**THOMPSON
HINE**

February 2009

**INVESTMENT MANAGEMENT
UPDATE****SEC Adopts Summary Prospectus and Related Amendments to Form N-1A**

On January 13, 2009, the Securities and Exchange Commission (SEC) adopted amendments to the form used by mutual funds to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933 (the "1933 Act"). The amendments to Form N-1A and related rules require each mutual fund statutory prospectus to include a summary section that lists certain specified information about the fund covered by the prospectus; amend certain disclosure requirements for exchange-traded funds (ETF) that register as open-end funds on Form N-1A; and allow a fund to satisfy its prospectus delivery requirements by providing to investors a summary prospectus, which is composed of the summary section of the statutory prospectus.¹

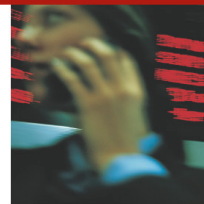
The amendments are effective on March 31, 2009. Compliance is mandatory on or after January 1, 2010 for initial registrations and post-effective amendments that add a new series or provide annual updates. Compliance is mandatory for other post-effective amendments filed on or after January 1, 2011. A fund may elect to voluntarily comply with the new form requirements at any time after the effective date. Funds should be aware that post-effective amendments using the new format must be filed under Rule 485(a) under the 1933 Act and are, therefore, not effective for at least 60 days. However, the SEC may consider acceleration requests under appropriate circumstances and may permit a fund to file post-effective amendments under Rule 485(b), with immediate effectiveness, provided the fund is part of a fund complex that has previously filed post-effective amendments implementing the new requirements under Rule 485(a) for other funds in the complex.

SUMMARY PORTION OF STATUTORY PROSPECTUS

Amended Form N-1A requires each statutory prospectus to include, at the beginning, a summary section that contains, in plain English and in a prescribed order, certain required disclosures. Registrants are not permitted to omit any of the prescribed disclosures or include any additional information that is not otherwise required. Furthermore, nothing other than the cover page and the table of contents may precede the summary section. Although the amendments do not include a specific page limit for the summary portion of a statutory prospectus, the Release indicates that the SEC expects this section to be approximately three to four pages in length. The following disclosures are required to be included in the summary portion of each statutory prospectus.

Item 1: Front and Back Cover. Funds are required to include the exchange ticker symbol for the fund and for each share class, if any, on the front cover page.²

Item 2: Investment Objectives/Goals. The investment objectives of a fund must be presented exactly as required in the fund's current risk/return summary.



Item 3: Costs, Fees and Turnover. This item is similar to the fee table and example currently required by Form N-1A, with the following modifications:

- If a fund offers sales load discounts or breakpoints, the summary must provide a narrative disclosing the minimum purchase necessary to qualify for the discounts or breakpoints, stating that further information about breakpoints or discounts is available from the investor's financial professional and identifying the pages in the statutory prospectus and Statement of Additional Information (SAI) that provide full details about the breakpoints or discounts.
- The parenthetical following the heading "Annual Fund Operating Expenses" on the fee table has been modified. Instead of reading "Expenses that are deducted from fund assets," it must now read "Expenses that you pay each year as a percentage of the value of your investment."
- If a fund has an expense limitation agreement or other arrangement that will reduce its annual operating expenses for a period of not less than one year from the effective date of the fund's registration statement, it may include two statements below the "Total Annual Fund Operating Expenses" caption. The first statement must indicate the amount of the reimbursement or waiver and the second should indicate the fund's total expenses net of the reimbursement or waiver. A fund that chooses to make this disclosure also must disclose the period for which the expense limitation arrangement is expected to continue, including the expected termination date and the circumstances under which the arrangement may be terminated.
- A fund may reflect the effects of waivers and reimbursements in the fee table only if the expense limitation agreement remains in effect for at least one year from the effective date of the prospectus and cannot be unilaterally terminated by the waiving or reimbursing entity during the first year, without the consent of a fund's board of directors or trustees (for example, unilaterally by the fund's investment adviser).
- Following the fee table, a fund (other than a money market fund) is required to disclose its fiscal year turnover rate, as a percentage of the average value of the portfolio, and provide a statement explaining that turnover increases transaction costs borne by the fund and has tax consequences for fund shareholders holding shares in a taxable account.

