRL, software applications, such as databases, financial reporting systems, and spreadsheets, recognize and process tagged information.

XBRL was derived from the XML standard. It was developed and continues to be supported by XBRL International, a collaborative consortium of approximately 550 organizations representing many elements of the financial reporting community worldwide in more than 20 jurisdictions, national and regional. XBRL U.S., the international organization’s U.S. jurisdiction representative, is a non-profit organization that includes companies, public accounting firms, software developers, filing agents, data aggregators, stock exchanges, regulators, financial services companies, and industry associations.<sup>27</sup>

Risk/return summary information in interactive format requires a standard list of tags. These tags are similar to definitions in an ordinary dictionary, and they cover a variety of concepts that can be read and understood by software applications. For the risk/return summary, a mutual fund would use the list of tags for risk/return summary information developed by the Investment Company Institute (“ICI”).<sup>28</sup> This list of tags contains descriptive

<sup>26</sup> The term “open standard” is generally applied to technological specifications that are widely available to the public, royalty-free, at minimal or no cost.

<sup>27</sup> XBRL U.S. supports efforts to promote interactive financial and business data specific to the U.S.

<sup>28</sup> Unless stated otherwise, when we refer to the “list of tags for risk/return summary information” we mean the interactive data taxonomy developed by the ICI, including any modifications. We anticipate entering into a contract to update the architecture of the taxonomy developed by the ICI and conform the taxonomy to any changes in the risk/return summary that we adopt pursuant to a pending rule proposal. See Summary Prospectus Proposing Release, *supra* note 15.

The ICI is a national association of the U.S. investment company industry. The taxonomy developed by the ICI received acknowledgement from XBRL International in June 2007 and is used by mutual funds participating in the Commission’s voluntary program. The taxonomy is available on XBRL International’s Web site at: <http://www.xbrl.org/Taxonomy/ici/ici-rr-summarydocument-20070516-acknowledged.htm>.

labels, authoritative references to Commission regulations where applicable, and other elements, all of which provide the contextual information necessary for interactive data<sup>29</sup> to be recognized and processed by software.<sup>30</sup>

To apply data tags to risk/return summary information, a preparer uses commercially available software that guides the preparer in mapping information in the risk/return summary, such as line item costs in a mutual fund’s fee table, to the appropriate tags in the standard list. This involves locating an element in the list of tags that represents the particular disclosure that is to be tagged. Occasionally, because mutual funds have some flexibility in preparing the risk/return summary, particularly the narrative portions, it is possible that a mutual fund may wish to use a non-standard disclosure that is not included in the standard list of tags. In this situation, a fund would create a company-specific element, called an extension.

A mutual fund may choose to tag its own risk/return summary using commercially available software, or it may choose instead to outsource the tagging process. In the event a mutual fund relies upon a service provider to tag the fund’s risk/return summary, the mutual fund would want to carefully review the tagging done by the service provider in order to make sure that the tagged risk/return summary information is accurate and consistent with the information the mutual fund presents in its traditional format filing.

<sup>29</sup> The proposed rules would define the interactive data necessary to create human-readable disclosure as the “interactive data file,” which would be required with every interactive data submission. See Interactive Data Proposing Release, *supra* note 8 (proposing new definitions under 17 CFR 232.11). The EDGAR Filer Manual would identify any necessary supporting files.

<sup>30</sup> For example, contextual information would identify the entity to which it relates, usually by using the filer’s CIK number. A hypothetical filer converting its traditional electronic disclosure of total annual fund operating expenses of 0.73% would have to create interactive data that identify what the 0.73% represents, total annual fund operating expenses, and that the number is a percentage. The contextual information would include other information as necessary; for example, the date of the prospectus to which it relates and the series and class to which it applies.

A mutual fund may issue multiple “series” of shares, each of which is preferred over all other series in respect of assets specifically allocated to that series. Rule 18f-2 under the Investment Company Act [17 CFR 270.18f-2]. Each series is, in effect, a separate investment portfolio.

A mutual fund may issue more than one class of shares that represent interests in the same portfolio of securities with each class, among other things, having a different arrangement for shareholder services or the distribution of securities, or both. Rule 18f-3 under the Investment Company Act [17 CFR 270.18f-3].

Because mutual fund risk/return summary information in interactive data format, referred to as the interactive data file, is intended to be processed by software applications, the unprocessed interactive data is not readable. Thus, viewers are necessary to convert the interactive data file to human readable format. Some viewers are similar to Web browsers used to read HTML files.

The Commission’s Web site currently provides links to four viewers that allow the public to easily read mutual fund and other company disclosures submitted using interactive data.<sup>31</sup> One of these viewers allows users to view and compare mutual fund risk/return summary information, including investment objectives and strategies, risks, costs, and performance, that is submitted in interactive data format.<sup>32</sup> These viewers demonstrate the capability of downloading interactive data into software such as Microsoft Excel as well as into other applications that are widely available on the Internet. In addition, we are aware of other applications under development that may provide additional and advanced functionality.

### C. The Commission’s Multiyear Evaluation of Interactive Data and Overview of Proposed Rules

In 2004, we began assessing the benefits of interactive data and its potential for improving the timeliness and accuracy of financial disclosure and analysis of Commission filings.<sup>33</sup> As part of this evaluation, we adopted rules in 2005 permitting filers, on a voluntary basis, to provide financial disclosure in interactive data format as an exhibit to certain filings on our electronic filing system. After more than two years of increasing participation, over 75 companies have chosen to provide interactive data financial reporting.<sup>34</sup>

In 2007, we extended the program to enable mutual funds voluntarily to submit risk/return summary information in interactive data format. To date,

<sup>31</sup> See viewers available at <http://www.sec.gov/xbrl>.

<sup>32</sup> A mutual fund information viewer for the voluntary program is available at: <http://a.viewerprototype1.com/viewer>.

<sup>33</sup> See SEC Announces Initiative to Assess Benefits of Tagged Data in Commission Filings, Securities and Exchange Commission Press Release, July 22, 2004, available at: <http://www.sec.gov/news/press/2004-97.htm>.

<sup>34</sup> A viewer for this interactive data is available at: <http://www.sec.gov/spotlight/xbrl/xbrlwebapp.shtml>. This viewer, one of several funded by the Commission to demonstrate interactive data, maintains a running total of companies and filers submitting data as part of the voluntary program. As of April 17, 2008, 78 companies had submitted 350 interactive data reports.

approximately 20 mutual funds have chosen to provide interactive data risk/return summaries.<sup>35</sup>

During this time, we have kept informed of technology advances and other interactive data developments. We note that several U.S. and foreign regulators have begun to incorporate interactive data into their financial reporting systems. The Federal Deposit Insurance Corporation ("FDIC"), the Federal Reserve, and the Office of the Comptroller of the Currency ("OCC") require the use of XBRL.<sup>36</sup> As of 2006, approximately 8,200 U.S. financial institutions were using XBRL to submit quarterly reports to banking regulators.<sup>37</sup> Countries that have required or instituted voluntary or pilot programs for XBRL financial reporting include Australia, Belgium, Canada, China, Denmark, France, Germany, Ireland, Israel, Japan, Korea, Luxembourg, the Netherlands, New Zealand, Norway, Singapore, Spain, Sweden, Thailand, and the United Kingdom.<sup>38</sup>

We also have kept informed of relevant advances and developments by hosting roundtables on the topic of interactive data reporting,<sup>39</sup> creating the Commission's Office of Interactive Disclosure,<sup>40</sup> and meeting with international securities regulators to discuss, among other items, timetables for implementation of interactive data initiatives for financial reporting.<sup>41</sup> Also, staff of the Commission have attended meetings of the Advisory Committee on Improvements to

Financial Reporting ("CIFiR") in which the committee discussed proposals for financial reporting using interactive data.<sup>42</sup> We also have reviewed written statements and public comments received by CIFiR on its XBRL developed proposal.<sup>43</sup>

Building on our experience monitoring the voluntary program and our participation in the other initiatives described above, we are now proposing rules to require mutual funds to provide risk/return summary information using interactive data as an exhibit to their registration statements filed on Form N-1A.<sup>44</sup> Interactive data would be required to be provided on a mutual fund's Web site<sup>45</sup> and with the fund's Securities Act registration statements and post-effective amendments thereto.<sup>46</sup> We believe this has the potential to provide advantages for the investing public by making risk/return

<sup>42</sup> The Commission established CIFiR to examine the U.S. financial reporting system, with the goals of reducing unnecessary complexity and making information more useful and understandable for investors. See *SEC Establishes Advisory Committee to Make U.S. Financial Reporting System More User-Friendly for Investors*, Securities and Exchange Commission Press Release, June 27, 2007, available at <http://www.sec.gov/news/press/2007/2007-123.htm>.

CIFiR conducted an open meeting on March 14, 2008, in which it heard reactions from an invited panel of participants to CIFiR's developed proposal regarding required filing of financial information using interactive data. An archived Webcast of the meeting is available at <http://sec.gov/about/offices/oca/cifir.shtml>. The March 14, 2008 panelists presented their views and engaged with CIFiR members regarding issues relating to requiring interactive data tagged financial statements, including tag list and technological developments, implications for large and small public companies, needs of investors, necessity of assurance and verification of such tagged financial statements, and legal implications arising from such tagging. Also, CIFiR has provided to the Commission an interim progress report that contains a developed proposal that the Commission, over the long term, require the filing of financial information using interactive data once specified conditions are satisfied. See Progress Report of the Advisory Committee on Improvements to the Financial Reporting to the United States Securities and Exchange Commission (Feb. 14, 2008) ("Progress Report"), available at <http://www.sec.gov/about/offices/oca/aciffr/aciffr-pr-021408-final.pdf>.

<sup>43</sup> The XBRL developed proposal appears in chapter 4 of the Progress Report. Written statements of panelists at the March 14, 2008 meeting and public comments received on the Progress Report are available at <http://sec.gov/comments/265-24/265-24.shtml>.

<sup>44</sup> Form N-1A is the form used by mutual funds to register under the Investment Company Act and to offer securities under the Securities Act.

<sup>45</sup> The proposed Web site posting requirement would apply only to the extent a mutual fund already maintains a Web site.

<sup>46</sup> Interactive data would be required as an exhibit to a Securities Act registration statement or post-effective amendment thereto that contains risk/return summary information. Interactive data would not be required as an exhibit to a post-effective amendment that does not contain risk/return summary information.

summary information more accessible, timely, inexpensive, and easier to analyze.

By enabling mutual funds to further automate their disclosure processes, interactive data may eventually help funds improve the speed at which they generate information, while reducing the cost of filing and potentially increasing the accuracy of the data. For example, with standardized interactive data tags, registration statements may require less time for information gathering and review. Also, standardized interactive data tagging may enhance the ability of a fund's in-house professionals to identify and correct errors in the fund's registration statements filed in traditional electronic format. Mutual funds also may gain benefits not directly related to risk/return summary information disclosures. For example, mutual fund families that use interactive data may be able to compile information more quickly and potentially more reliably both for internal purposes and for communications with financial intermediaries, third party information providers, and the public. However, we recognize that at the outset, mutual funds would most likely prepare their interactive data as an additional step after their prospectuses have been prepared.

The principal elements of the proposal are as follows:

- Mutual funds would provide to the Commission a new exhibit with their risk/return summary information in interactive data format, beginning with initial registration statements, and post-effective amendments that are annual updates to effective registration statements, that become effective after December 31, 2009.<sup>47</sup>
- Mutual funds providing risk/return summary information in interactive data format would be required to use the most recent list of tags released by XBRL U.S. as required by the EDGAR Filer Manual. Mutual funds also would be required to tag a limited number of document and entity identifier elements, such as the form type and the fund's name. As with interactive data for the risk/return summary, these document and entity identifier elements would be formatted using the appropriate list of tags as required by the EDGAR Filer Manual.<sup>48</sup>

<sup>47</sup> The proposed schedule is premised on the rules being adopted this fall in time for mutual funds to implement this schedule, and could be adjusted depending on when the Commission adopts any final rules.

<sup>48</sup> The appropriate list of tags for document and entity identifier elements would be a list released

<sup>35</sup> The mutual fund information viewer contains all mutual fund submissions under the voluntary program. As of May 1, 2008, 21 mutual funds had submitted 33 interactive data reports.

<sup>36</sup> Since 2005, the FDIC, Federal Reserve, and the OCC have required the insured institutions that they oversee to file their quarterly Consolidated Reports of Condition and Income (called "Call Reports") in interactive data format using XBRL. Call Reports, which include data about an institution's balance sheet and income statement, are used by these federal agencies to assess the financial health and risk profile of the financial institution.

<sup>37</sup> See *Improved Business Process Through XBRL: A Use Case for Business Reporting*, available at <http://www.xbrl.org/us/us/FFIEC%20White%20Paper%202002Feb2006.pdf>.

<sup>38</sup> See XBRL International Progress Report (November 2007), available at [http://www.xbrl.org/ProgressReports/2007\\_11\\_XBRL\\_Progress\\_Report.pdf](http://www.xbrl.org/ProgressReports/2007_11_XBRL_Progress_Report.pdf).

<sup>39</sup> See materials available at <http://www.sec.gov/spotlight/xbrl/xbrl-meetings.shtml>.

<sup>40</sup> See *SEC Announces New Unit to Lead Global Move to Interactive Data*, Securities and Exchange Commission Press Release, October 9, 2007, available at <http://www.sec.gov/news/press/2007/2007-213.htm>.

<sup>41</sup> See *Chairman Cox, Overseas Counterparts Meet to Discuss Interactive Data Timetable*, Securities and Exchange Commission Press Release, November 9, 2007, available at <http://www.sec.gov/news/press/2007/2007-227.htm>.

- A mutual fund required to provide risk/return summary information in interactive data format to the Commission also would be required to post that information in interactive data format on its Web site on the earlier of the date that the interactive data is submitted to the Commission or is required to be submitted to the Commission.

- The proposed rules would not alter the requirements to provide risk/return summary information with the traditional format filings.<sup>49</sup>

- Risk/return summary information in interactive data format would be provided as exhibits identified in General Instruction C.3.(g) of Form N-1A.

- Viewable interactive data as displayed through software available on the Commission's Web site, and to the extent identical in all material respects to the corresponding portion of the traditional format filing, would be subject to all the same liability provisions of the federal securities laws as the corresponding data in the traditional format filing.

- Data in the interactive data file submitted to us generally would be subject to the federal securities laws in a manner similar to that of the voluntary program and, as a result, would be

- Deemed not filed for purposes of specified liability provisions; and
  - Protected from liability for failure to comply with the proposed tagging and related requirements if the interactive data file either

- Met the requirements; or

- Failed to meet those requirements, but the failure occurred despite the mutual fund's good faith and reasonable effort, and the mutual fund corrected the failure as soon as reasonably practicable after becoming aware of it.

- The proposed rules would require the risk/return summary information and document and entity identifier elements to be tagged according to Regulation S-T and the EDGAR Filer Manual.<sup>50</sup>

by XBRL U.S. and would be required to be used by all issuers required to submit interactive data.

<sup>49</sup> When we extended the voluntary program to the mutual fund risk/return summary, we stated in the adopting release that the interactive data submission would be supplemental to filings and not replace the required traditional electronic format of the information it contains. We also said that volunteers would be required to continue to file their traditional electronic filings. See Part II.A. of the Risk/Return Voluntary Program Adopting Release, *supra* note 19, 72 FR at 39292.

<sup>50</sup> Proposed Rule 405 of Regulation S-T would directly set forth the basic tagging requirements and indirectly set forth the rest of the tagging requirements through the requirement to comply with the EDGAR Filer Manual. Consistent with proposed Rule 405, the Filer Manual would contain

- Each interactive data submission would be required to be filed as a post-effective amendment under Rule 485(b) under the Securities Act<sup>51</sup> and would be required to be filed after effectiveness of the related filing, but no later than 15 business days after the effective date of the related filing.

- If a mutual fund does not submit or post interactive data as required, the fund's ability to file post-effective amendments to its registration statement under Rule 485(b) under the Securities Act would be automatically suspended until the fund submits and posts the interactive data as required.

- We anticipate that the voluntary program would be modified, if the proposed rules are adopted, to exclude participation by mutual funds with respect to risk/return summary information but continue to permit investment companies to participate with respect to financial statement information. As a result, the voluntary program would continue for the financial statements of investment companies that are registered under the Investment Company Act, business development companies, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S-X.

- Registered investment companies, business development companies, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S-X would be permitted to submit exhibits under the voluntary program containing a tagged schedule of portfolio holdings without having to submit other financial information in interactive data format.

## II. Discussion of the Proposed Amendments

### A. Submission of Risk/Return Summary Information Using Interactive Data

The ICI's risk/return summary list of tags received acknowledgement from XBRL International in June 2007.<sup>52</sup> The

technical tagging requirements. See Interactive Data Proposing Release, *supra* note 8 (proposing Rule 405 of Regulation S-T).

<sup>51</sup> Rule 485(b) under the Securities Act provides for immediate effectiveness of amendments to registration statements that make certain non-material and other changes.

<sup>52</sup> The list of tags is available on XBRL International's Web site at: <http://www.xbrl.org/Taxonomy/ici/ici-rr-summarydocument-20070516-acknowledged.htm>.

There are two levels of XBRL taxonomy recognition: (1) "Acknowledgement" is formal recognition that a taxonomy complies with XBRL specifications, including testing by a defined set of validation tools; and (2) "approval" is a formal recognition requiring more detailed quality

Commission anticipates entering into a contract to update the architecture of the list of tags and conform the list of tags to any changes in the risk/return summary that we adopt pursuant to a pending rule proposal.<sup>53</sup>

Interactive data risk/return summary information using the list of tags for risk/return summary information has been submitted voluntarily to us by approximately 20 mutual funds. In recent years, there has been a growing development of software products for users of interactive data, as well as of applications to assist companies, including mutual funds, to tag their disclosures using interactive data.<sup>54</sup> The growing number of software applications available to preparers and consumers is helping make interactive data increasingly useful to both retail and institutional investors, as well as to other participants in the U.S. and global capital markets. On this basis, we believe interactive data, and in particular the XBRL standard, have become widespread and that the list of tags for risk/return summary information is now sufficiently advanced to require that mutual funds provide their risk/return summary information in interactive data format.

