**THOMPSON  
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**INVESTMENT MANAGEMENT  
UPDATE****Practical Tips for Drafting and Using a Summary Prospectus**

Earlier this year, the Securities and Exchange Commission (SEC) adopted amendments to Form N-1A and revised Rule 498 under the Securities Act of 1933. The amendments to Form N-1A *require* a mutual fund to include in its statutory prospectus a summary section containing certain specified information about the fund, while revised Rule 498 *permits* a fund to satisfy its prospectus delivery requirements by providing a summary prospectus to investors.

Funds may elect to voluntarily comply with the new requirements at any time after March 31, 2009, and several fund groups currently are using summary prospectuses. Below are nine practical tips for revising statutory prospectuses and drafting summary prospectuses.

**Create a Realistic Timeline.** Adapting your statutory prospectus to the new format and creating a summary prospectus is a time-consuming process. Plan to begin preparing the Rule 485(a) filing earlier than usual, allowing more time to experiment with disclosure and design.

**Draft the Statutory Prospectus First.** The summary prospectus must contain exactly the same disclosures as the summary section of the statutory prospectus in the same order. After completing the statutory prospectus, it is easy to simply lift out the summary section to create the summary prospectus. Also, drafting the statutory prospectus first will allow you not only to develop concise, informative summary disclosure, but will reveal how the statutory and summary prospectuses will work together. For instance, while drafting the summary section of the statutory prospectus, you can identify the strategy and risk disclosure that can be moved to another part of the statutory prospectus and then incorporate by reference that disclosure into the summary prospectus.

**Make Use of Incorporation by Reference.** Paring down the summary prospectus disclosure, without exposing the fund to liability for omitting potentially material information, is difficult. However, Rule 498 permits incorporation by reference of the statutory prospectus into the summary prospectus. The rule provides that if a statutory prospectus is incorporated by reference into the summary prospectus, and the fund complies with the conditions in Rule 498 relating to making the summary prospectus, statutory prospectus and other fund documents available online, the fund is deemed to have delivered to investors the statutory prospectus at the same time investors receive the summary prospectuses, thus satisfying its prospectus delivery obligations under the 1933 Act.

**Include Only the Material Facts.** Review each fund's investment strategy and risks separately, then draft a summary disclosure that communicates just the material strategy and risks of the fund. Other information that adds color or nuance or is more technical can be moved to another section of the statutory prospectus and incorporated by reference into the summary prospectus.

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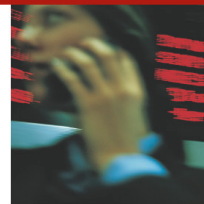
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**Use Common Language.** Prospectus disclosure language often is used multiple times. For instance, credit risk, market risk and short selling disclosures may be used repeatedly in a series fund prospectus. Take the time at the beginning of the project to build a library of standard disclosure language that can be used in the appropriate statutory and summary prospectuses. This will save time in creating summaries for multi-series funds and will ensure consistent disclosure throughout the fund complex. In addition, this strategy will make drafting prospectuses for new funds more efficient and cost-effective.

**Heed SEC Comments.** The SEC staff has developed specific views on the required content and format of prospectus summaries (and the summary prospectus), which it is communicating to funds through the review process. While subject to ongoing revision, the staff's views generally can be summarized as follows:

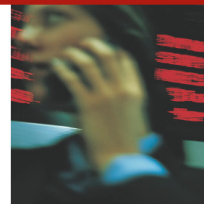
- The content requirements of Items 2-8 of Form N-1A must be followed precisely. Disclosure not specifically required or permitted cannot be used.
- Section headings, tables and captions must appear in the summary exactly as they do in Form N-1A.
- Footnotes are not permitted unless specifically required (e.g., when expenses are restated) or where permitted by the form (e.g., relating to acquired fund fees and expenses). When footnotes are used, they must disclose only the information specifically permitted or required.

**Remember the Privacy Notice.** Many funds include a privacy notice at the beginning or end of the statutory prospectus and rely on this to satisfy the initial and annual notice delivery requirements under Regulation S-P. This strategy will no longer work with the summary prospectus, which can contain only the information required or permitted by Items 2-8 of Form N-1A. Therefore, a separate privacy notice must be sent to new shareholders along with the summary prospectus. Existing shareholders can receive the annual notice in the annual report, in a separate mailing or along with a copy of the annual summary prospectus update.

**Know the Filing Requirements.** The summary prospectus is not included as a separate document in the Rule 485(a) filing. Rather, it is filed under Rule 497(k) after the statutory prospectus is effective. A separate 497(k) must be filed for each summary prospectus in a multi-series trust.

**Understand Delivery Constraints.** Summary prospectuses for individual funds may not be bound together. However, the SEC staff has indicated that they will not object if summary prospectuses for multiple funds are included on a single CD-ROM, provided that each summary is a separate document, the CD does not contain any other information (such as marketing materials) and the CD is clearly labeled to alert investors that it contains summary prospectuses. If the CD is mailed with other materials, it must be placed on top of the other materials.

For additional information on the summary prospectus, go to [www.ThompsonHine.com/publications/publication1715.html](http://www.ThompsonHine.com/publications/publication1715.html).



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### **FOR MORE INFORMATION**

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