Item 4: Principal Investment Strategies and Risks. A fund is required to disclose its principal investment strategies and risks in the same manner as is required in the current risk/return summary. However, if a fund provides performance updates via a web site and/or toll-free number, it must include a statement in the narrative accompanying the bar chart and performance table noting the availability of these updates and the appropriate web address and/or toll-free number to call to request the information.³

Item 5: Management. A fund must disclose the name of its investment adviser and identify the fund's portfolio manager by name, title and length of service to the fund. If a fund employs a sub-adviser, the same information is required for the sub-adviser and the sub-adviser portfolio manager. A fund is not required to identify a sub-adviser whose sole responsibility is limited to day-to-day



management of cash instruments unless the fund is a money market fund or other fund with a principal investment strategy of regularly holding cash instruments. In addition, a fund having three or more sub-advisers, each of whom manages a portion of the fund's assets, will not be required to identify each sub-adviser, except that the fund will be required to identify any sub-adviser that is, or is reasonably expected to be, responsible for the management of a significant portion of the fund's net assets (generally 30 percent or more).

Item 6: Purchase and Redemption Information. A fund must disclose its minimum initial and subsequent purchase amounts and describe procedures for redeeming shares. However, prospectuses that are used solely for retirement plans and variable insurance contracts may omit or modify this disclosure.

Item 7: Tax Information. A fund must disclose whether its distributions are expected to be treated as ordinary income, capital gains or exempt from tax. If a fund invests in tax-exempt securities, it also must disclose that a portion of its distributions may, nonetheless, be subject to federal income tax.

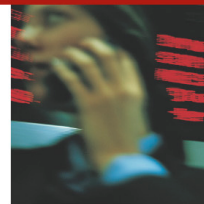
Item 8: Financial Intermediary Compensation. If a fund pays financial intermediaries for sales or shareholder services, it must disclose the potential conflict of interest for the financial intermediary with respect to the shareholder, using the following or a substantially similar statement:

Payments to Broker-Dealers and Other Financial Intermediaries. If you purchase the Fund through a broker-dealer or other financial intermediary (such as a bank), the Fund and its related companies may pay the intermediary for the sale of Fund shares and related services. These payments may create a conflict of interest by influencing the broker-dealer or other financial intermediary and your salesperson to recommend the Fund over another investment. Ask your salesperson or visit your financial intermediary's web site for more information.

However, if a fund does not pay financial intermediaries, it may omit this disclosure.

SPECIAL RULES FOR MULTIPLE FUNDS/CLASSES AND VARIABLE INSURANCE CONTRACTS

The amendments require each statutory prospectus covering more than one fund to include a separate summary section for each fund. The amendments do, however, permit information required by Items 6, 7 and 8 to be presented only once (as opposed to being duplicated in the summary section for each fund) as long as this information is identical for each fund and a statement is included in the summary section for each fund informing the reader where such information can be found in the statutory prospectus. The omitted information then needs to be presented together in one place following the presentation of Items 2 through 8 for each individual fund. Additionally, funds with multiple classes have the option of either presenting an individual summary section for each class or using one integrated summary section for all classes. Prospectuses covering funds constituting investment options under retirement plans or variable insurance contracts may omit or modify Items 7 and 8 at the fund's discretion.



OPEN-END ETFS

The amendments to Form N-1A include enhanced disclosure requirements focused on retail investors who buy ETF shares in the secondary market, as opposed to financial institutions that purchase creation units directly from the fund. ETF-specific amendments to Form N-1A, including some that are specific to ETFs with creation units of at least 25,000 shares, are addressed in Items 1, 3, 6 and 11.

Item 1: Front and Back Cover. An ETF is required to include the exchange ticker symbol(s) for the fund and for each share class, if any. Additionally, an ETF must identify the principal U.S. exchange or exchanges on which it trades.

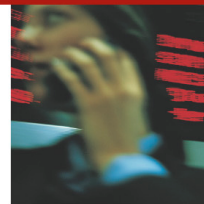
Item 3: Costs, Fees and Turnover. An ETF must provide a narrative explanation preceding the example stating that individual ETF shares are sold on the secondary market and are not redeemable by the fund and that investors may pay brokerage commissions not included in the fee table. ETFs with minimum creation units of at least 25,000 shares are no longer required to include in their fee table any fees and expenses for purchases or sales of creation units.