As discussed in more detail below, our proposed rules would require all mutual funds to submit interactive data with any registration statement or post-effective amendment on Form N-1A that includes or amends risk/return summary information.<sup>55</sup> We anticipate that the first required submissions would be for initial registration statements and post-effective amendments that are annual updates to effective registration statements and that become effective after December 31, 2009.

We are proposing that mutual funds be required to provide the same risk/return summary information in interactive data format that mutual

assurance and testing, including compliance with official XBRL guidelines for the type of taxonomy under review, creation of a number of instance documents, and an open review period after acknowledgement. For more information regarding the XBRL taxonomy recognition process, see "Taxonomy Recognition Process" on the XBRL International Web site available at: <http://www.xbrl.org/TaxonomyRecognition/>.

<sup>53</sup> See Summary Prospectus Proposing Release, *supra* note 15.

<sup>54</sup> See SEC's Office of Interactive Disclosure Urges Public Comment as Interactive Data Moves Closer to Reality for Investors, Securities and Exchange Commission Press Release, Dec. 5, 2007, available at: <http://www.sec.gov/news/press/2007/2007-253.htm>. A list of interactive data products and service providers is available at: <http://xbrl.us/Vendors/Pages/default-expand.aspx>.

<sup>55</sup> See proposed General Instruction C.3.(g) to Form N-1A.

funds have been providing in the voluntary program.<sup>56</sup> In addition, funds would be required to provide document and entity identifier tags, such as the form type and the fund's name. As was the case in the voluntary program, the proposed requirement for interactive data reporting is intended to be disclosure neutral. We do not intend the rules to result in mutual funds providing more, less, or different disclosure for a given disclosure item depending upon the format, whether ASCII, HTML, or XBRL.

We propose to continue requiring the existing electronic formats now used in filings because we believe it is necessary to monitor the usefulness of interactive data reporting to investors and the cost and ease of providing interactive data before attempting further integration of the interactive data format. However, the proposed rules would treat viewable interactive data as displayed through software available on the Commission's Web site, and interactive data generally,<sup>57</sup> as part of the official filing, instead of a supplement as is the case in the voluntary program. Further evaluation will be useful with respect to the availability of inexpensive, sophisticated interactive data viewers. Currently there are many software providers and financial printers that are developing interactive data viewers. We anticipate that these will become widely available and increasingly useful to investors.

We expect that the open standard feature of XBRL format will facilitate the development of applications and software, and that some of these applications may be made available to the public for free or at a relatively low cost. The expected continued improvement in this software would give the public increasingly useful ways to view and analyze mutual fund risk/return summary information. After evaluating the use of the new interactive data technologies, software, and list of tags, we may consider proposing rules to eliminate the filing of risk/return summary information in ASCII or HTML format. Or we may consider proposing rules to require a filing format that integrates ASCII or HTML with XBRL.

We believe XBRL is the appropriate interactive data format with which to supplement ASCII and HTML. Our experience with the voluntary program and feedback from company, audit, and

software communities point to XBRL as the appropriate open standard for the purposes of this rule. As a derivative of the XML standard, XBRL data would be compatible with a wide range of open source and proprietary XBRL software applications. As discussed above, many XBRL-related products exist for analysts, investors, filers, and others to more easily create and compare disclosures; still others are in development, and that process would likely be hastened by mutual fund disclosure using interactive data. Comments on our 2004 concept release and proposed rules in 2004 and 2007 generally supported interactive data and XBRL in particular.<sup>58</sup> Several other factors support our views regarding XBRL's broad and growing acceptance, internationally as well as in the U.S. For example, as noted above, in addition to the use of XBRL by other U.S. agencies,<sup>59</sup> several foreign securities regulators have adopted voluntary or required XBRL financial reporting.<sup>60</sup> We understand that several U.S. public and private companies use XBRL in connection with financial reporting or analysis.

Request for Comment:

- Should we adopt rules that require each mutual fund's risk/return summary information to be provided in interactive data format? What are the principal factors that should be considered in making this decision? Is it useful to users of risk/return summary information to continue to have, in addition to interactive data, duplicate,

<sup>58</sup> Securities Act Release No. 8497 (Sept. 27, 2004) [69 FR 59111 (Oct. 1, 2004)] ("Concept Release"); Securities Act Release No. 8496 (Oct. 1, 2004) [69 FR 59094 (Oct. 1, 2004)]; Securities Act Release No. 8781 (Feb. 6, 2007) [72 FR 6676 (Feb. 12, 2007)]. See, e.g., letter from Deloitte & Touche LLP (Nov. 11, 2004) regarding the Voluntary Program Adopting Release, *supra* note 16; and letter from PR Newswire Association LLC (Nov. 11, 2004) regarding the Concept Release; and letters from Charles S. Hoffman (Feb. 10, 2007); ICI (Mar. 14, 2007); NewRiver, Inc. (Mar. 14, 2007); PricewaterhouseCoopers LLP (Mar. 14, 2007); and Ayal Rosenthal (Mar. 6, 2007) regarding extending the voluntary program to allow funds to submit tagged risk/return summaries.

We also note that financial statement participants in the voluntary program provided positive feedback with respect to possible mandatory XBRL. For example, the vast majority of voluntary program participants that submitted responses and views to a questionnaire answered in the affirmative to the question "Based on your experience to date, do you think it would be advisable for the Commission to continue to explore the feasibility and desirability of the use of interactive data on a more widespread and, possibly, mandated basis?" See question V.f in the Interactive Data Voluntary Program Questionnaire available at [http://www.sec.gov/cgi-bin/XBRL\\_Questionnaire](http://www.sec.gov/cgi-bin/XBRL_Questionnaire).

<sup>59</sup> See note 36 above. Also we note CIFI's support of XBRL as referenced above in Part I.C.

<sup>60</sup> For example, such countries include Canada, China, Israel, Japan, Korea, and Thailand.

human-readable risk/return summary information in ASCII or HTML format?

- What opportunities exist to improve the display of risk/return summary information prepared using interactive data? How should these affect any continued requirement to file ASCII- or HTML-formatted risk/return summary information? For example, if the technology is sufficiently developed, should we propose rules to encourage or require a format that embeds interactive data tags in HTML so that risk/return summary information can be viewed in a browser? How should these affect any continued requirement to file ASCII- or HTML-formatted risk/return summary information? What obstacles exist to making such improvements in the display of XBRL information?

- Is it appropriate to require mutual funds to provide interactive data using XBRL? Alternatively, in place of such a requirement, should the Commission instead wait to see whether interactive data disclosure by mutual funds is voluntarily adopted? Without a requirement, would the development of products for producing and using interactive data from mutual funds meet the needs of investors, third party information providers, and others who seek interactive data? Would a large percentage of mutual funds provide interactive data voluntarily, and following the same standard, if not required to do so?

- If we do not adopt the proposed rules and instead wait to see whether mutual funds on their own expand their use of interactive data, would such data be less comparable among mutual funds? Is there a "network effect," such that interactive data would not be useful unless many or all mutual funds provide their risk/return summary information using interactive data? Would the development of software for retail investors to obtain and make use of such data be slowed without a requirement that mutual funds provide interactive data?

- What advantages are there to investors having the mutual fund responsible for preparing risk/return summary information in interactive data format, as opposed to a model in which third parties independently prepare the information in interactive format and charge a fee for it?

- Do commenters agree that compared to filings using ASCII and HTML, interactive data would require less manually-transferred data? If so, do commenters believe that the proposed rules would result in less human error and therefore contribute to reduced costs?

<sup>56</sup> See proposed General Instruction C.3.(g) to Form N-1A.

<sup>57</sup> As further discussed below in Part II.F, interactive data generally would be deemed not filed for purposes of specified liability provisions.

- If we require interactive data disclosure and the proposed rules result in more effective and efficient disclosure with reduced human error and cost, would fees charged by financial printers or other service providers be likely reduced to reflect such lower costs?

- If we adopt rules requiring interactive data disclosure of risk/return summary information, is the XBRL standard the one that we should use?

Are any other standards becoming more widely used or otherwise superior to XBRL? What would the advantages of any such other standards be over XBRL?

- Is the XBRL format for interactive data sufficiently developed to require its use at this time? If not, what indicators should we use to determine when it has become sufficiently developed to require its use?

- Are vendors likely to develop and make commercially available software applications or Internet products that will be able to deliver the functionality of interactive data to retail investors?

- How important is it that many different types of viewers with varying levels of sophistication and functionality be available to investors? In addition to the free viewer provided on the SEC Web site, are there likely to be other such products available at low or no cost?

- If we require risk/return summary information in interactive data format, what are the principal challenges facing the eventual integration of such reporting with the current filing formats, ASCII and HTML, so that filing in all three formats would no longer be necessary?

### B. Compliance Date

The proposed rules would require all mutual funds to submit interactive data with any registration statement or post-effective amendment on Form N-1A that includes or amends risk/return summary information.<sup>61</sup> If the rules are adopted by this fall, we anticipate that the first required submissions would be for initial registration statements and post-effective amendments that are annual updates to effective registration statements<sup>62</sup> and that become effective

<sup>61</sup> See proposed General Instruction C.3.(g) of Form N-1A.

<sup>62</sup> Section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)] generally requires that when a prospectus is used more than nine months after the effective date of the registration statement, the information in the prospectus must be as of a date not more than sixteen months prior to such use. The effect of this provision is to require mutual funds to update their prospectuses annually to reflect current cost, performance, and other financial information. A mutual fund updates its registration statement by filing a post-effective amendment to the registration statement.

after December 31, 2009. We are sensitive to concerns that undue expense and burden should not accompany the adoption of required interactive data reporting. We therefore propose limitations on liability applicable to the interactive data file, as well as a 15-business-day period for making interactive data submissions after effectiveness of the related filing.<sup>63</sup>

Mutual funds under the proposed rules would be required to convert their risk/return summary information into an interactive data file using the list of tags for risk/return summary information, as approved for use by the Commission.<sup>64</sup> The submission also would be required to include any supporting files as prescribed by the EDGAR Filer Manual. Interactive data would be required for the entirety of the risk/return summary information, including information for all series and all classes.<sup>65</sup>

As noted above, we anticipate deferring the requirement for submission of risk/return summary information in interactive data format for all mutual funds until after December 31, 2009. We also anticipate that the voluntary program, with its limitations on liability, will remain available to mutual funds until December 31, 2009, for purposes of submitting risk/return summary information in interactive data format. We believe that this period of almost two years from now will give mutual funds, including those that have not previously participated in the voluntary program, adequate opportunity to test interactive data submissions so that they may be fully prepared to file risk/return summary information in interactive data format after December 31, 2009.

Our multiyear experience with interactive data has helped us understand the extent to which a mutual fund would incur additional costs to create and submit its existing disclosures in interactive data format. Based on that experience, we believe that the process of converting a mutual fund's existing ASCII or HTML risk/return summary information into interactive data would not impose a significant burden or cost. Mutual funds could choose to tag their risk/return summary information using available

<sup>63</sup> We discuss more fully at Part II.F liability related to required submissions of interactive data in general and the continuation of some of the limitations on liability used in the voluntary program in particular.

<sup>64</sup> See Interactive Data Proposing Release, *supra* note 8 (proposing amendments to Rule 11 of Regulation S-T and proposing new Rule 405(a) and proposed amendments to proposed Rule 405(a).

<sup>65</sup> Proposed General Instruction C.3.(g) of Form N-1A.

software without using outside services or consultants; alternatively, they could rely on financial printers, consultants, and software companies for assistance, although they would retain ultimate responsibility for both their risk/return summary information and their tagged data. As discussed in more detail in the cost-benefit analysis below,<sup>66</sup> we believe that the modest first-year costs for a mutual fund would decrease in subsequent periods. We also believe that these costs would be justified by interactive data's benefits.

We expect that most mutual funds that are part of smaller fund families, which generally are disproportionately affected by regulatory costs, also would be able to provide their risk/return summary information in interactive data format without undue effort or expense. While interactive data reporting involves changes in reporting procedures mostly in the initial reporting periods, we expect that these changes would provide efficiencies in future periods. As a result, there may be potential net savings to the mutual fund, particularly if interactive data become integrated into the mutual fund's disclosure process. While we recognize that requiring interactive data risk/return summary information would likely result in start-up expenses for smaller mutual fund families, we expect that both software and third-party services will be available to help meet the needs of smaller mutual fund families. We also intend that the delayed compliance date for all mutual funds would permit mutual funds that are part of smaller fund families to learn from the experience of funds that have participated in the voluntary program and to participate in the voluntary program themselves during the almost two-year period prior to December 31, 2009. The delayed compliance date would also give mutual funds that are part of smaller fund families a significant period of time across which to spread first-year data tagging costs.

We believe that adopting a delayed compliance date of December 31, 2009, would establish an appropriate and measured timeline, which we would be able to monitor and, if necessary, reconsider during the continuation of the voluntary program.

Request for Comment:

- Is the proposed schedule for implementation of interactive data tagging appropriate?
- Should we advance the first required interactive data submission to be for filings that become effective after June 30, 2009, or some other date, rather

<sup>66</sup> See Part V.

than December 31, 2009? Should we delay the first required interactive data submissions until, for example, 2011, 2012, or later? What benefits would there be to advancing or delaying implementation of the proposed rules? How much lead time do mutual funds need to familiarize themselves with interactive data and the process of mapping risk/return summary information using the list of tags for risk/return summary information?

- Should there be a phase-in to provide mutual funds with more time to become familiar with the list of tags for risk/return summary information and to encourage potential vendors of interactive data products and services to invest in the development and marketing of such products? If so, what should the phase-in dates be and what funds should be included in each phase? Should we differentiate funds based on net assets of the fund, the fund family, or on some other basis? Should we, for example, provide a more delayed compliance date for mutual funds that are small entities for purposes of the Regulatory Flexibility Act, *i.e.*, funds that, together with other investment companies in the same group of related investment companies, have net assets of \$50 million or less as of the end of their most recent fiscal year? If we provide a more delayed compliance date for smaller fund families, how should we define such a category?

- Is the proposed timing sufficient for mutual funds to familiarize themselves with interactive data and the process of mapping risk/return summary information using the list of tags for risk/return summary information? Is it sufficient for funds that are part of smaller fund families, *e.g.*, funds that are small entities for purposes of the Regulatory Flexibility Act?

- Should there be a longer lag than proposed for mutual funds that are part of smaller fund families, *e.g.*, funds that are small entities for purposes of the Regulatory Flexibility Act, to allow them to allocate the necessary resources and meet the proposed requirements?

- Should mutual funds that are part of smaller fund families, *e.g.*, funds that are small entities for purposes of the Regulatory Flexibility Act, be subject to the proposed rules at all? Should compliance with the proposed rules be solely voluntary for those funds?

- Will the rule proposal and the anticipated December 31, 2009 compliance date sufficiently encourage potential vendors of interactive data products and services to invest in the development and marketing of such products? If not, what changes should

we make to encourage developments in the markets for filer and investor products related to mutual fund interactive data?

### *C. Documents and Information Covered by the Proposed Rules*

The proposed rules would require interactive data tagging of a mutual fund's risk/return summary information, which is currently provided in response to Items 2 and 3 of Form N-1A.<sup>67</sup> In November 2007, the Commission proposed to amend Form N-1A.<sup>68</sup> The amendments, if adopted as proposed, would result in the risk/return summary information being contained in Items 2, 3, and 4 of Form N-1A. If the Commission adopts that proposal, we intend to apply any tagging rules we adopt to the items of amended Form N-1A that contain the information that is currently contained in Items 2 and 3.

As with the voluntary program, the proposed rules would require mutual funds to provide the interactive data in an exhibit.<sup>69</sup> Interactive data would be required for all information in the risk/return summary, including information for each series and class included in a mutual fund's prospectus.<sup>70</sup> The proposed rules would not, however, require interactive data submissions for parts of Form N-1A other than the risk/return summary information.

As with the voluntary program, the proposed rules would require that the information contained in the risk/return summary section in the traditional format filing on Form N-1A be the same as in the interactive data format.<sup>71</sup> Further, the interactive data would have to be submitted in a manner that would permit the information for each series and any class-specific information, such as expenses and performance, to be separately identified by series and class.<sup>72</sup> However, information that is not class-specific, such as investment

<sup>67</sup> See proposed Rule 405(b)(2); General Instruction C.3.(g) to Form N-1A. We are also proposing technical amendments to proposed Rule 405 that reflect this proposed requirement.

As previously noted, proposed Rule 405 of Regulation S-T would directly set forth the basic tagging requirements and indirectly set forth the rest of the tagging requirements through the requirement to comply with the EDGAR Filer Manual. Consistent with proposed Rule 405, the EDGAR Filer Manual would contain the detailed tagging requirements.

<sup>68</sup> See Summary Prospectus Proposing Release, *supra* note 15, 72 FR at 67817.

<sup>69</sup> See proposed General Instruction C.3.(g) to Form N-1A; proposed Rule 405(a). The Interactive Data File must be named "EX-101" as specified in the EDGAR Filer Manual.

<sup>70</sup> See proposed General Instruction C.3.(g) to Form N-1A.

<sup>71</sup> Proposed Rule 405(b)(2).

<sup>72</sup> Proposed General Instruction C.3.(g) to Form N-1A.

objectives, would not be required to be separately identified by class.

To clarify the intent of the rules, we propose to include an instruction to proposed Rule 405 of Regulation S-T stating that the rules require a disclosure format, but do not change substantive disclosure requirements.<sup>73</sup> The rules also would state clearly that the information in interactive data format should not be more or less than the information in the ASCII or HTML part of the Form N-1A filing.<sup>74</sup>

The proposed rules would not eliminate or alter existing filing requirements that risk/return summary information be filed in traditional format. We believe investors and other users may wish to use these electronic formats to obtain an electronic or printed copy of the entire registration statement, either in addition to or instead of disclosure formatted using interactive data. In addition, we propose to no longer require or permit the cautionary disclosure that is used in the voluntary program for required interactive data, which states that investors should not rely on the interactive data information in making investment decisions. We believe that such language would be inconsistent with the proposal that interactive data be part of the related registration statement.

We are proposing to require a mutual fund to submit interactive data for the risk/return summary information that is contained in any filing on Form N-1A that includes or amends information provided in response to Items 2 and/or 3.<sup>75</sup> This would include initial registration statements and any post-effective amendment that makes changes to the risk/return summary information.<sup>76</sup>

#### Request for Comment:

- Has the interactive information available through the voluntary program been useful? Should we require that more or less information be tagged? For example, should the entire risk/return summary section of Form N-1A, including the investment objective and

<sup>73</sup> See Interactive Data Proposing Release, *supra* note 8 (proposing Preliminary Note 2 to proposed Rule 405).

<sup>74</sup> Proposed Rule 405(b)(2).

<sup>75</sup> Proposed General Instruction C.3.(g) to Form N-1A.

<sup>76</sup> Revised interactive data would be required with respect to post-effective amendments that make changes to the risk/return summary information so that the risk/return summary information would be the same in both the traditional format filing and the interactive data file. If the risk/return summary information is not revised in connection with a post-effective amendment, the exhibit index would indicate that the interactive data file was already provided.



strategies, risks, costs, and performance information, be required to be tagged in interactive data format? Should we apply tagging requirements to both narrative information, such as investment objectives, and numerical information, such as costs?

- Would investors and other users of risk/return summary information find tagged risk/return information useful for analytical purposes? Is tagged risk/return summary information that is narrative, rather than numerical, useful as an analytical tool?

- Would the availability of interactive data-formatted risk/return summary information possibly cause competitive pressures on mutual funds to choose to make more disclosures than are required by Commission regulations? Alternatively, might the availability of tagged data possibly cause mutual funds to choose to curtail such disclosures? What types of disclosures would those be?

- Once interactive data are provided with a Form N-1A filing, should we limit the requirement to provide interactive data for amendments to only the amendments that reflect substantive changes from or additions to the risk/return summary information? What would the benefits and burdens be of revising interactive data that previously was provided in connection with a registration statement on Form N-1A to reflect changes?

- Do the standards we propose for tagging provide clear enough guidance for preparers so that we can expect to achieve consistency among filers?

- Should we require that mutual funds tag their document and entity<sup>77</sup> information? Would this information be useful in interactive data format?

- Should we provide an opportunity for mutual funds to submit voluntarily in interactive data format information other than that which they would be required to submit as interactive data? If so, should we permit such interactive data format information to be subject to provisions governing the proposed required filing of interactive data? Should we instead permit such

- interactive data format information to be submitted under the voluntary program?

- If we adopt the recently proposed amendments to Form N-1A,<sup>78</sup> should we require interactive data format information for the risk/return summary? Should we require interactive data format information for any additional information contained in the proposed summary section of the

prospectus? Should the information in the proposed summary prospectus be tagged? If so, should all of the information required in the summary prospectus be tagged? If not, what information in the summary prospectus should be tagged? Should only the risk/return information in the summary prospectus be tagged?

- When we proposed the summary prospectus, we proposed that mutual funds choosing to use a summary prospectus be required to provide the summary prospectus, the statutory prospectus, and the statement of additional information on the Internet with links that would allow persons to move back and forth among the documents.<sup>79</sup> If we were to require information in the prospectus and/or the summary prospectus to be submitted in interactive data format, should we adopt as proposed or modify the proposed linking requirements?<sup>80</sup>

- Should the proposed rules eliminate the requirement that the risk/return summary information be submitted in traditional format, in addition to interactive data format? Should cautionary language from the voluntary program be eliminated or modified and, if not, why not?

- Should the proposed rules apply to a prospectus filed under Securities Act Rule 497?<sup>81</sup> If we require interactive data with filings that do not currently include exhibits, such as prospectus supplements, should we require that the interactive data be provided as schedules or exhibits?

#### D. Filing Period

Form N-1A filings, which contain mutual fund registration statements (or amendments thereto), are often subject to revision prior to effectiveness. For this reason, the proposed rules would not permit the submission of an interactive data exhibit that is related to a registration statement or a post-effective amendment that is not yet effective. More specifically, the proposed rules would provide that an interactive data exhibit to a Form N-1A filing, whether the filing is an initial registration statement or a post-effective amendment thereto, must be submitted as a post-effective amendment to the

<sup>79</sup> See Summary Prospectus Proposing Release, *supra* note 15, 72 FR at 67802-03.

<sup>80</sup> See Summary Prospectus Proposing Release, *supra* note 15, 72 FR at 67803 and 67816 (Proposed Rule 498(f)(2)(ii) and (iii) under the Securities Act would require persons accessing documents on the Internet to be able to move back and forth between certain specified sections of the documents.).

<sup>81</sup> 17 CFR 230.497. Currently, Rule 497 prospectuses do not have a provision for exhibits, so additional EDGAR programming would be needed.

registration statement to which the interactive data relates. Under the proposal, the amendment, including the interactive data, must be submitted after the related filing becomes effective, but not later than 15 business days after the effective date of the related filing.<sup>82</sup> Our proposal that the interactive data exhibit be filed within 15 business days is intended both to provide funds with adequate time to prepare the exhibit and to make the interactive data available promptly. An exhibit containing interactive data format risk/return summary information could be submitted under Rule 485(b) of the Securities Act, which provides for immediate effectiveness of amendments that make non-material changes, and would only need to contain the new exhibit, a facing page, a signature page, a cover letter explaining the nature of the amendment, and a revised exhibit index.

Request for Comment:

- Should we require interactive data information to be submitted before effectiveness of the related filing, *e.g.*, at the same time that the related filing is made? Or should we, as proposed, require interactive data information to be provided only after the related filing becomes effective? If so, is 15 business days after the effective date of the related filing an appropriate time period for filing the interactive data? Should the time period be shorter or longer, *e.g.*, 1 day, 5 days, 10 days, 20 days, 30 days? Would it be feasible and desirable to require interactive data to be submitted on the effective date of the related filing, either for filings that become effective automatically and/or for filings that are declared effective by the Commission staff? How would different requirements regarding the time of filing affect the usefulness of the interactive data, the ability of funds to file accurate interactive data, and the burdens of filing the data?

#### E. Web Site Posting of Interactive Data

We believe interactive data, consistent with our proposed rules, should be easily accessible for all investors and other market participants. As such disclosure becomes more widely available, advances in interactive data software, online viewers, search engines, and other Web tools may in turn facilitate access and usability of the data. Encouraging widespread accessibility to mutual funds' risk/return summary information furthers

<sup>82</sup> Proposed General Instruction C.3.(g) of Form N-1A. This proposal differs from the voluntary program which does not impose a time limit for the filing of interactive data.

<sup>77</sup> See *supra* note 48.

<sup>78</sup> See Summary Prospectus Proposing Release, *supra* note 15.

our mission to promote fair, orderly, and efficient markets, and facilitates capital formation. We believe Web site availability of the interactive data would encourage its widespread dissemination, thereby contributing to lower access costs for users. We therefore propose that each mutual fund be required to provide the same interactive data on its Web site, if it has one, that would be required to be provided to the Commission.<sup>83</sup> The interactive data on a fund's Web site would be required by the end of the business day on the earlier of the date that the interactive data is submitted to the Commission or is required to be submitted to the Commission.<sup>84</sup>

We believe access to the interactive data on fund Web sites would enable search engines and other data aggregators to more quickly and cheaply aggregate the data and make them available to investors because the data would be available directly from the mutual fund, instead of through third-party sources that may charge a fee. To help further our goals of decreasing user cost and increasing availability, we do not propose to allow mutual funds to comply with the Web posting requirement by including a hyperlink to the documents available electronically on the Commission's Web site.

We believe this requirement would be consistent with the increasing role that mutual fund Web sites perform in supplementing the information filed electronically with the Commission by delivering risk/return summary information and other disclosure directly to investors. For example, we recently proposed amendments that would permit a person to satisfy its mutual fund prospectus delivery obligations under the Securities Act by sending or giving the key information directly to investors in the form of a summary prospectus and providing the statutory prospectus on an Internet Web site.<sup>85</sup> We also note that mutual funds may satisfy certain disclosure

<sup>83</sup> See proposed General Instruction C.3.(g) to Form N-1A.

<sup>84</sup> See Interactive Data Proposing Release, *supra* note 8 (proposing Rule 405(f)); proposed Rule 405(a). Proposed Rule 405(a) requires posting to a "corporate" Web site. For mutual funds, this would require posting to the fund's Web site.

The day the interactive data is submitted electronically to the Commission may not be the business day on which it was deemed officially filed. For example, a filing submitted after 5:30 p.m. generally is not deemed officially filed until the following business day. Under the proposed rules, the Web posting would be required to be posted at any time on the same day that the interactive data exhibit to a Form N-1A filing is deemed officially filed or required to be filed, whichever is earlier.

<sup>85</sup> See Summary Prospectus Proposing Release, *supra* note 15, 72 FR at 67798-99.

obligations by posting required disclosures on their Web sites.<sup>86</sup> In addition, many mutual funds provide on their Web sites access to their prospectuses, statements of additional information, and other Commission filings.<sup>87</sup> This proposal would expand such Web site posting by requiring mutual funds with Web sites to post their interactive data as well.

#### Request for Comment:

- Should we adopt rules that require each mutual fund to post interactive data from its risk/return summary on its Web site, if it has one?

- What advantages, if any, would dual Internet and EDGAR availability have for individual investors, other users, search engines, software developers, and others involved in the extraction and processing of risk/return summary data? Would it be helpful if our Web site provided the option to download the interactive data submission from our Web site or the mutual fund's Web site? Would it add a significant burden if a mutual fund were required to submit with its interactive data the URL that would link specifically to that interactive data as posted on the mutual fund's Web site or, alternatively, link to a part of the mutual fund's Web site from which there would be easy access to the interactive data as posted there? What would facilitate the realization of any advantages of Web site posting, for example, the use of a standardized URL for interactive data? Would a standardized URL add significant cost to posting?

- Instead of requiring Web site posting, should we require that mutual funds disclose in their prospectuses, registration statements, shareholder reports, or elsewhere whether or not they provide free access to their interactive data on their Web sites and, if not, why not?

- What impact would be realized by mutual funds that do not currently

<sup>86</sup> See, e.g., Securities Act Release No. 8458 (Aug. 23, 2004) [69 FR 52788 (Aug. 27, 2004)] (disclosure regarding portfolio managers); Securities Act Release No. 8408 (April 16, 2004) [69 FR 22300 (April 23, 2004)] (disclosure regarding market timing and selective disclosure of portfolio holdings); Securities Act Release No. 8393 (Feb. 27, 2004) [69 FR 11244 (Mar. 9, 2004)] (shareholder reports and quarterly portfolio disclosure); Securities Act Release No. 8188 (Jan. 31, 2003) [68 FR 6564 (Feb. 7, 2003)] (disclosure of proxy voting policies and records); Exchange Act Release No. 47262 (Jan. 27, 2003) [68 FR 5348 (Feb. 3, 2003)] (disclosure of code of ethics).

<sup>87</sup> Mutual funds filing registration statements are required to disclose whether or not they make available free of charge on or through their Web site, if they have one, their statement of additional information and shareholder reports. Funds that do not make their reports available in that manner also must disclose the reasons that they do not. See Item 1(b)(1) of Form N-1A.

provide Web sites? Would the proposed rules affect whether mutual funds create or maintain Web sites?

- Would Web site posting decrease the time and cost required for aggregators of mutual fund disclosure, individual investors, and other users to access disclosure formatted using interactive data?

- If we require Web site posting of interactive data, as proposed, should we also require that the Web site include language stating that the entire registration statement also is available for free at the Commission's Web site?

#### F. Accuracy and Reliability of Interactive Data

##### 1. Voluntary Program

To help ensure the accuracy of interactive data in the voluntary program, the data has undergone validation upon receipt by our electronic filing system separate from the normal validation of the traditional format filing.<sup>88</sup> Potential liability also helps ensure the accuracy and reliability of the data. Although the voluntary program has provided limited protections from liability under the federal securities laws,<sup>89</sup> interactive data in the voluntary program are subject to the anti-fraud provisions of the federal securities laws. The voluntary program also encourages participants' efforts to create accurate and reliable interactive data that is the same as the corresponding disclosure in the traditional electronic format filing by providing that a participant is not liable for information in its interactive data that reflects the same information that appears in the corresponding portion of the traditional format filing, to the extent that the information in the corresponding portion of the traditional format filing was not materially false or misleading. To further encourage reasonable efforts to provide accurate interactive data, the voluntary program treats interactive data that do not reflect the same information as the official version as reflecting the official version if the volunteer meets several conditions. The volunteer must have made a good faith and reasonable attempt to reflect the same information as appears in the traditional format filing and, as soon as reasonably practicable after becoming aware of any difference, the volunteer must amend

<sup>88</sup> If the traditional format filing meets its validation criteria, but any interactive data fail their own validation criteria, all interactive data are removed and the traditional format filing is accepted and disseminated without the interactive data file.

<sup>89</sup> Rule 402 of Regulation S-T provides these liability protections.

the interactive data to cause them to reflect the same information.<sup>90</sup>

## 2. Use of Technology to Detect Errors

Complete, accurate, and reliable prospectus and other disclosures are essential to investors and the proper functioning of the securities markets. Our proposed requirement to submit interactive data with mutual fund registration statements is designed to provide investors with new tools to obtain, review, and analyze information from mutual funds more efficiently and effectively. To satisfy these goals, interactive data must meet investor expectations of reliability and accuracy. Many factors, including mutual fund policies and procedures buttressed by incentives provided by the application of technology by the Commission, market forces, and the liability provisions of the federal securities laws, help further those goals.

Building on the validation criteria referenced above for interactive data in the voluntary program, we plan to use validation software to check interactive data for compliance with many of the applicable technical requirements and to help the Commission identify data that may be problematic. For example, we expect the validation software to:

- Check if required conventions (such as the use of angle brackets to separate data) are applied properly for standard and, in particular, non-standard special labels and tags;
- Identify, count, and provide the staff with easy access to non-standard special labels and tags;<sup>91</sup>
- Identify the use of practices, including some the XBRL U.S. Preparers Guide contains, that enhance usability;<sup>92</sup>
- Facilitate comparison of interactive data with disclosure in the corresponding traditional format data in the official filing;
- Check for mathematical errors; and
- Analyze the way that mutual funds explain how particular facts relate to one another.<sup>93</sup>

The availability of interactive data to the staff may also enhance its review of mutual fund filings. After the FDIC required submission of interactive data, it reported that its analysts were able to increase the number of banks they

reviewed by 10% to 33%, and that the number of bank reports that failed to fully meet filing requirements fell from 30% to 0%. These bank reports require information that is more structured and less varied than the information we would require. As a result, the FDIC's efficiency gains from the use of interactive data likely would be greater than ours.

We believe analysts, individual investors, and others outside the Commission that use the interactive data submitted to us also will make use of software and other tools to evaluate the interactive data and, as a result, market forces will encourage mutual funds to provide interactive data that accurately reflects the corresponding traditional format data in the traditional format filing. For example, the use of non-standard labels or tags (extensions) could introduce errors, but we expect the open source and public nature of interactive data and the list of tags for risk/return summary information would enable software easily to detect and identify any modifications or additions to the approved list of tags. We believe such software and other technology will be widely available for free or at reasonable cost. Investors, analysts, and other users therefore would be able to identify the existence and evaluate the validity of any such modifications or additions. We also anticipate that mutual funds preparing their interactive data and investors, analysts, and other users would use such devices to search for and detect any changes made to the standard list of tags. Because analysts and other users would rapidly discover mistakes or alterations not consistent with the desired use of interactive data, mutual funds would have a powerful incentive to prepare such data with care and promptly to correct any errors.

With this proposal, we seek the rapid adoption and use of interactive data without imposing unnecessary cost and expense on mutual funds. We therefore propose that the interactive data itself provided to us generally would be subject to a liability regime under the federal securities laws similar to that governing the voluntary program. We also propose that viewable interactive data<sup>94</sup> as displayed through software available on the Commission's Web site, as described above and further discussed below, would be subject to the same liability under the federal

securities laws as the corresponding portions of the traditional format filing.<sup>95</sup>

Interactive data would be subject to the following liability-related provisions:

- Deemed not filed or part of a registration statement or prospectus for purposes of sections 11 and 12 of the Securities Act;
- Deemed not filed for purposes of section 18 of the Exchange Act and section 34(b) of the Investment Company Act;
- Not otherwise subject to the liabilities of these sections;
- Subject to other liability under these Acts for the substantive content of the risk/return summary disclosures (as distinct from compliance with proposed Rule 405) in the same way and to the same extent as the corresponding information in the related traditional format official filing.<sup>96</sup> The content of the risk/return summary disclosures refers, for example, to the investment objectives and strategies, costs, risks, and past performance. The Rule 405 requirements generally refer to the process of tagging and formatting the content of the risk/return summary for the interactive data file;
- Deemed filed for purposes of (and, as a result, benefit from) Rule 103 of Regulation S-T;<sup>97</sup> and
- Protected from liability under these Acts for failure to comply with the requirements of proposed Rule 405 if the interactive data either:
  - Met the requirements of proposed Rule 405 of Regulation S-T; or
  - Failed to meet those requirements but the failure occurred despite the

<sup>95</sup> Proposed Rule 406 of Regulation S-T would set forth the liability applicable to interactive data and viewable interactive data that is displayed through software available on the Commission's Web site. Proposed Rule 406 also would clarify that disclosures in the traditional format part of an official filing on Form N-1A that contains the information corresponding to the interactive data remain subject to the federal securities laws as in the past and that nothing in proposed Rule 405 of Regulation S-T (setting forth content, format, and other requirements related to interactive data) or proposed Rule 406 would affect the liability otherwise applicable to the traditional format data. We are not proposing to modify proposed Rule 406 as set forth in our recently issued release. See Interactive Data Proposing Release, *supra* note 8 (proposing Rule 406 of Regulation S-T).

<sup>96</sup> Proposed Rule 11 of Regulation S-T would define "Related Official Filing." See Interactive Data Proposing Release, *supra* note 8 (proposing amendments to Rule 11 of Regulation S-T). We are proposing technical amendments to the definition.

<sup>97</sup> The viewed data would be deemed filed for purposes of Rule 103 of Regulation S-T [17 CFR 232.103] and, as a result, in general, the mutual fund would not be subject to liability for electronic transmission errors beyond its control if the mutual fund corrects the problem through an amendment as soon as reasonably practicable after the fund becomes aware of the problem.

<sup>90</sup> 17 CFR 232.402(b).

<sup>91</sup> For example, if a mutual fund uses the words "redemption fees" as the caption for a value data tagged as "exchange fees," the software could flag the filing and bring it to the staff's attention.