Item 6: Purchase and Redemption Information. An ETF prospectus must disclose the fund's creation unit minimum and briefly describe procedures for buying and selling creation units. The prospectus also must provide disclosure stating that individual fund shares (non-creation unit shares) are bought and sold on national securities exchanges through broker-dealers and a warning that shares are bought and sold at current market-determined prices, which may differ from the fund's net asset value (NAV) per share. ETFs with minimum creation units of at least 25,000 shares may omit instructions on how to buy and sell creation units. However, this information would be required to be disclosed in the SAI.

Item 11: Shareholder Information. An ETF prospectus must include historical premium/discount information (*i.e.*, the extent to which the market price for each ETF share is greater than or less than the NAV per share of the fund) for the last calendar year and quarters. The premium/discount summary information must include the number of days that an ETF's market value was above or below NAV and the magnitude of the deviation. As an alternative, an ETF can fulfill this requirement by posting premium/discount information on its web site and providing the web address in its statutory prospectus.

SUMMARY PROSPECTUS

As part of its effort to encourage mutual funds and their sponsors to provide investors with more usable and understandable investment information, the SEC amended Rule 498 to permit funds to satisfy the prospectus delivery requirements under the 1933 Act by sending or giving investors a summary prospectus. A summary prospectus must reproduce the information required to be set forth in the summary section of the statutory prospectus and must disclose, on a cover page or at the beginning of the summary prospectus, the following information:



- The fund name and classes, if any;
- The exchange ticker symbol(s);
- A statement identifying the document as a summary prospectus;
- The approximate date of the summary prospectus's first use; and
- A prescribed legend indicating that the statutory prospectus, and in some cases other additional information, is available online or by making a request by e-mail or telephone, with the relevant web and e-mail addresses and telephone number provided.

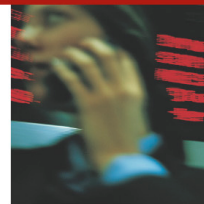
Incorporation By Reference

The summary prospectus may incorporate by reference only the fund's statutory prospectus, SAI and shareholder reports. Items incorporated by reference must be named in the legend mentioned above, along with an explanation that these documents may be obtained free of charge from the same sources as the statutory prospectus. Additionally, items may be incorporated by reference only via direct reference. For example, even if the SAI is incorporated into the statutory prospectus, the SAI is not implicitly incorporated into the summary prospectus when the summary prospectus incorporates the statutory prospectus. Rather, the document to be incorporated must be explicitly identified. Furthermore, shareholder reports may be incorporated by reference into the summary prospectus only to the extent they also are incorporated by reference into the statutory prospectus.

Delivery Requirements

A fund may satisfy its prospectus delivery obligation by delivering a summary prospectus no later than delivery of the mutual fund security; making available online the summary prospectus, statutory prospectus, SAI and annual report and semi-annual report; and delivering upon request a paper copy of any or all documents on the web site at no charge by first class mail within three days of any such request. Instead of paper copies, a fund may deliver documents electronically (by email or direct web site link), provided the fund receives affirmative investor consent.

If the summary prospectus is delivered with other materials, it must be given greater prominence. This may be accomplished, for example, by placing the summary prospectus on top of a group of documents. Nonetheless, a summary prospectus need not be given greater prominence than another summary prospectus or a statutory prospectus. To assure greater prominence, the summary prospectus must not be bound to any of the other materials. However, summary prospectuses and statutory prospectuses for multiple underlying funds of a variable insurance contract may be bound together and with the statutory prospectus for the variable insurance contract.