<sup>92</sup> The XBRL U.S. Preparers Guide, available from the XBRL U.S. Web site, would provide guidance to facilitate preparing information in the interactive data format that we propose to require.

<sup>93</sup> The technology used to show these relationships is known as a "linkbase."

<sup>94</sup> Proposed Rule 11 of Regulation S-T would define viewable interactive data as "Interactive Data in Viewable Form." See Interactive Data Proposing Release, *supra* note 8 (proposing Rule 11 of Regulation S-T). We are proposing technical amendments to include references to risk/return summary information in the definition.

mutual fund's good faith and reasonable effort and the mutual fund corrected the failure as soon as reasonably practicable after becoming aware of it.

None of the proposed liability-related provisions for interactive data submitted to the Commission, however, would affect the application of the anti-fraud provisions under the federal securities laws, whether the interactive data is submitted to the Commission or posted on a fund's Web site.

Rule 405 is being proposed, in part, under the Commission's authority to specify information required to be submitted to the Commission in registration statements. To encourage accurate filing of interactive data without fear of making good faith errors, the Commission is proposing Rule 406.<sup>98</sup> Although not expressly addressed in proposed Rule 406, the Commission would have the authority to enforce compliance with proposed Rule 405 because it has the authority to enforce compliance with any of its rules.

We believe these liability-related provisions strike an appropriate balance between avoiding unnecessary cost and expense and encouraging accuracy in light of the nature of the interactive data to which they apply and the additional accuracy incentives that may be provided by our validation software and market forces.

Other aspects of the proposal would supplement the Commission's objective of supplying reliable and accurate information to investors. First, the risk/return summary information and other disclosures in the traditional format related official filing to which the interactive data relate would continue to be subject to the usual liability provisions of the federal securities laws. For example, the traditional format related official filing would continue to be subject to section 10(b) and Rule 10b-5<sup>99</sup> of the Exchange Act and, in the appropriate circumstance, to section 11 of the Securities Act.

Second, we propose that the usual liability provisions of the federal securities laws also would apply to human-readable interactive data that is identical in all material respects to the corresponding data in the traditional format filing<sup>100</sup> as displayed by a viewer that the Commission provides. Under these circumstances, for example,

a Form N-1A's viewable interactive data would be deemed filed and subject to section 11 of the Securities Act and section 34(b) of the Investment Company Act, consistent with the liability applicable to the corresponding part of the traditional format Form N-1A. In that regard, such viewable interactive data disclosure therefore would have exactly the same potential liability as the corresponding portions of the traditional format filing. We believe applying liability for such viewable interactive data displayed through software on the Commission's Web site would further investors' interests in filers providing accurate interactive data under our proposal.

We expect that each mutual fund would be in the best position to determine the appropriate manner in which to assure the accuracy of the interactive data it would be required to submit and the viewable interactive data that would result. We also expect that software providers and other private sector third parties would help develop procedures and tools to help in that regard. As an adjunct to those private sector efforts, we plan to make available to mutual funds, on an optional basis, the opportunity to help assure accuracy by making a test submission with the Commission or using software we provide to create viewable interactive data.

A mutual fund would have the opportunity to submit an interactive data exhibit as part of a test submission just as a filer can make test submissions today.<sup>101</sup> The validation system would process the test submission with an interactive data exhibit similar to the way it processes test submissions today. If it found an error, it would advise the filer of the nature of the error and as to whether the error was major or minor. As occurs in the voluntary program, a major error in an interactive data exhibit that was part of a live filing would cause the exhibit to be held in suspense in the electronic filing system while the rest of the filing would be accepted and disseminated if there were no major errors outside of the interactive data exhibit. If that were to happen, the filer would need to revise the interactive data exhibit to eliminate the major error and submit the exhibit as an amendment to the filing to which it is intended to appear as an exhibit. A minor error in an interactive data exhibit that was part of a live filing would not prevent the interactive data exhibit from being accepted and disseminated together with the rest of

the filing if there were no major errors in the rest of the filing. We believe it would be appropriate to accept and disseminate a filing without the interactive data exhibit submitted with it if only the exhibit has a major error, in order to disseminate at least as much information at least as timely as would have been disseminated were there no interactive data requirement.

We are not proposing that mutual funds be required to involve third parties such as auditors or consultants in the creation of the interactive data provided as an exhibit to a mutual fund's Form N-1A filing, including assurance. We are taking this approach after considering various factors, including:

- The availability of a comprehensive list of tags for risk/return summary information from which appropriate tags can be selected, thus reducing a mutual fund's need to develop new elements;
- The availability of user-friendly software with which to create the interactive data file;
- The delayed compliance date, prior to which mutual funds may become familiar with the tagging of risk/return summary information;
- The availability of interactive data technology specifications, and of other XBRL U.S. and XBRL International resources for preparers of tagged data;
- The advances in rendering/presentation software and validation tools for use by preparers of tagged data that can identify the existence of certain tagging errors;
- The expectation that preparers of tagged data will take the initiative to develop sufficient internal review procedures to promote accurate and consistent tagging; and
- The mutual fund's and preparer's liability for the accuracy of the traditional format version of the risk/return summary information that will also be provided using the interactive data format.

Request for Comment:

- Do the proposed rules strike an appropriate balance to promote the availability of reliable interactive data without imposing undue additional costs and burdens? If not, what balance of liability will best encourage mutual funds to prepare reliable interactive data without subjecting them to undue fear of mis-tagging? How does the "extensibility" of interactive data, *i.e.*, a mutual fund's ability to customize the standard list of tags to correspond more closely to the fund's particular risk/return summary information, affect your answer?

<sup>98</sup> See Interactive Data Proposing Release, *supra* note 8 (proposing Rule 406).

<sup>99</sup> 17 CFR 240.10b-5.

<sup>100</sup> The human-readable interactive data would be identical to the corresponding data in the traditional format filing if the mutual fund complied with the interactive data tagging requirements of proposed Rule 405.

<sup>101</sup> The EDGAR Filer Manual addresses test submissions primarily at section 6.6.5 of Volume II.

• What are the risks to investors under the proposed liability rules? Will investors still find the interactive data sufficiently reliable to use it?

• Should interactive data be subject to liability if a mutual fund does not tag its risk/return summary information in a manner consistent with the standards approved by the Commission, irrespective of the mutual fund's good faith effort? If the answer is yes, what should the mutual fund's liability be for such errors, and should liability attach even if the mistake is inadvertent? What if the error is the result of negligent tagging practices, but there was no affirmative intent to mislead?

• If interactive data are subject to liability as proposed, is it necessary or appropriate for viewable interactive data to be subject to liability as and to the extent proposed or otherwise? Should the answer depend on the degree of liability to which the interactive data are subject? Should viewable interactive data be subject to liability in a manner or to an extent different than as proposed?

• Should any or all interactive data be deemed filed for purposes of Section 34(b) of the Investment Company Act and, if so, should it be regardless of compliance with proposed Rule 405 or a filer's good faith and reasonable efforts to comply?

• Should the liability for interactive data be exactly the same as it is for XBRL-Related Documents under the voluntary program?

• Would software be commercially available and reasonably accessible to all required interactive data filers, investors, and analysts that would make detection of tagging errors, such as the use of inappropriate tags or improper extensions, easy and cost-effective? If so, would such monitoring by investors and analysts likely discourage the improper use of extensions or negligent conduct in the tagging process?

• Would the use of software to search for and detect any differences between a mutual fund's interactive data and the Commission-approved interactive data tags and other attributes depend on the degree of investor interest or analysis by third party information providers?

• Should a rule expressly state that the Commission retains the authority to enforce compliance with proposed Rule 405?

• Should we require the involvement of auditors, consultants, or other third parties in the tagging of data? If assurance should be required, what should be its scope, and should any such requirement be phased in?

• Should we phase in increasing levels of liability over time? Are the

proposed limitations on liability necessary and appropriate at the outset, for example, the first year that a mutual fund is subject to the interactive data requirement, but inappropriate at a later time? Should we require that interactive data be subject to more liability later?

• Should the validation software, as contemplated, cause an interactive data exhibit with a major error to be held in suspense in the electronic filing system while the rest of the filing would be accepted and disseminated if there were no major errors outside of the interactive data exhibit? In that case, should the validation software hold the entire filing in suspense or reject or accept the entire filing or interactive data exhibit?

### G. Required Items

#### 1. Data Tags

To comply with the proposed rules, mutual funds would be required to tag their risk/return summary information using the most recent list of tags for mutual fund risk/return summaries, as released by XBRL U.S. and required by the EDGAR Filer Manual. The ICI's risk/return summary list of tags received acknowledgement from XBRL International in June 2007. The Commission anticipates entering into a contract to update the architecture of the list of tags and conform the list of tags to any changes in the risk/return summary that we adopt pursuant to a pending rule proposal.<sup>102</sup>

Updates to the list of tags for risk/return summary reporting may be posted and available for downloading from time to time to reflect changes in the risk/return summary requirements, refinements to the list of tags, or for other reasons. To provide mutual funds sufficient time to become familiar with any such updates, we anticipate giving advance notice before requiring use of an updated list of tags. Based on experience to date with the list of tags for risk/return summaries, we believe that, with the enhancements to the list of tags that XBRL U.S. will be developing, the list of tags will be sufficiently developed to support the interactive data disclosure requirements in the proposed rules.

One of the principal benefits of interactive data is its extensibility—that is, the ability to add to the standard list of tags in order to accommodate unique circumstances in a mutual fund's particular disclosures. The use of customized tags, however, may also serve to reduce the ability of users to compare similar information across

<sup>102</sup> See Summary Prospectus Proposing Release, *supra* note 15.

mutual funds. In order to promote comparability across funds, our proposed rules would limit the use of extensions to circumstances where the appropriate element does not exist in the standard list of tags.<sup>103</sup> We also are proposing that wherever possible, preparers change the label for an element that exists in the standard list of tags, instead of creating a new customized tag.<sup>104</sup>

Under Item 401(c) of Regulation S–T, voluntary filers' interactive data elements must reflect the same information as the corresponding traditional format elements. Further, no data element can be “changed, deleted or summarized” in the interactive data file.<sup>105</sup> We do not propose to change this equivalency standard for risk/return summary information provided in interactive data format as required by the proposed rules.<sup>106</sup>

Request for Comment:

• Is our focus on comparability appropriate? Instead of stressing ease of risk/return summary comparability, should our rules permit greater use of customized data tags?

• Should we codify any other principles to encourage comparability without unduly reducing the extensibility of interactive data?

#### 2. Regulation S–T and the EDGAR Filer Manual

We propose to require that mutual funds provide interactive data in the form of exhibits to the related registration statement on Form N–1A.<sup>107</sup> Interactive data would be required to comply with our Regulation S–T<sup>108</sup> and the EDGAR Filer Manual. The EDGAR Filer Manual is available on our Web site. It includes technical information for making electronic filings to the Commission. Volume II of this manual includes guidance on the preparation, submission, and validation of interactive data submitted under the voluntary program. Before adoption of our proposed rules, we plan to update

<sup>103</sup> Proposed Rule 405(c)(1)(iii)(B) as proposed in Interactive Data Proposing Release, *supra* note 8.

<sup>104</sup> Proposed Rule 405(c)(1)(iii)(A) as proposed in Interactive Data Proposing Release, *supra* note 8.

<sup>105</sup> Proposed Rule 405(c)(2) as proposed in Interactive Data Proposing Release, *supra* note 8.

<sup>106</sup> *Id.*

<sup>107</sup> The requirement to submit interactive data as an exhibit would appear in proposed General Instruction C.3.(g) of Form N–1A.

<sup>108</sup> Proposed Rule 405 of Regulation S–T would directly set forth the basic tagging and posting requirements for the XBRL data and require compliance with the EDGAR Filer Manual. Consistent with proposed Rule 405, the EDGAR Filer Manual would contain the detailed tagging requirements.

our manual with additional instructions for filers of interactive data.

In addition to both Regulation S–T, which would include the rules we are proposing, and the instructions in our EDGAR Filer Manual, filers may access other sources for guidance in tagging their financial information. These include the XBRL U.S. Preparers Guide; user guidance accompanying tagging software; and financial printers and other service providers. New software and other forms of third-party support for tagging risk/return summary information using interactive data are also becoming available.

Request for Comment:

- What specific guidance should be provided in Regulation S–T for interactive data filers?
- Does the XBRL U.S. Preparers Guide provide useful guidance to promote consistent tagging among various mutual funds?
- Is the user guidance accompanying tagging software, and the guidance available from financial printers and other service providers, helpful for filers to tag their risk/return summary information? What other sources of guidance might prove useful?

#### *H. Consequences of Non-Compliance and Hardship Exemption*

We propose that if a filer does not provide the required interactive data submission, or post the interactive data on its Web site, by the required due date, the filer's ability to file post-effective amendments under Rule 485(b), which provides for immediate effectiveness of amendments that make non-material and other changes, would be automatically suspended.<sup>109</sup> The suspension would become effective at the time that the filer fails to meet the requirement to submit or post interactive data and would terminate as soon as the filer has submitted and posted that data. The suspension would apply to post-effective amendments filed after the suspension becomes effective, but would not apply to post-effective amendments that were filed before the suspension became effective. The suspension would not apply to post-effective amendments filed solely for purposes of submitting interactive data, which would enable a filer to cure its failure to submit interactive data by filing an amendment under Rule 485(b). We believe that precluding the use of immediate effectiveness of post-effective amendments during any period of failure to comply would appropriately direct attention to the proposed interactive data requirement without

permanently suspending a mutual fund's ability to file post-effective amendments under Rule 485(b) once the fund has remedied the failure.

If the proposed rules are adopted, we anticipate that we would not interpret Rule 303,<sup>110</sup> which restricts the ability of registered investment companies to incorporate by reference into an electronic filing documents that have not been filed in electronic format, to apply to the failure to file Interactive Data Files. Thus, as long as the traditional format electronic filing has been made as required, the failure to file a required Interactive Data File would not affect a mutual fund's ability to incorporate by reference the mutual fund's prospectus. For example, if we were to adopt as proposed our proposed rules regarding a summary prospectus for mutual funds, we anticipate that a mutual fund could incorporate by reference its statutory prospectus into its summary prospectus as permitted by those proposed rules, notwithstanding the fund's failure to file required interactive data.<sup>111</sup>

Consistent with the treatment of other applicable reporting obligations, we propose to provide a continuing hardship exemption for the inability to timely electronically submit interactive data. Rule 202 of Regulation S–T provides for continuing hardship exemptions.<sup>112</sup>

Rule 202 permits a filer to apply in writing for a continuing hardship exemption if information otherwise required to be submitted in electronic format cannot be so filed without undue burden or expense. If the staff, through authority delegated from the Commission, grants the request, the filer must file the information in paper by the applicable due date and file a confirming electronic copy if and when specified in the grant of the request.

We propose to revise Rule 202 to provide that a grant of a continuing hardship exemption for interactive data would not require a paper submission.<sup>113</sup> If the filer did not electronically submit the interactive data by the end of the period for which the exemption was granted, the filer's ability to file post-effective amendments under Rule 485(b) would be suspended

<sup>110</sup> Rule 303 of Regulation S–T.

<sup>111</sup> See Summary Prospectus Proposing Release, *supra* note 15.

<sup>112</sup> Rule 201 of Regulation S–T provides for temporary hardship exemptions. We are not proposing a temporary hardship exemption because our proposal would provide a mutual fund with a 15-business day period for submitting the interactive data file for a related Form N–1A filing.

<sup>113</sup> See Proposed Rule 202 as proposed in Interactive Data Proposing Release, *supra* note 8.

until it did electronically submit the interactive data.<sup>114</sup> Similarly, we propose to revise Rule 202 to provide an essentially mirror-image exemption from the proposed requirement for a mutual fund that has a Web site to post the interactive data on its Web site.<sup>115</sup>

Request for Comment:

- Are the consequences for failure to comply with the interactive data submission requirements appropriate?
- Should we suspend the ability of a mutual fund to file post-effective amendments under Rule 485(b) if it does not comply with the proposed rules? Should the proposed rules provide similar treatment whether the failure to comply relates to interactive data submission or to Web site posting? Should the suspension apply to the particular fund that failed to comply, all series of a registrant that failed to comply, or all funds of a complex that failed to comply?
- Should the proposed rules treat a mutual fund's compliance with interactive data requirements as an express condition to the mutual fund's related registration statement or post-effective amendment becoming effective?
- Should the failure to file or post interactive data as required restrict a mutual fund's ability to incorporate by reference the fund's statutory prospectus, including under our proposed rules relating to a mutual fund summary prospectus?
- Does our proposed rule strike the correct balance of positive and negative consequences when a mutual fund meets its requirements to provide traditional format documents but fails to provide interactive data?
- Do commenters believe that the proposed revisions to the continuing hardship exemption would be sufficient to cover unanticipated technical difficulties associated with interactive data? If insufficient, why would they be insufficient and how should the hardship exemption be tailored to address technical difficulties associated with interactive data?
- Should we provide a temporary hardship exemption? If so, would six business days be an appropriate period for the temporary hardship exemption to apply? <sup>116</sup> If not, would a shorter or longer period be appropriate, and why?

<sup>114</sup> Proposed amendment to Note 4 to Rule 202 as proposed in Interactive Data Proposing Release, *supra* note 8; Proposed Rule 485(c)(3).

<sup>115</sup> *Id.*

<sup>116</sup> See Proposed Rule 201 as proposed in Interactive Data Proposing Release, *supra* note 8 (proposing a six-business-day temporary hardship exemption for financial statement filers).

<sup>109</sup> Proposed Rule 485(c)(3).

### I. Changes to the Voluntary Program

If we adopt rules requiring mutual funds to submit risk/return information in interactive data format, we intend that mutual funds would no longer be able to submit risk/return summary information in interactive data format through the voluntary program after the compliance date for the mandatory rules. We are proposing to amend Rule 8b-33 to remove risk/return summary information as a category of information permitted to be submitted under the voluntary program. In addition, we are proposing technical amendments to other rules to reflect this.<sup>117</sup>

Further, in order to encourage participation in the voluntary program for tagging investment company financial information, we are proposing amendments to enable investment companies that are registered under the Investment Company Act, business development companies, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S-X to submit exhibits containing a tagged schedule of portfolio holdings without having to submit other financial information in interactive data format.<sup>118</sup> As with the current voluntary program, volunteers could participate, without pre-approval, merely by submitting a tagged *Schedule I—Investments in Securities of Unaffiliated Issuers* (“Schedule I”).<sup>119</sup> To facilitate this, the Commission anticipates entering into a contract to develop a list of tags that could be used to tag portfolio holdings.

Currently, the interactive data furnished under the voluntary program must consist of at least one item from a list of enumerated mandatory content (“Mandatory Content”), including financial statements, earnings information, and, for registered management investment companies,

financial highlights or condensed financial information and risk/return summary information set forth in Items 2 and 3 of Form N-1A.<sup>120</sup> We are adding Schedule I information as a separate item of Mandatory Content that participants can submit in order to give volunteers greater flexibility in tagging fund data.

Investors, financial intermediaries, and third party information providers, among others, use the portfolio holdings data contained in Schedule I to make decisions concerning the purchase and continued holding of funds and for other purposes. Portfolio holdings data promises to be even more useful to these various stakeholders if this data is interactive. In addition, allowing volunteers to submit tagged portfolio holdings information without having to submit other financial information in interactive data format would increase the range of options for participation in the voluntary program and encourage increased participation.

Under the current voluntary program, any official filing with which tagged exhibits are submitted must disclose that the financial information is “unaudited” or “unreviewed,” as applicable and that the purpose of submitting the tagged exhibits is to test the related format and technology and, as a result, investors should not rely on the exhibits in making investment decisions.<sup>121</sup> We believe that this cautionary disclosure should also be tagged and included within each interactive data exhibit, in order to help alert investors and other users that the exhibits should not be relied on in making investment decisions. Accordingly, we are proposing that this disclosure be required in the exhibits submitted pursuant to the voluntary program as a tagged data element,<sup>122</sup> consistent with how the cautionary disclosure is presented in risk/return summary exhibits under the current voluntary program.

Request for Comment:

- Is allowing the tagging of fund data contained in Schedule I separately from other investment company financial information an appropriate next step in the voluntary program for investment companies? Is there other investment company information that should be included in the voluntary program?
- What effect would tagged data have on investors’, analysts’, and other users’ ability to analyze investment company

portfolio holdings? Are there any potential problems related to providing investment company portfolio holdings in interactive data format? For example, could this facilitate the front-running of investment company portfolio transactions or other behavior that could harm investors?

- Is the tagging of fund data contained in Schedule I useful on a stand-alone basis? Should we instead require a fund that submits tagged data for Schedule I to also provide tagged data for Schedules II through V,<sup>123</sup> as Schedules I through V are often presented together in fund financial statements? Should we allow funds to tag any or all of Schedules I through V in the voluntary program without tagging other financial information? Are there particular Schedules, or particular combinations of Schedules, that should be permitted to be tagged in the voluntary program without tagging other financial information?

- How would allowing volunteers to submit an interactive data exhibit consisting of Schedule I information on a stand-alone basis affect participation in the voluntary program? Does the tagging of Schedule I information separately from other investment company financial information present any technical concerns that would affect participation in the voluntary program?

- Should we require cautionary disclosure in the tagged schedule of portfolio holdings as a tagged data element?
- Is additional or different language necessary for cautionary disclosure?
- Has development of a list of tags for portfolio holdings advanced sufficiently to permit tagging of Schedule I on a stand-alone basis? If not, what further steps are needed?

### III. General Request for Comments

We request comment on the specific issues we discuss in this release, and on any other approaches or issues that we should consider in connection with the proposed amendments. We seek comment from any interested persons, including those required to file information with us on the EDGAR system, as well as investors, disseminators of EDGAR data, industry analysts, EDGAR filing agents, and any other members of the public.

<sup>123</sup> *Schedule II—Investments—other than securities*, Rule 12-13 of Regulation S-X [17 CFR 210.12-13]; *Schedule III—Investments in and advances to affiliates*, Rule 12-14 of Regulation S-X [17 CFR 210.12-14]; *Schedule IV—Investments—securities sold short*, Rule 12-12A of Regulation S-X [17 CFR 210.12-12A]; and *Schedule V—Open option contracts written*, Rule 12-12B of Regulation S-X [17 CFR 210.12-12B].

<sup>117</sup> See proposed Rule 401(a); proposed Rule 401(d)(1)(i); proposed Rule 401(d)(2)(i). We are also proposing to delete current Rule 401(b)(1)(iv), which provides the option to file risk/return summary information under the voluntary program, and to replace it with the option to file the portfolio holdings schedule on a stand-alone basis described below.

<sup>118</sup> Proposed Rule 401(b)(1)(iv) (designating *Schedule I—Investments in securities of unaffiliated issuers* as mandatory content under the voluntary program). If rules requiring interactive data financial information are adopted, we anticipate that the voluntary program would be modified to permit participation only by registered investment companies, business development companies, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S-X. See Interactive Data Proposing Release, *supra* note 8 (proposed Rule 401(a)).

<sup>119</sup> Rule 12-12 of Regulation S-X [17 CFR 210.12-12].

<sup>120</sup> Rule 401(b)(1) of Regulation S-T [17 CFR 232.401(b)(1)].

<sup>121</sup> Rule 401(d)(1)(ii) of Regulation S-T [17 CFR 232.401(d)(1)(ii)].

<sup>122</sup> See proposed Rule 401(d)(2).

#### IV. Paperwork Reduction Act

The proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995, or PRA.<sup>124</sup> The purpose of the proposed amendments is to make risk/return summary information easier for investors to analyze and to assist in automating regulatory filings and business information processing. We are submitting the proposed amendments to the Office of Management and Budget (OMB) for review in accordance with the PRA.<sup>125</sup> An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The title for the new collection of information for submitting risk/return summary information in interactive data format that the proposed amendments would establish is "Mutual Fund Interactive Data" (OMB Control No. 3235-XXXX). This collection of information relates to already existing regulations and forms adopted under the Securities Act, the Exchange Act, and the Investment Company Act that set forth disclosure requirements for mutual funds and other issuers. The proposed amendments, if adopted, would require mutual funds to submit their risk/return summary information in interactive data format and post it on their Web sites, if any, in interactive data form. The specified risk/return summary information already is and would continue to be required to be submitted to the Commission in traditional format under existing disclosure requirements. Compliance with the proposed amendments would be mandatory beginning with initial registration statements, and post-effective amendments that are annual updates to effective registration statements, that become effective after December 31, 2009.<sup>126</sup> The information required to be submitted would not be kept confidential by the Commission.

The title for the collection of information for submitting portfolio holdings in interactive data format is "Voluntary XBRL-Related Documents" (OMB Control No. 3235-0611). The proposed amendments would permit investment companies that are registered under the Investment Company Act, business development companies, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S-X to

submit exhibits containing a tagged schedule of portfolio holdings without having to submit other financial information in interactive data format. Compliance with the proposed amendments would be voluntary. The information required to be submitted would not be kept confidential by the Commission.

##### A. Reporting and Burden Estimate

###### 1. Submission of Risk/Return Summary Information Using Interactive Data

Form N-1A (OMB Control No. 3235-0307) under the Securities Act and the Investment Company Act<sup>127</sup> is used by mutual funds to register under the Investment Company Act and to offer their securities under the Securities Act. The information required by the new collection of information we propose, would correspond to the risk/return summary information now required by Form N-1A and would be required to appear in exhibits to Form N-1A and on mutual funds' Web sites.

Based on estimates from voluntary program participant responses to a questionnaire and our experiences with the voluntary program, we estimate that interactive data filers would require an average of approximately 13 burden hours to tag risk/return summary information in the first year, and the same task in subsequent years would require an average of approximately 11 hours.<sup>128</sup> The average annual burden over a three-year period is estimated at approximately 12 hours.<sup>129</sup> Based on estimates of 8,810 mutual funds submitting interactive data documents,<sup>130</sup> each incurring 12 hours per year on average, we estimate that, in the aggregate, interactive data adoption would result in an additional 105,720 burden hours, on average, for all mutual funds for each of the first three years.<sup>131</sup> Converted into dollars, this amounts to approximately \$22,500,000.<sup>132</sup>

<sup>127</sup> 17 CFR 239.15A; 17 CFR 274.11A.

<sup>128</sup> The average burden hours for the first and subsequent submissions were calculated using data collected from 6 responses to a voluntary program participant questionnaire from mutual funds that participated in the voluntary program. See Part V, *infra*.

<sup>129</sup> (13.33 hours for the first submission + 11.275 hours for the second submission + 11.275 hours for the third submission) ÷ 3 years = approximately 12 hours.

<sup>130</sup> This estimate is based on analysis by the Division of Investment Management staff of publicly available data.

<sup>131</sup> 8,810 mutual funds × 12 incremental burden hours per mutual fund = 105,720 burden hours.

<sup>132</sup> This cost increase is estimated using an estimated hourly wage rate of \$213.00 ((105,720 burden hours) × \$213.00 hourly wage rate = \$22,518,360 total incremental internal cost). The estimated wage figure is based on published rates for compliance attorneys and programmer analysts,

We further estimate that mutual funds would require an average of approximately 1 burden hour to post interactive data to their Web sites. Based on estimates of 8,810 mutual funds posting interactive data, each incurring 1 burden hour per year on average, we estimate that, in the aggregate, adoption of Web site posting requirements would result in an additional 8,810 burden hours for all mutual funds.<sup>133</sup> Converted into dollars, this amounts to approximately \$2,200,000.<sup>134</sup>

We also estimate that software and consulting services would be used by mutual funds for an increase of approximately \$803 per mutual fund.<sup>135</sup> Based on the estimate of 8,810 mutual funds using software and consulting services at an annual cost of \$803 we estimate that, in the aggregate, the total external costs to the industry would be approximately \$7,100,000.<sup>136</sup>

##### Regulation C and Regulation S-T

Regulation C (OMB Control No. 3235-0074) describes the procedures to be followed in preparing and filing registration statements with the Commission. Regulation S-T (OMB Control No. 3235-0424) specifies the

modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding effective hourly rates of \$270 and \$194, respectively. See Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2007* (Sept. 2007) ("SIA Report"). The estimated wage rate was further based on the estimate that compliance attorneys would account for one quarter of the hours worked and senior system analysts would account for the remaining three quarters, resulting in a weighted wage rate of \$213.00 (( $\$270 \times .25$ ) + ( $\$194 \times .75$ )).

<sup>133</sup> 8,810 mutual funds × 1 burden hour per mutual fund = 8,810 burden hours.

<sup>134</sup> ( $\$250 \times 1$  hour × 8,810 mutual funds). This cost estimate is based on informal discussions with a limited number of persons believed to be generally knowledgeable about preparing, submitting, and posting interactive data. See Part V, *infra*.

<sup>135</sup> For purposes of this estimate, we assumed that the largest 50 fund complexes would develop software in-house incurring costs of \$125,000 in the first year. Assuming that the largest 50 fund complexes would develop software for use in all of their funds, and that their funds encompass 80% of the number of funds (7,048), then the average first year cost for those funds would be ( $\$125,000 \times 50$ ) / 7,048 = \$887. Therefore, for those funds using software developed internally, the average 3 year cost would be approximately \$829 ( $\$887$  in the first year + \$800 in the second year + \$800 in the third year) ÷ 3 years = approximately \$829. The average 3 year cost for those funds that use commercial software would be \$700 ( $\$500$  in the first year + \$800 in the second year + \$800 in the third year) ÷ 3 years = \$700. Assuming 80% of funds incurred costs of \$829 and 20% of funds incurred costs of \$700, the average software and consulting cost per mutual fund would be approximately \$803. These estimates were derived from responses to a voluntary program questionnaire. See Part V, *infra*.

<sup>136</sup> 8,810 mutual funds × \$803 = approximately \$7,100,000.

<sup>124</sup> 44 U.S.C. 3501 *et seq.*

<sup>125</sup> 44 U.S.C. 3507(d) and 5 CFR 1320.11.

<sup>126</sup> See Part II.B.



requirements that govern the electronic submission of documents. The proposed changes to these items would add and revise rules under Regulations C and S–T. The filing requirements themselves, however, are included in Form N–1A and we have reflected the burden for these new requirements in the burden estimate for Mutual Fund Interactive Data. The rules in Regulations C and S–T do not impose any separate burden.

## 2. Changes To the Voluntary Program

We are proposing to decrease the burden associated with the existing collection of information for Voluntary XBRL-Related Documents to reflect the proposed amendments. If we adopt rules requiring mutual funds to submit risk/return information in interactive data format, we intend that mutual funds would no longer be able to submit risk/return summary information in interactive data format through the voluntary program after the compliance date for the mandatory rules.

When we adopted the amendments to expand the voluntary program to enable mutual funds voluntarily to submit risk/return summary information in interactive data format, we estimated an increase to the existing collection of information for Voluntary XBRL-Related Documents.<sup>137</sup> We estimated that 10% of the approximately 545 fund complexes that have mutual funds, or 55 fund complexes, would each submit documents containing tagged risk/return summary information for one mutual fund.<sup>138</sup> We further estimated that the initial creation of tagged documents containing risk/return summary information would require, on average, approximately 110 burden hours per mutual fund, and the creation of such tagged documents in subsequent years would require an average 10 burden hours per mutual fund. Because the PRA estimates represent the average burden over a three-year period, we estimated the average hour burden for the submission of tagged documents containing risk/return summary information for one mutual fund to be approximately 43 hours.<sup>139</sup>

Based on the estimates of 55 participants submitting tagged documents containing risk/return summary information for one mutual fund once per year and incurring 43 hours per submission, we estimated

that, in the aggregate, the industry would incur an additional 2,365 burden hours associated with the amendments.<sup>140</sup> We further estimated that 75% of this burden increase, or approximately 1,774 hours, would be borne internally by the mutual fund complexes. We estimated that this internal burden increase converted to dollars would amount to a total annual increase of internal costs of approximately \$393,828.<sup>141</sup>

We also estimated that 25% of the burden, or approximately 591 hours, would be outsourced to external professionals and consultants retained by the mutual fund complex at an average cost of \$256.00 per hour for a total annual increase of approximately \$151,296.<sup>142</sup> In addition, we estimated that the cost of licensing software would be \$333 per participant per year, for a total annual increase of \$18,315.<sup>143</sup> Altogether, we estimated the total annual increase in external costs related to the amendments would be \$169,611.<sup>144</sup>

Given that mutual funds would no longer be able to submit risk/return summary information in interactive data format through the voluntary program if the proposed amendments are adopted, we would reduce the internal hour burden associated with the voluntary program by 1,774 hours and the internal cost burden by \$393,828. We would also reduce the external cost burden by \$169,611.

We also are proposing amendments to the voluntary program to enable investment companies that are registered under the Investment Company Act, business development companies, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X to submit exhibits containing a tagged schedule of portfolio holdings without having to submit other financial information in interactive data format. As with the current voluntary program, volunteers could participate, without pre-approval, merely by submitting Schedule I in interactive data format.<sup>145</sup>

Investors, financial intermediaries, and third party information providers,

among others, use the portfolio holdings data contained in Schedule I to make decisions concerning the purchase and continued holding of funds and for other purposes. Portfolio holdings data promises to be even more useful to these various stakeholders if this data is interactive. In addition, allowing volunteers to submit tagged portfolio holdings information without having to submit other financial information in interactive data format would increase the range of options for participation in the voluntary program and encourage increased participation.

We estimate that 20 registrants would choose to submit a schedule of portfolio holdings in interactive data format. We believe that investment companies that are registered under the Investment Company Act, business development companies, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X would participate, given the flexibility provided by a new option to submit exhibits containing just portfolio holdings information in interactive data format.

Submission of portfolio holdings information in interactive data format would not affect the burden of preparing the registrants' traditional format filings. In order to provide portfolio holdings information in interactive data format, a participating registrant would have to tag Schedule I and submit the resulting interactive data file as an exhibit to its filing on Form N–CSR or Form N–Q.<sup>146</sup> The Commission anticipates entering into a contract to develop a list of tags that could be used to tag portfolio holdings. Based on our experience with mutual funds that have submitted risk/return summary information in the current voluntary program, we estimate that the initial creation of portfolio holdings information in interactive data format would require, on average, approximately 12 burden hours per registrant,<sup>147</sup> and the creation of such information in interactive data format in subsequent years would require an average 10 burden hours per

<sup>146</sup> Form N–CSR [17 CFR 249.331; 17 CFR 274.128]; Form N–Q [17 CFR 249.332; 17 CFR 274.130].

<sup>147</sup> Mutual funds submitting risk/return summary information in our voluntary program indicated that an initial submission in the voluntary program took approximately 13 hours of labor. Given that the submission of portfolio holdings in interactive data format is less complex than the submission of risk/return summary information in interactive data format but potentially requires the tagging of many more individual items, we estimate that the initial creation of interactive data files containing portfolio holdings information would require, on average, approximately 12 burden hours per volunteer.

<sup>140</sup> 55 documents per year × 43 hours per submission = 2,365 hours.

<sup>141</sup> See note 82 of the Voluntary Program Adopting Release, *supra* note 16.

<sup>142</sup> See note 83 of the Voluntary Program Adopting Release, *supra* note 16.

<sup>143</sup> \$333 per participant × 55 participants = \$18,315.

<sup>144</sup> This annual total consisted of \$151,296 in outside professional costs plus \$18,315 in software costs.

<sup>145</sup> Rule 12–12 of Regulation S–X [17 CFR 210.12–12].

<sup>137</sup> See Voluntary Program Adopting Release, *supra* note 16.

<sup>138</sup> In the case of a mutual fund with multiple series, our estimate treated each series as a separate mutual fund.

<sup>139</sup> (110 hours in the first year + 10 hours in the second year + 10 hours in the third year) ÷ 3 years = 43 hours.

registrant.<sup>148</sup> Because the PRA estimates represent the average burden over a three-year period, we estimate the average hour burden for the submission of portfolio holdings information in interactive data format for one registrant to be approximately 11 hours.<sup>149</sup>

Based on the estimate of 20 registrants submitting interactive data files containing portfolio holdings information once each year and incurring 11 hours per submission we estimate that, in the aggregate, the industry would incur an additional 220 burden hours associated with the proposed amendments.<sup>150</sup> We estimate that this internal burden increase converted to dollars would amount to approximately \$47,000.<sup>151</sup>

We also estimate that external professionals and consultants would be retained by the registrant for an increase of approximately \$600.00.<sup>152</sup> It is our understanding that annual software licensing costs generally would be included in the cost of hiring external professionals and consultants.<sup>153</sup> Based

<sup>148</sup> Mutual funds submitting risk/return summary information in the current voluntary program indicated that each set of submissions, after the initial set, would take approximately 11 burden hours, or 2 hours less than the initial submission. We estimate that the reduction in burden hours for subsequent submissions of portfolio holdings information in interactive data format would be a similar 2 hour reduction, or approximately 10 burden hours per volunteer.