Document Access and Maintenance

The rule specifies that a fund's web site must include the most recent versions of the summary prospectus, statutory prospectus, SAI and annual and semi-annual reports and maintain them for at least 90 days after the fund security is delivered. However, most funds are expected to maintain an evergreen or continuously updated web site. Additionally, the web site documents must be convenient to read on-screen and capable of being printed and saved via download or some other means. Electronic versions of documents can be in any format, including PDF or HTML. The rule also requires the summary prospectus, statutory prospectus and SAI to include hyperlink capabilities to permit ease of movement within and between documents. Specifically, the summary prospectus, statutory prospectus and SAI maintained on a fund's web site must permit linking between the documents under a "one-click" or "two-click" format. A one-click format would permit movement from a section of the summary prospectus to the section of the statutory prospectus or SAI that provides additional detail. A two-click format would permit movement from the top and bottom of each page of the summary prospectus to the table of contents of both the statutory prospectus and the SAI, and then from the respective table of contents section heading to the section in the statutory prospectus or SAI that provides additional detail. A document's table of contents also must permit users to move among section headings and specific sections by one click.

Safe Harbor

The Release indicates that the SEC staff recognizes that a fund's internet site may be subject to events beyond the fund's control, such as technological issues, natural disasters and terrorism. As a result, a fund temporarily may be out of compliance with the requirement in Rule 498 that it maintain and provide access to fund documents on-line. To address this issue, the amendments provide a safe harbor for temporary non-compliance with the online posting of a fund's documents. A fund's failure to maintain its documents online will be deemed a violation of Rule 498, rather than a violation of the prospectus delivery requirements in Section 5(b)(2) of the 1933 Act, provided the fund has reasonable procedures to ensure that materials are available in a timely manner and promptly corrects any deficiencies in its online library. However, the safe harbor is not available to repeat offenders or funds that take an unreasonable amount of time to correct deficiencies.

Filing Requirements

A summary prospectus is considered part of a fund's registration statement, but is filed separately from Form N-1A under Rule 497. Additionally, under Rule 497(k) the summary prospectus must be filed on EDGAR no later than the date of first use. Furthermore, if a fund updates the summary portion of its statutory prospectus with a sticker or supplement under Rule 497, it must also update the summary prospectus by the same method or re-file the entire summary prospectus as amended.



NOTABLE CHANGES FROM INITIAL PROPOSAL

As first proposed in November 2007, the amendments to Form N-1A would have required the statutory prospectus and the summary prospectus to include a fund's top 10 portfolio holdings. The top 10 holdings, along with the risk/return bar charts and tables, would have been required to be updated on a quarterly basis. The SEC omitted these requirements in the final amendments, noting that a top 10 list may be of limited utility and that substantially similar information about holdings and quarterly performance typically is available from other sources.

OUTLOOK

The summary prospectus is expected to be widely adopted by the mutual fund industry because of its potential cost savings. However, the mechanics of shifting from the current Form N-1A will require substantial advance planning.

FOR MORE INFORMATION

For more information, please contact:

Michael V. Wible	614.469.3297	Michael.Wible@ThompsonHine.com
Richard S. Heller	212.908.3907	Richard.Heller@ThompsonHine.com
James P. Jalil	212.908.3976	James.Jalil@ThompsonHine.com
Donald S. Mendelsohn	513.352.6546	Don.Mendelsohn@ThompsonHine.com
JoAnn M. Strasser	513.352.6725	JoAnn.Strasser@ThompsonHine.com
David A. Wilson	202.263.4161	David.Wilson@ThompsonHine.com
Marc L. Collins	513.352.6774	Marc.Collins@ThompsonHine.com

If you do not wish to receive future communications by email, please reply to this email with "unsubscribe" in the subject line.

This advisory bulletin may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgement of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.

This document may be considered attorney advertising in some jurisdictions. Some of the design images and photographs in this document may be of actors depicting fictional scenes.

© 2009 THOMPSON HINE LLP. ALL RIGHTS RESERVED.

¹ *Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies*, SEC Release No. 33-8998, IC-28584, File No. S7-28-07 (January 13, 2009), available at <http://www.sec.gov/rules/final/2009/33-8998.pdf>; 74 Fed. Reg. 4546 (Jan. 26, 2009) (hereinafter "Release").

² Mandatory inclusion of a fund's exchange ticker symbol or symbols was not a requirement of the original proposing release.

³ A fund may voluntarily elect to provide updated performance information via toll free (or collect) number and/or web site. Such updated performance information is subject to the disclosure requirements of Rule 482 governing fund advertising.