<sup>149</sup> (12 hours in the first year + 10 hours in the second year + 10 hours in the third year) ÷ 3 years = approximately 11 hours. While the PRA requires an estimate based on a hypothetical three years of participation, a registrant, as noted earlier, could participate in the voluntary program by submitting portfolio holdings information in interactive data format over a shorter period or even just once as the registrant chooses.

<sup>150</sup> 20 documents per year × 11 hours per submission = 220 hours. We note that mutual funds submit portfolio holdings information to the Commission four times per year. However, for purposes of our analysis, we estimate that mutual funds choosing to participate in the voluntary program would submit portfolio holdings information in interactive data format once each year.

<sup>151</sup> This cost increase is estimated by multiplying the increase in annual internal hour burden (220) by the estimated hourly wage rate of \$213.00. See *supra* note 132.

<sup>152</sup> (\$100.00 in the first year + \$800.00 in the second year + \$800.00 in the third year) ÷ 3 years = approximately \$600.00. Mutual funds participating in our voluntary program for the submission of risk/return summary information in interactive data format indicated an initial external cost of \$100.00 for the hiring of external professionals and consultants and projected an annual cost of \$800.00 for external service providers going forward. The increase going forward was due to the fact that a couple of participants indicated that their external service provider had waived its fee for the initial submission.

<sup>153</sup> We note that one respondent spent over \$100,000 internally to develop software to submit risk/return summary information in interactive data format. We did not include this number in our

on the estimate of 20 registrants retaining external professionals and consultants at an annual cost of \$600.00 we estimate that, in the aggregate, the total external cost to the industry would be \$12,000.<sup>154</sup>

As a result of the changes to the voluntary program, we therefore estimate a total decrease in internal burden hours of approximately 1,600<sup>155</sup> and a total decrease in internal costs of approximately \$347,000.<sup>156</sup> We further estimate a total decrease in external costs of approximately \$158,000.<sup>157</sup>

### B. Request for Comments

We solicit comment on the expected Paperwork Reduction Act effects of the proposed amendments, including the following:

- The accuracy of our estimates of the additional burden hours that would result from adoption of the proposed amendments;
- Whether the proposed new collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Any effects of the proposed amendments on any other collections of information not previously identified.

Any member of the public may direct to us any comments concerning these burden estimates and suggestions for reducing the burdens. Persons submitting comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the

calculations as this software was developed solely for purposes of submitting risk/return summary information and not for submitting financial information in interactive data format. See *infra* note 170.

<sup>154</sup> 20 registrants submitting interactive data files under the voluntary program × \$600.00 = \$12,000.

<sup>155</sup> (1,774 hours for the removal of risk/return summary information from the voluntary program – 220 hours for the submission of schedule of portfolio holdings in interactive data format = approximately 1,600 hours.)

<sup>156</sup> (\$393,828 for the removal of risk/return summary information from the voluntary program – \$47,000 for the submission of schedule of portfolio holdings in interactive data format = approximately \$347,000.)

<sup>157</sup> (\$169,611 for the removal of risk/return summary information from the voluntary program – \$12,000 for the submission of schedule of portfolio holdings in interactive data format = approximately \$158,000.)

Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Office of the Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, with reference to File No. S7–12–08. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–12–08, and be submitted to the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

### V. Cost/Benefit Analysis

#### A. Submission of Risk/Return Summary Information Using Interactive Data

The proposed rules would require submission of interactive data-formatted risk/return summary information and the posting of such information on a mutual fund's Web site, if any. We believe that the proposed rules likely would result in the benefits and costs described below. We base our belief on an economic analysis of data obtained from several sources, including voluntary program participant responses to a staff-prepared questionnaire and our experiences with the voluntary program.<sup>158</sup>

Interactive data are intended to remove a barrier in the flow of information between mutual funds and users of information that is conveyed through mutual fund disclosures. This should enable less costly dissemination of information and thereby improve the allocation of capital. The cost of implementation will depend primarily on the costs of transition by mutual funds to the new mode of reporting. The magnitudes of these benefits and costs from any individual mutual fund's adoption of interactive data reporting will depend on the number of other mutual funds that also adopt and on the availability of supporting software and other infrastructures that enable analysis of the information. To the extent that submitted information allows investors to make investment decisions based on market-wide comparison and analysis, the value to the investors of the reported information

<sup>158</sup> The proposed required program, similar to the voluntary program, would require use of interactive data in XBRL format.

tends to increase with the total number of mutual funds adopting the regime. Likewise, mutual funds' incentives to report their information using interactive data depends on the interest level of the investors in this mode of reporting. By mandating implementation, the rule will expand the network of adopters and thereby create positive network externalities of reported information for the investors.

#### 1. Benefits of Interactive Data Submissions and Web Site Posting

The proposed rules have the potential to benefit investors both directly and by facilitating the exchange of information between mutual funds and the third party information providers and other intermediaries who receive and process mutual fund disclosures.

#### Information Access

Benefits of the proposed rulemaking accrue from the acceleration of market-wide adoption of interactive data format reporting. The magnitudes of the benefits thus depend on the value to investors of the new reporting regime relative to the old reporting regime and on the extent to which the mandated adoption speeds up the market-wide implementation.

Requiring mutual funds to file their risk/return summary information using the interactive data format would enable investors, third party information providers, and the Commission staff to capture and analyze that information more quickly and at a lower cost than is possible using the same information provided in a static format.<sup>159</sup> Even though the new regime does not require any new information to be disclosed or reported, certain benefits accrue when mutual funds use an interactive data format to report their risk/return summary information. These include the following. Through interactive data, what is currently static, text-based information could be dynamically searched and analyzed, facilitating the comparison of mutual fund cost, performance, and other information across multiple classes of the same fund and across the more than 8,000 funds currently available. Any investor with a computer would have the ability to acquire and download data that have generally been available only to intermediaries and third-party analysts. For example, users of risk/return summary information could download it directly into spreadsheets, analyze it using commercial off-the-shelf software, or use it within investment models in other software formats. Also, to the

extent investors currently are required to pay for access to mutual fund risk/return summary information that has been extracted and reformatted into an interactive data format by third-party sources, the availability of interactive data in Commission filings could allow investors to avoid additional costs associated with third-party sources.

The magnitude of this informational benefit varies, however, with the availability of sophisticated tools that will allow investors to analyze the information. The growing development of software products for users of interactive data is helping to make interactive data increasingly useful to both institutional and retail investors.<sup>160</sup> For example, currently there are many software providers and financial printers that are developing interactive data viewers. We anticipate that these will become widely available and increasingly accessible to investors. We expect that the open standard feature of the interactive data format will facilitate the development of applications, and software, and that some of these applications may be made available to the public for free or at a relatively low cost. The continued improvement in this software would allow increasingly useful ways to view and analyze mutual fund risk/return summary information to help investors make more well-informed investment decisions.

Interactive data also could provide a significant opportunity for mutual funds to automate their regulatory filings and business information processing, with the potential to increase the speed, accuracy, and usability of mutual fund disclosure. This reporting regime may in turn reduce filing and processing costs.

By enabling mutual funds to further automate their disclosure processes, interactive data may eventually help funds improve the speed at which they generate information. For example, with standardized interactive data tags, registration statements may require less time for information gathering and review.

A mutual fund that uses a standardized interactive data format at earlier stages of its reporting cycle may also increase the accuracy of its disclosure by reducing the need for repetitive data entry that could introduce errors and enhancing the ability of a mutual fund's in-house professionals to identify and correct errors in the fund's registration

statements filed in traditional electronic format. There has been a growing development of software products to assist mutual funds to tag their risk/return summary information using interactive data helping make interactive data increasingly useful.<sup>161</sup>

Mutual funds that automate their regulatory filings and business information processing in a manner that facilitates their generation and analysis of disclosures could, as a result, realize a reduction in costs.

#### Market Efficiency

The proposed requirements could benefit investors by making financial markets more efficient in regard to the following:<sup>162</sup>

- Capital formation as a result of mutual funds' being in a better position to attract shareholders because of greater (less costly) awareness on the part of investors of mutual fund risk/return summary information; and
- Capital allocation as a result of investors' being better able to allocate capital among those mutual funds seeking it because of interactive data reporting's facilitating innovations in efficient communication of mutual fund risk/return summary information.

#### More Efficient Capital Formation

An increase in the efficiency of capital formation is a benefit that may accrue to the extent that interactive data reduces some of the information barriers that make it costly for mutual funds to find appropriate sources of new investors. In particular, smaller mutual fund complexes are expected to benefit from enhanced exposure to investors. If interactive data risk/return summary reporting increases the availability, or reduces the cost of collecting and analyzing, mutual fund risk/return summary data, then there could be improved coverage of mutual funds in smaller fund complexes by third party information providers and commercial data vendors.

At present, some mutual funds in smaller fund complexes do not provide their data to third party information providers.<sup>163</sup> This may reduce the

<sup>161</sup> *Id.*

<sup>162</sup> We believe the benefits will stem primarily from the requirement to submit interactive data to the Commission and the Commission's disseminating that data. We also believe, however, that the requirement that mutual funds with Web sites post the interactive data required to be submitted would encourage its widespread dissemination thereby contributing to lower access costs for users and the related benefits described. We solicit comment in Part II.E regarding what advantages dual Commission and Web site availability would have.

<sup>163</sup> Analysis by Division of Investment Management staff based on publicly available data.

<sup>160</sup> See SEC's Office of Interactive Disclosure Urges Public Comment as Interactive Data Moves Closer to Reality for Investors, Securities and Exchange Commission Press Release, Dec. 5, 2007, available at <http://www.sec.gov/news/press/2007/2007-253.htm>.

<sup>159</sup> See Part I.

likelihood that their data is readily available to investors who use commercially available products to assess mutual fund performance. Hence, if interactive data reporting increases coverage of mutual funds in smaller fund complexes by third party information providers, and this increases their exposure to investors, then lower search costs for shareholders could result.

#### More Efficient Capital Allocation

An increase in the efficiency of capital allocation may accrue to the extent that interactive data increase the quality of information by reducing the cost to access, collect, and analyze mutual fund risk/return summary information or improve the content of mutual fund-reported information.<sup>164</sup> An increase in quality and improvement in content could enable investors to better allocate their capital among mutual funds.

Information quality in mutual fund markets would likely be higher if interactive data reporting were required than if not, leading to more efficient capital allocation. As a result of the improved utility of information, investors may be able to evaluate various mutual funds, thereby facilitating capital flow into their favored investment prospects.

We believe that requiring mutual funds to provide interactive data would improve the quality of risk/return summary information available to end users, and help spur interactive data-related innovation in the supply of mutual fund comparative products, resulting from a potential increased competition among suppliers of such products due to lower entry barriers as a result of lower data collection costs.

However, we have considered competing views of the informational consequences of interactive data. For example, a requirement to submit interactive data information could decrease the marginal benefit of collecting information and thus reduce the information quality to the extent it reduces third-party incentives to facilitate access to, collect, or analyze information. Assuming that markets efficiently price the value of information, the amount of information accessed, collected (or enhanced), and analyzed will be determined by the marginal benefit of doing so.<sup>165</sup>

<sup>164</sup> In the context of the discussion below, quality refers to the ease with which end-users of risk/return summary information can access, collect, and analyze the data. This issue is separate from the content of mutual fund-reported information.

<sup>165</sup> Also, we expect that because the proposed rules would require the use of the XBRL interactive

Lowering information collection costs (through a requirement to submit interactive data information) should increase this benefit. If this is so, then there should be no degradation in the level of information quality as a result of changes in third-party provider behavior under an interactive data reporting regime. However, if one competitor in the industry can subsidize its operations through an alternative revenue stream, both quality and competition may suffer.<sup>166</sup>

Another potential information consequence of the proposed requirements may be changes to the precision and comparability of the information disseminated by data service providers since the interactive data requirements would shift the source of data formatting that allows aggregation and facilitates comparison and analysis from end-users to mutual funds submitting interactive data. At present, data service providers manually key risk/return summary information into a format that allows aggregation. As a result, the data service provider makes interpretive decisions on how to aggregate reported items so that they can be compared across all mutual funds. Consequently, when a subscriber of the commercial product offered by a data service provider uses this aggregated data, it can expect consistent interpretation of the reported items. In contrast, a requirement for mutual funds to submit interactive data information would require the mutual funds to independently decide within the confines of applicable requirements which "tag" best describes each item within the risk/return summary—perhaps with the help from a filing agent or consultant—lessening the amount of interpretation required by data aggregators or end-users of the data. Once a tag is chosen, comparison to other funds is straightforward. However,

data standard, XBRL's being an open standard would facilitate the development of related software, some of which may, as a result, be made available to the public for free or at a relatively low cost and provide the public alternative ways to view and analyze interactive data information provided under our proposed rules.

<sup>166</sup> For illustration purposes only, assume that an Internet service company develops an interactive data-based tool that easily provides mutual fund risk/return summary information for free to all subscribers, and it uses this product as a loss leader to increase viewership and advertising revenue. If the data provided is of the same quality as data provided through subscription to other available commercial products, then there should be no informational efficiency loss. However, if a data aggregator's providing information that improves investor interpretation and goes beyond risk/return summary information is possible, but no longer profitable to produce for competitors without the subsidy, then valuable information production may be lost.

since mutual funds have some discretion in how to select tags, and can choose extensions (new tags) when they can not find an appropriate existing tag, unique interpretations by each fund could result in reporting differences from what current data service providers and other end-users would have chosen. This view suggests that the information disseminated by data aggregators may be, on the one hand, less comparable because they have not normalized it across mutual funds but, on the other hand, more accurate because the risk of human error in the manual keying and interpretation of filed information would be eliminated and more precise because it will reflect decisions by the mutual funds themselves. Replication of prior methods of interpretation still would be possible, however, because mutual funds would continue to be required to file risk/return summary information in traditional format. As a result, nothing would prohibit data aggregators from continuing to provide normalized data. Nonetheless, interactive data benefits could diminish if other reporting formats are required for clarification in data aggregation.

The content of mutual fund-reported information may improve because, as previously discussed, a mutual fund that uses a standardized interactive data format at earlier stages of its disclosure cycle may increase the accuracy of its disclosure. In contrast, the content of mutual fund-reported information may improve or decline to the extent that the interactive data process influences what mutual funds disclose. While the proposed requirements to submit and post interactive data information are intended to be disclosure neutral, it is possible they would affect what is disclosed.<sup>167</sup>

#### 2. Costs of Interactive Data Submissions and Web Site Posting

The primary cost of the rulemaking is the cost of mutual funds' implementation of the rule, which includes the costs of submitting and posting interactive data. We discuss this cost element extensively below. In addition, because the proposed rules would allow an increase in the flow of risk/return summary information being reported directly to third party information providers and investors, there will be a cost of learning on the part of the investors in using and analyzing risk/return summary information at the interactive data level.

<sup>167</sup> We solicit comment on whether the proposed requirements would affect mutual fund disclosure in Part II.C.

As for the cost of implementation of the rule, based on currently available data, we estimate the average direct

costs of submitting and posting interactive data-formatted risk/return summary information for all mutual

funds under the proposed rules would, based on certain assumptions, be as follows:

TABLE.—ESTIMATED DIRECT COSTS OF SUBMITTING INTERACTIVE DATA-FORMATTED RISK/RETURN SUMMARY INFORMATION

	First submission	Subsequent submissions
Preparation <sup>168</sup> .....	\$2,600	\$2,300
Software and consulting services <sup>169</sup> .....	<sup>170</sup> 20,600	800
Web site posting <sup>171</sup> .....	250	250
<b>Total cost</b> .....	<b>23,450</b>	<b>3,350</b>

The above estimates are generated from a limited number of voluntary program participant questionnaire responses. In particular, these responses provided detail on the actual and projected costs of preparing risk/return

<sup>168</sup> Estimates based on risk/return summary voluntary program questionnaire responses. The voluntary program questionnaire responses indicated that different filers use different personnel to prepare interactive data submissions. We calculated costs for each participant based upon the personnel each individual respondent to the voluntary program questionnaire indicated it used and the length of time it indicated the personnel spent on the preparation. The numbers in the table represent the average of all of these calculations. The following wage rates were assumed for preparation cost estimates: operations specialist—\$129; paralegal—\$168; senior compliance examiner—\$180; intermediate business analyst—\$183; senior accountant—\$185; programmer analyst—\$194; financial reporting manager—\$268; and attorney—\$295. These estimated wage figures are based on published rates for the personnel above, modified to account for bonuses, firm size, employee benefits, and overhead, yielding the effectively hourly rates above. See SIA Report, *supra* note 132.

<sup>169</sup> Software licensing and the use of a consultant can be substitutionary—mutual funds can choose to do one or the other, or do both—and are thus aggregated.

<sup>170</sup> We note that one volunteer expended over \$100,000 in information technology to develop internal software that applies interactive data tags to risk/return summary information. This one expenditure by one fund resulted in a higher average software and consulting services cost per fund of \$20,600 for the first submission. Excluding this data, the average software and consulting services costs per fund would have been approximately \$500.

While our averages imply that the costs of internally developing software are allocated to one fund in the sample, in reality the complex that developed the software will likely use that software for all of its funds. Thus the development cost could be allocated across all funds within that complex rather than to one fund.

<sup>171</sup> Voluntary program participants were not required to post on their Web sites, if any, the interactive data information they submitted. Consequently, the costs of the requirement to post interactive data information are not derived from the voluntary program participant questionnaire responses or discussed in our analysis of those responses. Those costs are, instead, derived from informal discussions with a limited number of persons believed to be generally knowledgeable about preparing, submitting, and posting interactive data.

summary information in interactive data format and for purchasing software or related filing agent services. A detailed analysis of the costs associated with voluntary program participation suggests that the estimated direct cost of submitting risk/return summary information in interactive data format falls within the range of \$735.50 to \$127,500 per fund for the first submission.<sup>172</sup> This cost reflects expenditures on interactive data-related software, consulting or filing agent services used, and the market rate for all internal labor hours spent (including training) to prepare, review, and submit the first interactive data format risk/return summary information. The future experiences of individual mutual funds regarding risk/return summary information filed in an interactive data format still may vary according to the mutual funds' size, complexity, and other factors not apparent from the voluntary program participant responses. The discussion below summarizes the *direct* cost estimates of compliance regarding risk/return summary submissions based on voluntary program participant questionnaire responses and the specified assumptions.<sup>173</sup>

- Average cost of first submission, excluding the costs of Web site posting, from voluntary program questionnaire data is \$23,200.

- Projected average cost of subsequent submissions, excluding the costs of Web site posting, from voluntary program questionnaire data is \$3,100.

This analysis attempts to quantify some of the direct costs that mutual funds will incur if we require submission and posting of interactive

<sup>172</sup> See *supra* note 170 with respect to the high end of the range.

<sup>173</sup> The details of this analysis regarding risk/return summary information, including the underlying assumptions and other considerations related to both the costs and benefits of requiring submission of interactive data, are provided following the summary.

data. Whether mutual funds choose to purchase and learn how to use software packages designed for interactive data submissions or outsource this task to a third party, internal (labor) resources would be required to complete the task. The cost estimates provided here using voluntary program participant questionnaire responses shed light on the potential dollar magnitude of the costs of requiring interactive data submissions.

At present, there are 22 mutual funds that have participated in the voluntary program. Of these, 9 were provided questionnaires on the details of their cost experience, and 6 responses were collected by the time of this analysis representing the cost data for 10 funds.<sup>174</sup> The table below summarizes the aggregate costs per mutual fund, including software and filing agent service costs and an estimated cost for the internal labor hours required to prepare and submit the interactive data format information. The low and high estimates of the cost for internal labor hours were calculated using a variety of billing rates corresponding to the job descriptions of internal personnel involved in preparing the tagged risk/return summaries.<sup>175</sup> The reported costs are calculated using responses from the six voluntary program participants that provided responses. Although there are only 6 voluntary program respondents to the questionnaire, those 6 respondents represent mutual fund complexes whose assets comprise approximately 26.35% of all the assets of the mutual funds that ultimately

<sup>174</sup> The questionnaires requested data for one fund; however, several questionnaire respondents voluntarily submitted cost information for more than one fund.

<sup>175</sup> See *supra* note 168. These estimates are from the Securities Industry and Financial Markets Association's Management & Professional Earnings in the Securities Industry 2007, modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. Questionnaire respondents apportioned time spent tagging risk/return summaries among various job types.

would be required to submit interactive data.<sup>176</sup>

TABLE.—SUMMARY OF ILLUSTRATIVE SURVEY DATA ON THE DIRECT COST ESTIMATES FOR VOLUNTARY PROGRAM PARTICIPANTS

	All voluntary program participants respondents	
	Low	High
First submission: Estimated costs .....	\$735.50	<sup>177</sup> \$127,500
Subsequent submissions: Estimated costs .....	\$555.00	\$5,640
Average reduction in cost from first to second submission .....	24.54%	<sup>178</sup> 95.58%

### Scalability of Interactive Data-Related Support Services and Technology

The final cost consideration in this section is the scalability of interactive data-related support services and technology. In particular, it is unclear how the market for interactive data support services and technology may change if the Commission required over 8,000 mutual funds to submit and post interactive data.

The roles of each potential kind of service provider within the interactive data market are likely to develop further and are not yet clear, and there are many potential participants to consider, including the software vendors, print/filing agents, and consultants, as well as the Commission.<sup>179</sup> Until the market of mutual funds that submit interactive data information grows substantially larger (either by requirement or by expansion of the number of volunteers), it is difficult to predict how standard solutions will evolve. For example, we do not know whether mutual funds will adopt solutions that create interactive data submissions using third party software, a so-called “bolt-on” approach, or will seek integrated solutions that enable funds to prepare interactive data submissions from their existing software. Moreover, filing agents may maintain their role as an intermediary by offering interactive data technology or other service providers may cause that role to change. Others with technical expertise may participate in the technology with unpredictable results.

Combining the uncertainty over the source of future interactive data services with increased demand for these services could result in a new equilibrium market price that is different from what is currently reported by voluntary program participants. This

price could be higher if the demand for interactive data services increases (from 15 mutual fund complexes currently participating in the voluntary program to 683 mutual fund complexes<sup>180</sup> participating) at a faster rate than the supply for these same services. More broadly, if an interactive data requirement resulted in clients subscribing for interactive data services faster than the rate at which these services can be supplied, then a price increase is the natural discriminator in how to allocate limited resources.

The submission costs discussed in this section suggest that if interactive data is implemented too quickly it could result in higher than necessary submission costs if the supply of interactive data-related resources is constrained, but the effect would likely diminish as a market place for interactive data services develops. Hence, this concern is mitigated by delaying the requirement that mutual funds submit interactive data until December 31, 2009. This delay would allow interactive data service suppliers to keep pace with demand.

### B. Changes to Voluntary Program

In order to facilitate further evaluation of data tagging, the proposed amendments would enable investment companies that are registered under the Investment Company Act, business development companies, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S-X to submit exhibits containing a tagged schedule of portfolio holdings without having to submit other financial information in interactive data format.

interactive data software in-house. *See supra* note 170.

<sup>178</sup> *Id.*

<sup>179</sup> In addition, mutual fund complexes with a large number of funds may consider developing

### 1. Benefits

We believe that portfolio holdings information in interactive data format may allow more efficient and effective retrieval, research, and analysis of registrants' portfolio holdings through automated means. The proposed amendments to the voluntary program will assist us in assessing whether using interactive data tags enhances users' ability to analyze and compare portfolio holdings information included in filings with the Commission.

Currently, a number of companies use computers and data entry staff to mine portfolio holdings information provided by mutual funds and others in order to populate databases that are used to package information for sale to analysts, funds, investors, and others. Permitting funds and other entities to tag portfolio holdings information in Commission filings will aid this data-mining process in that it will identify points of data at the source, which could reduce the cost to populate databases and improve the accuracy of that data. Additionally, the changes to the voluntary program may benefit funds and the public by permitting experimentation with data tagging using the new portfolio holdings list of tags when it is created.

In the future, the availability of potentially more accurate information about mutual funds and other entities could also reduce the cost of research and analysis and create new opportunities for companies that compile, provide, and analyze data to produce more value added services. Enhanced access to information submitted in interactive data format also has the potential to allow retail investors (or financial advisers assisting such investors) to perform more personalized and sophisticated analyses and comparisons of mutual funds and

software in-house since that cost could be allocated across all of their funds.

<sup>180</sup> Investment Company Institute, *2008 Investment Company Fact Book*, at 14 (2008), available at: [http://www.icifactbook.org/pdf/2008\\_factbook.pdf](http://www.icifactbook.org/pdf/2008_factbook.pdf) (683 fund sponsors).

<sup>176</sup> Based on total mutual fund assets of \$11.8 trillion. Lipper-Directors' Analytical Data, Reuters 2008.

<sup>177</sup> We note that these costs are higher due to one questionnaire respondent who spent significantly more than all other respondents to create its own

other investment options, which could result in investors making better informed investment decisions, and therefore in a more efficient distribution of assets by investors among different funds. This may, in turn, also contribute to increased competition among mutual funds and other entities and result in a more efficient allocation of resources among competing investment products. Although it is not possible to quantify precisely the beneficial effects of more efficient allocation of investors' assets and increased competition, they may be significant, given the size of the mutual fund industry.

Other potential benefits resulting from the inclusion of portfolio holdings information as a stand-alone item in the voluntary program could include an increase in the accuracy of information and the potential for increased timeliness of data that investors use to make informed investment decisions. Another potential benefit is that portfolio holdings information submitted in interactive data format would allow automated, instantaneous extraction of every investment disclosed in the schedule of portfolio holdings. Finally, the investment analysis process could become more efficient and effective through the increased use of automation and reduced human intervention that would result from the use of interactive data.

## 2. Costs

The proposed amendments to the voluntary program would lead to some costs for filers choosing to submit portfolio holdings information in interactive data format.<sup>181</sup> For purposes of the PRA, we estimated that the increase in annual internal burden hours to the industry would be approximately 220 hours, which would amount to an increase in costs of approximately \$47,000 and that the increase in annual external costs per filer would amount to approximately \$600 per year for a total estimated increase to the industry of approximately \$12,000 on an annual basis.<sup>182</sup>

We based these cost estimates upon, among other things, experience with mutual funds who have submitted risk/return summary information in interactive data format in the current voluntary program.<sup>183</sup> Due to the ongoing nature of the project to develop

the list of tags for portfolio holdings, however, we have limited data to quantify the cost of implementing the use of interactive data tags applied to portfolio holdings information, and we seek comment and supporting data on our estimates with regard to the proposed amendments. In the future, there may be additional costs to current users of EDGAR data. For example, companies that currently provide tagging and dissemination of EDGAR data may experience decreased demand for their services. These entities have developed certain products and services based on data in EDGAR; many entities disseminate, repackage, analyze, and sell the information. Allowing filers to submit tagged portfolio holdings information, even voluntarily, may have an impact on entities providing EDGAR-based services and products. Because the Commission does not regulate all these entities, it is currently not feasible to accurately estimate the number or size of these potentially affected entities. The limited, voluntary nature of the program will help the Commission assess the effect, if any, on these entities. Additionally, the availability of interactive data on EDGAR may provide these companies with alternative business opportunities.

## C. Comment Solicited

We solicit comment on all aspects of this cost-benefit analysis, including the identification of any additional costs or benefits of, or suggested alternatives to, the proposed rules. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

We request comment regarding the costs and benefits to investors, mutual funds, third-party information providers, software providers, filing agents, and others who may be affected by the proposed rules. We are particularly interested in information on the costs and benefits to smaller mutual fund complexes.

In particular, we request comment regarding:

- The differences between start-up costs and the costs of providing interactive data on a continuing basis after the initial preparation; and
- The cost of Web site posting.

## VI. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act<sup>184</sup> requires us, when adopting rules under the Exchange Act, to consider the

impact that any new rule would have on competition. In addition, section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, section 2(b)<sup>185</sup> of the Securities Act, section 3(f)<sup>186</sup> of the Exchange Act, and section 2(c)<sup>187</sup> of the Investment Company Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

### A. Submission of Risk/Return Summary Information Using Interactive Data

The proposals to require mutual funds to submit interactive data to the Commission and post it on their Web sites are intended to make risk/return summary information easier for investors to analyze while assisting in automating regulatory filings and business information processing. In particular, we believe that the proposed rules would enable investors and others to search and analyze the risk/return summary information dynamically; facilitate comparison of mutual fund cost, performance, and other information; and, possibly, provide a significant opportunity to automate regulatory filings and business information processing with the potential to increase the speed, accuracy, and usability of risk/return summary disclosure. Further, as discussed in detail above, we believe that the proposals may lead to more efficient capital formation and allocation.<sup>188</sup>

We understand that private sector businesses such as those that access mutual fund information and aggregate, analyze, compare, or convert it into interactive format have business models and, as a result, competitive strategies that the proposed interactive data requirements might affect. Since interactive data technology is designed to remove an informational barrier, business models within the mutual fund services industry that are currently adapted to traditional format document reporting may change, with possible consequences for the revenue stream of current product offerings due to the competitive effects of such a change.

<sup>181</sup> For purposes of the PRA, we also estimated a reduction in burden hours for the voluntary program collection of information, due to removal of risk/return summary information from the voluntary program. See *supra* Part IV.A.2.

<sup>182</sup> See *supra* Part IV.A.2.

<sup>183</sup> See *supra* note 168.

<sup>184</sup> 15 U.S.C. 78w(a)(2).

<sup>185</sup> 15 U.S.C. 77b(b).

<sup>186</sup> 15 U.S.C. 78c(f).

<sup>187</sup> 15 U.S.C. 80a-2(c).

<sup>188</sup> See Part V.A.

The competitive effects may relate to changes in the accessibility of risk/return summary information to investors, the nature of the information that investors receive, and the potential from new entry or innovation in the markets through which mutual fund disclosures are transmitted from mutual funds to investors. For example, lower entry barriers that result from lower data collection costs may increase competition among third-party information providers and help spur interactive data-related innovation. It is also possible, however, that a requirement to submit interactive data information could decrease the marginal benefit of collecting information and thus cause third-party information providers to produce information that is less robust to the extent the decreased marginal benefit reduces third party incentives to facilitate access to, collect, or analyze information. If markets efficiently price the value of information, the amount of information accessed, collected (or enhanced), and analyzed will be determined by the marginal benefit of doing so.<sup>189</sup> Lowering information collection costs (through a requirement to submit interactive data information) should increase this benefit. If this is so, then there should be no degradation in the level of information quality as a result of changes in third-party provider behavior under an interactive data reporting regime. However, if one competitor in the industry can subsidize its operations through an alternative revenue stream, both quality and competition may suffer.

For the reasons described more fully above, we believe the liability protections for interactive data would be necessary or appropriate in the public interest and consistent with the protection of investors. Moreover, the protections would also be consistent with the purposes fairly intended by the policy and provisions of the Investment Company Act.

#### *B. Changes to the Voluntary Program*

The proposed amendments would no longer allow mutual funds to submit risk/return summary information in interactive data format through the voluntary program after the compliance date for the mandatory rules and would

enable investment companies that are registered under the Investment Company Act, business development companies, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S-X to submit exhibits containing a tagged schedule of portfolio holdings without having to submit other financial information in interactive data format. The changes to the voluntary program are intended to help further evaluate the usefulness to investors, third-party information providers, investment companies, the Commission, and the marketplace of interactive data and, in particular, of submitting portfolio holdings information in interactive data format. Because compliance with the proposed amendments will be voluntary, the Commission estimates that the impact of the proposal will be limited. However, because the submission of portfolio holdings information in interactive data format has the potential to facilitate analysis of that information, we believe that the proposed amendments could promote efficiency by allowing us and others to gain experience with portfolio holdings information in interactive data format.

Further, submitting portfolio holdings information in interactive data format has the potential to help streamline the delivery of portfolio holdings information, and provide investors and others with improved tools to compare funds and other entities. As with the filing of risk/return summary information in interactive data format, we believe that the potential to streamline the delivery of portfolio holdings information and to provide investors and others with improved comparison tools could promote efficiency and competition through more efficient allocation of investments by investors and more efficient allocation of assets among competing funds and other investment products.

In the future, companies that currently provide tagging and dissemination of EDGAR data may experience decreased demand for their services. The availability of interactive data on the Commission's electronic filing system however, may provide these companies with alternative business opportunities. We do not anticipate that the proposed amendments would have a significant impact on capital formation. Finally, because the proposals are designed to permit mutual funds and other entities to provide information in a format that we believe would be more useful to investors, we believe that the proposed amendments are appropriate in the

public interest and for the protection of investors.

#### *C. Request for Comment*

We request comment on whether the proposals, if adopted, would promote efficiency, competition, and capital formation or have an impact or burden on competition. Commenters are requested to provide empirical data and other factual support for their views, if possible.

### **VII. Initial Regulatory Flexibility Analysis**

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed amendments that would require mutual funds to provide risk/return summary information to the Commission and on their Web sites in interactive data format and that would enable investment companies and other entities to submit exhibits through the voluntary program containing a tagged schedule of portfolio holdings without having to submit other financial information in interactive data format.

#### *A. Reasons for, and Objectives of, the Proposed Action*

##### *Submission of Risk/Return Summary Information Using Interactive Data*

The main purpose of the proposed amendments is to make risk/return summary information easier for investors to analyze while assisting in automating regulatory filings and business information processing. Currently, mutual funds are required to file their registration statements in a traditional format that provides static text-based information. We believe that providing the risk/return summary information these filings contain in interactive data format would:

- Enable investors and others to search and analyze the information dynamically;
- Facilitate comparison of mutual fund performance; and
- Possibly provide a significant opportunity to automate regulatory filings and business information processing with the potential to increase the speed, accuracy, and usability of risk/return summary disclosure.

##### *Changes to the Voluntary Program*

The main purpose of the proposed amendments to the voluntary program is to help us evaluate the usefulness to investors, third party information providers, funds, the Commission, and the marketplace of interactive data and, in particular, of submitting portfolio holdings information in interactive data format. We believe the proposed

<sup>189</sup> Also, we expect that because the proposed rules would require the use of the XBRL interactive data standard, XBRL's being an open standard would facilitate the development of related software, some of which may, as a result, be made available to the public for free or at a relatively low cost and provide the public alternative ways to view and analyze interactive data information provided under our proposed rules.



changes to the voluntary program would enable us to further study the extent to which interactive data enhance the comparability of portfolio holdings information, the usefulness of interactive data for dissemination, and our staff's ability to review and assess the accuracy and adequacy of that data. The proposed changes to the voluntary program also would help us assess the effect of interactive data on the quality and transparency of portfolio holdings information, as well as the compatibility of interactive data with the Commission's disclosure requirements.

More specifically, we believe that the proposed changes to the voluntary program would better enable us to study the extent to which interactive data would:

- Enable investors and others to search and analyze the information dynamically;
- Facilitate comparison of portfolio holdings among funds and other entities; and
- Possibly provide a significant opportunity to reduce the resources needed for data analysis.

In addition, we believe the proposed changes to the voluntary program would enhance our ability to evaluate the:

- Impact on the staff's ability to review filings on a more timely and efficient basis,
- Use of interactive data for risk assessment and surveillance procedures, and
- Compatibility of interactive data with reporting quality, transparency, and other Commission reporting requirements.

#### B. Legal Basis

We are proposing the amendments under sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act,<sup>190</sup> sections 3, 12, 13, 14, 15(d), 23(a), 35A, and 36 of the Exchange Act,<sup>191</sup> sections 314 and 319 of the Trust Indenture Act<sup>192</sup> and sections 6(c), 8, 24, 30, and 38 of the Investment Company Act.<sup>193</sup>

#### C. Small Entities Subject to the Proposed Rules

The proposed amendments would affect mutual funds that are small entities. For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as

of the end of its most recent fiscal year.<sup>194</sup> Approximately 127 mutual funds registered on Form N-1A meet this definition.<sup>195</sup> All of these mutual funds would become subject to the proposed rules to require submission of risk/return summary information using interactive data. Regarding the proposed changes to the voluntary program, a smaller subset of small entity mutual funds may voluntarily submit tagged portfolio holdings information, but, because submitting portfolio holdings information would be voluntary, we anticipate that only mutual fund complexes with sufficient resources would elect to participate. To date, no small entity mutual funds have elected to participate in the current voluntary program.

#### D. Reporting, Recordkeeping and Other Compliance Requirements

##### Submission of Risk/Return Summary Information Using Interactive Data

All mutual funds subject to the proposed rules would be required to submit risk/return summary information to the Commission in interactive data format and, if they have a Web site, post the interactive data on their Web site. We believe that, in order to submit risk/return summary information in interactive data format, mutual funds in general and small entities in particular likely would need to prepare and then submit the interactive data by expending internal labor hours in connection with either or both of

- Purchasing, learning, and using software packages designed to prepare risk/return summary information in interactive format; and
- Hiring and working with a consultant or filing agent.

We believe that mutual funds would incur relatively little cost in connection with the requirement to post the interactive data on their Web site because the requirement applies only to mutual funds that already have a Web site.<sup>196</sup>

##### Changes to the Voluntary Program

The voluntary program is designed to assist us in assessing the feasibility of using interactive data on a broader basis. Experience with the current voluntary program indicates that the cost of submitting portfolio holdings information in interactive data format,

the associated burden on the Commission's electronic filing system, and the possible effect of the proposed changes to the voluntary program on those entities that use the data from the Commission's electronic filing system would be minimal.

No registrant would be required to submit documents in interactive data format under the proposed changes to the voluntary program. The submission of portfolio holdings information in interactive data format would require a participant to tag the portfolio holdings information already provided in required disclosures and to submit exhibits to its filing. Volunteers may also need to purchase software or retain a consultant to assist in creating interactive data exhibits.<sup>197</sup>

#### E. Duplicative, Overlapping, or Conflicting Federal Rules

We believe that the proposed amendments would not duplicate, or overlap, or conflict with, other federal rules.

#### F. Agency Action to Minimize the Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered several alternatives, including the following:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Further clarifying, consolidating, or simplifying the proposed requirements;
- Using performance rather than design standards; and
- Providing an exemption from the proposed requirements, or any part of them, for small entities.

##### Submission of Risk/Return Summary Information Using Interactive Data

We believe that, as to small entities, differing compliance, reporting or timetable requirements, a partial or complete exemption from the proposed requirements, or the use of performance rather than design standards would be inappropriate because these approaches would detract from the long-term completeness and uniformity of the interactive data format risk/return summary information database. Less long-term completeness and uniformity would reduce the extent to which the proposed requirements would enable

<sup>190</sup> 15 U.S.C. 77e, 77f, 77g, 77s(a), and 77z-3.

<sup>191</sup> 15 U.S.C. 78c, 78l, 78m, 78n, 78o(d), 78w(a), 78ll, and 78mm.

<sup>192</sup> 15 U.S.C. 77nnn and 77sss.

<sup>193</sup> 15 U.S.C. 80a-6(c), 80a-8, 80a-24, 80a-29, and 80a-37.

<sup>194</sup> 17 CFR 270.0-10.

<sup>195</sup> This estimate is based on analysis by the Division of Investment Management staff of publicly available data as of December 2007.

<sup>196</sup> The internal labor and external costs required to comply with the proposed rules are discussed more fully in Parts IV and V above.

<sup>197</sup> *Id.*

investors and others to search and analyze the information dynamically; facilitate comparison of mutual fund performance; and, possibly, provide a significant opportunity to automate regulatory filings and business information processing with the potential to increase the speed, accuracy, and usability of risk/return summary information disclosure. We note, however, that all mutual funds, including small entities, would not be subject to the proposed requirements until after December 31, 2009.<sup>198</sup> We solicit comment, however, on whether differing compliance, reporting, or timetable requirements, a partial or complete exemption, or the use of performance rather than design standards would be consistent with our described main goal of making risk/return summary information easier for investors to analyze while assisting in automating regulatory filings and business information processing.

We are considering whether further clarifying, consolidating, or simplifying the proposed interactive data submission and posting requirements would be appropriate. Based in part on our experience with the voluntary program, we believe that the proposed requirements are sufficiently clear and straightforward (although, we seek comment on this).

#### Changes to the Voluntary Program

The purpose of the proposed amendments is to help us evaluate the usefulness to investors, third party information providers, mutual funds and other entities, the Commission, and the marketplace of interactive data and, in particular, of submitting portfolio holdings information in interactive data format. Submitting documents containing portfolio holdings information in interactive data format would be entirely voluntary.

We have considered different or simpler procedures for small entities, but for interactive data to provide benefits such as ready comparability there cannot be alternative procedures in place for different entities. Similarly, in order to achieve the benefits of interactive data, use of a single technology is necessary. If we determine

<sup>198</sup>In this regard, in Part II.B. of this release we note that the additional time is intended to permit mutual funds to plan for and implement the interactive data reporting process after having the opportunity to experiment with the voluntary program. We also there solicit comment on the appropriate timetable for smaller mutual fund complexes (which would include small entities) and note that the additional time also is intended to enable us to monitor the voluntary program and, if necessary, make appropriate adjustments to the timetable.

to require the filing of portfolio holdings information in interactive data format in the future, we will look to the results of the voluntary program, including those of the proposed changes to the voluntary program, to find alternatives to minimize any burden on small entities. We solicit comment on how the proposals could be modified to minimize the effect on small entities.

#### G. Solicitation of Comment

We encourage comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposed amendments;
- The existence or nature of the potential impact of the proposed amendments on small entities as discussed in this analysis; and
- How to quantify the impact of the proposed amendments.

We ask those submitting comments to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

#### VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, a rule is “major” if it has resulted, or is likely to result in:

- An annual effect on the economy of \$100 million or more;
  - A major increase in costs or prices for consumers or individual industries; or
  - Significant adverse effects on competition, investment, or innovation.
- We request comment on whether our proposals would be a “major rule” for purposes of SBREFA. We solicit comment and empirical data on:
- The potential effect on the U.S. economy on an annual basis;
  - Any potential increase in costs or prices for consumers or individual industries; and
  - Any potential effect on competition, investment, or innovation.

#### IX. Statutory Authority

The Commission is proposing the amendments outlined above under sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), and 77z–3]; sections 3, 12, 13, 14, 15(d), 23(a), 35A, and 36 of the Exchange Act [15 U.S.C. 78c, 78l, 78m,

78n, 78o(d), 78w(a), 78ll, and 78mm]; sections 314 and 319 of the Trust Indenture Act [15 U.S.C. 77nnn and 77sss]; and sections 6(c), 8, 24, 30, and 38 of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–8, 80a–24, 80a–29, and 80a–37].

#### List of Subjects

17 CFR Parts 232 and 239

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 230, 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

#### Text of Proposed Rule and Form Amendments

For the reasons set forth above, the Commission proposes to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

#### PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

**Authority:** 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

\* \* \* \* \*

2. Amend § 230.485 by adding paragraph (c)(3) to read as follows:

**§ 230.485 Effective date of post-effective amendments filed by certain registered investment companies.**

\* \* \* \* \*

(c) \* \* \*

(3) A registrant’s ability to file a post-effective amendment, other than an amendment filed solely for purposes of submitting an Interactive Data File, under paragraph (b) of this section is automatically suspended if a registrant fails to submit and post on its Web site any Interactive Data File exhibit as required by General Instruction C.3.(g) of Form N–1A. A suspension under this paragraph (c)(3) shall become effective at such time as the registrant fails to submit or post an Interactive Data File as required by General Instruction C.3.(g) of Form N–1A. Any such suspension, so long as it is in effect, shall apply to any post-effective amendment that is filed after the suspension becomes effective, but shall not apply to any post-effective amendment that was filed before the suspension became effective. Any suspension shall apply only to the ability to file a post-effective amendment pursuant to paragraph (b) of

this section and shall not otherwise affect any post-effective amendment. Any suspension under this paragraph (c)(3) shall terminate as soon as a registrant has submitted and posted to its Web site the Interactive Data File as required by General Instruction C.3.(g) of Form N-1A.

\* \* \* \* \*

**PART 232—REGULATION S—  
GENERAL RULES AND REGULATIONS  
FOR ELECTRONIC FILINGS**

3. The authority citation for Part 232 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 *et seq.*; and 18 U.S.C. 1350.

\* \* \* \* \*

4. Further amend § 232.11 as published at 73 FR 32827, June 10, 2008 by revising the definitions of “Interactive Data in Viewable Form” and “Related Official Filing” to read as follows:

**§ 232.11 Definition of terms used in part 232.**

\* \* \* \* \*

*Interactive Data in Viewable Form.* The term *Interactive Data in Viewable Form* means the financial statements, financial statement schedules, financial statement footnotes, and, in the case of an open-end management investment company registered under the Investment Company Act of 1940, risk/return summary information that

(1) Are displayed when an Interactive Data File is converted from machine-readable computer code into human-readable text through software the Commission provides; and

(2) Are displayed through such conversion identically in all material respects to the corresponding financial statements, financial statement schedules, financial statement footnotes, and, in the case of an open-end management investment company registered under the Investment Company Act of 1940, risk/return summary information in the Related Official Filing.

\* \* \* \* \*

*Related Official Filing.* The term *Related Official Filing* means the ASCII or HTML format part of the official filing with which an Interactive Data File appears as an exhibit or, in the case of a filing on Form N-1A, the ASCII or HTML format part of an official filing that contains the information to which an Interactive Data File corresponds.

\* \* \* \* \*

5. Further amend § 232.202 as published at 73 FR 32828, June 10, 2008, by revising Note 4 to read as follows:

**§ 232.202 Continuing hardship exemption.**

\* \* \* \* \*

**Note 4 to § 232.202:** Failure to submit or post, as applicable, the Interactive Data File as required by Rule 405 by the end of the continuing hardship exemption if granted for a limited period of time, will result in ineligibility to use Forms S-3, S-8, and F-3 (§§ 239.13, 239.16b and 239.33 of this chapter), constitute a failure to have filed all required reports for purposes of the current public information requirements of Rule 144(c)(1) (§ 230.144(c)(1) of this chapter), and, pursuant to Rule 485(c)(3), suspend the ability to file post-effective amendments under Rule 485(b) (§ 230.485 of this chapter).

6. Further amend § 232.401 as published at 73 FR 32828, June 10, 2008, by revising paragraph (a) to read as follows:

**§ 232.401 XBRL-Related Document submissions.**

(a) Only an electronic filer that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), a “business development company” as defined in section 2(a)(48) of that Act, or an entity that reports under the Exchange Act and prepares its financial statements in accordance with Article 6 of Regulation S-X (17 CFR 210.6-01 *et seq.*) is permitted to participate in the voluntary XBRL (eXtensible Business Reporting Language) program. An electronic filer that participates in the voluntary XBRL program may submit XBRL-Related Documents (§ 232.11) in electronic format as an exhibit to: the filing to which the XBRL-Related Documents relate; an amendment to such filing, or, if the electronic filer is eligible to file a Form 8-K (§ 249.308 of this chapter) or a Form 6-K (§ 249.306 of this chapter), a Form 8-K or a Form 6-K, as applicable, that references the filing to which the XBRL-Related Documents relate if such Form 8-K or Form 6-K is submitted no earlier than the date of that filing. The XBRL-Related Documents must comply with the content and format requirements of this section, be submitted as an exhibit to a form that contains the disclosure required by this section and be submitted in accordance with the EDGAR Filer Manual and, as applicable, one of Item 601(b)(100) of Regulation S-K (§ 229.601(b)(100) of this chapter), Item 601(b)(100) of Regulation S-B (§ 228.601(b)(100) of this chapter), Form 20-F (§ 249.220f of this chapter), Form 6-K or § 270.8b-33 of this chapter.

\* \* \* \* \*

7. Amend § 232.401 by revising paragraphs (b)(1)(iv), (d)(1)(i), (d)(2) introductory text, and (d)(2)(i) to read as follows:

**§ 232.401 XBRL-Related Document submissions.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) If the electronic filer is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), a “business development company” as defined in Section 2(a)(48) of that Act, or an entity that reports under the Exchange Act and prepares its financial statements in accordance with Article 6 of Regulation S-X (17 CFR 210.6-01 *et seq.*), *Schedule I—Investments in Securities of Unaffiliated Issuers* (§ 210.12-12 of this chapter).

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) That the financial information contained in the XBRL-Related Documents is “unaudited” or “unreviewed,” as applicable;

\* \* \* \* \*

(2) The disclosures required by paragraph (d)(1) of this section must appear within the XBRL-Related Documents as a tagged data element and, as applicable, in:

(i) The exhibit index of a Form 10-K (§ 249.310 of this chapter), 10-Q (§ 249.308a of this chapter), 10 (§ 249.210 of this chapter), 10-SB (§ 249.210b of this chapter), 10-KSB (§ 249.310b of this chapter), 10-QSB (§ 249.308b of this chapter) or 20-F;

\* \* \* \* \*

8. Further amend § 232.405 as published beginning at 73 FR 32828, June 10, 2008 by:

- a. Revising Preliminary Note 1;
- b. Revising paragraph (a);
- c. Redesignating paragraph (b) as paragraph (b)(1) and adding the phrase “If the electronic filer is not an open-end management investment company registered under the Investment Company Act of 1940,” to the beginning of the paragraph;
- d. Redesignating paragraphs (b)(1) and (b)(2) as paragraphs (b)(1)(i) and (b)(1)(ii);
- e. Redesignating Note to paragraph (b) as Note to paragraph (b)(1);
- f. Adding paragraph (b)(2); and
- g. Adding a sentence at the end of the Note to § 232.405.

The revisions and additions read as follows:

**§ 232.405 Interactive Data File submissions and postings.**

## Preliminary Notes

1. Sections 405 and 406 of Regulation S–T (§§ 232.405 and 232.406) apply to electronic filers that submit or post Interactive Data Files. Item 601(b)(101) of Regulation S–K (§ 229.601(b)(101) of this chapter), Item 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), and General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter) specify when electronic filers are required or permitted to submit or post an Interactive Data File (§ 232.11), as further described below in the Note to Section 405.

\* \* \* \* \*

(a) *Content, Format, Submission and Posting Requirements—General.* An Interactive Data File (§ 232.11) must:

(1) Comply with the content, format, submission and Web site posting requirements of this section;

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by Item 601(b)(101) of Regulation S–K (§ 229.601(b)(101) of this chapter), Item 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), or General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), as applicable, as an exhibit to a form that contains the disclosure required by this section;

(3) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, Item 601(b)(101) of Regulation S–K, Item 101 of the Instructions as to Exhibits of Form 20–F, or General Instruction C.3.(g) of Form N–1A; and

(4) Be posted on the electronic filer's corporate Web site, if any, in accordance with, as applicable, Item 601(b)(101) of Regulation S–K, Item 101 of the Instructions as to Exhibits of Form 20–F, or General Instruction C.3.(g) of Form N–1A.

(b)(1) *Content—Categories of Information Presented.* If the electronic filer is not an open-end management investment company registered under the Investment Company Act of 1940,

- (i) \* \* \*  
(ii) \* \* \*

(2) If the electronic filer is an open-end management investment company registered under the Investment Company Act of 1940, an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related

Official Filing, no more and no less, from the risk/return summary information set forth in Items 2 and 3 of Form N–1A.

\* \* \* \* \*

**Note to § 232.405:** \* \* \* For an issuer that is an open-end management investment company registered under the Investment Company Act of 1940, General Instruction C.3.(g) of Form N–1A specifies the circumstances under which an Interactive Data File must be submitted as an exhibit and be posted to the company's Web site, if any.

\* \* \* \* \*

**PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

9. The authority citation for Part 239 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

\* \* \* \* \*

**PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940**

10. The authority citation for Part 270 continues to read in part as follows:

**Authority:** 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

\* \* \* \* \*

11. Revise § 270.8b–33 to read as follows:

**§ 270.8b–33 XBRL-Related Documents.**

A registrant that participates in the voluntary XBRL (eXtensible Business Reporting Language) program may submit, in electronic format as an exhibit to a filing on Form N–CSR (§§ 249.331 and 274.128 of this chapter) or Form N–Q (§§ 249.332 and 274.130 of this chapter) to which they relate, XBRL-Related Documents (§ 232.11 of this chapter). A registrant that submits XBRL-Related Documents as an exhibit to a form must name each XBRL-Related Document “EX 100” as specified in the EDGAR Filer Manual and submit the XBRL-Related Documents in such a manner that will permit the information for each series and, for any information that does not relate to all of the classes in a filing, each class of an investment company registrant and each contract of an insurance company separate account to be separately identified. A registrant may submit such exhibit with, or in an amendment to, the filing to which it relates.

**PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940**

12. The authority citation for Part 274 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

13. Amend Form N–1A (referenced in §§ 239.15A and 274.11A) by adding a paragraph (g) to General Instruction C.3.

The addition is to read as follows:

**Note:** The text of Form N–1A does not, and these amendments will not, appear in the Code of Federal Regulations.

**FORM N–1A**

\* \* \* \* \*

**GENERAL INSTRUCTIONS**

\* \* \* \* \*

**C. Preparation of the Registration Statement**

\* \* \* \* \*

3. Additional Matters:

\* \* \* \* \*

(g) *Interactive Data File.* An Interactive Data File (§ 232.11 of this chapter) is required to be submitted to the Commission and posted on the Fund's Web site, if any, in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) for any registration statement or post-effective amendment thereto on Form N–1A that includes or amends information provided in response to Items 2 and/or 3. The Interactive Data File must be submitted as an exhibit to Form N–1A and must be named “EX–101” as specified in the EDGAR Filer Manual and be submitted in such a manner that will permit the information for each series and, for any information that does not relate to all of the classes in a filing, each class of the Fund to be separately identified. The Interactive Data File must be submitted as an amendment to the registration statement to which the Interactive Data File relates. The amendment must be submitted after the registration statement or post-effective amendment that contains the related information becomes effective but not later than 15 business days after the effective date of that registration statement or post-effective amendment.

Dated: June 10, 2008.

By the Commission.

**Florence E. Harmon,**  
*Acting Secretary.*

[FR Doc. E8–13356 Filed 6–20–08; 8:45 am]

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