

# ICI Summary Prospectus Webinar

## SPEAKERS:

Mara Shreck, Moderator  
Investment Company Institute

Kathy Joaquin  
Investment Company Institute

Nino Palermo  
American Funds Service Company

Marty Burns  
Investment Company Institute

David Maher  
Fidelity Investments

Frances Stadler  
Investment Company Institute

Lee Butler  
Investment Company Institute

Michael McNeill  
Putnam Investments

Daniel Steiner  
ICI Mutual Insurance Company

Amy Doberman  
Morgan Stanley

Susan Nash  
U.S. Securities and Exchange  
Commission

Paul Schott Stevens  
Investment Company Institute

Ruth Epstein  
Dechert, LLP

## Opening Remarks

Paul Schott Stevens  
President and CEO  
Investment Company Institute

# Program

- I. Background - Overview of the Rule Amendments
  - a. Required Summary Section of the Statutory Prospectus
  - b. Optional Summary Prospectus
- II. Summary Prospectus - Legal Analysis
- III. Summary Prospectus - Technology Requirements
- IV. Summary Prospectus - Operational Considerations
- V. Getting it Done: Other Implementation Considerations
- VI. Questions

## Background - Overview of the Rule Amendments

- a. Required Summary Section of the Statutory Prospectus
- b. Optional Summary Prospectus

# The Summary Prospectus and Related Amendments to Form N-1A

---

The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication or statement by any of its employees. The views expressed herein are those of the authors and do not necessarily reflect the views of the Commission or of the authors' colleagues upon the staff of the Commission.

**Prepared by:**  
Susan Nash  
Mark T. Uyeda  
Kieran G. Brown  
Sanjay Lamba  
Devin F. Sullivan  
*Division of Investment Management  
U.S. Securities and Exchange Commission*

## Purpose of the Rulemaking

---

- Provide key information in plain English and in a concise and standardized manner
  - Improve access to more detailed information
-

## Form N-1A and Rule 498

---

- Amendments to Form N-1A require summary section at front of prospectus
  - New rule 498 permits use of Summary Prospectus to satisfy delivery obligations
- 

## The Required Summary

---

- Concise: 3-4 pages
  - Multiple-fund summaries generally prohibited
    - May combine purchase and sale, tax, financial intermediary information for multiple funds in limited circumstances
  - Multiple-class summaries permitted
-

## Item 1. Front Cover Page

---

- Front cover page must include:
    - The fund's name and the class or classes to which the prospectus relates
    - Exchange ticker symbol(s) [new]
    - For ETFs, the principal U.S. trading market or markets [new]
- 

## Summary Section Order and Contents

---

- Mandatory summary section order and contents:
    - Item 2. Risk/Return Summary: Investment Objectives/Goals
    - Item 3. Risk/Return Summary: Fee Table
    - Item 4. Risk/Return Summary: Investments, Risks, and Performance
    - Item 5. Management
    - Item 6. Purchase and Sale of Fund Shares
    - Item 7. Tax Information
    - Item 8. Financial Intermediary Compensation
-

## Rule 498 Satisfaction of Prospectus Delivery Obligations

---

- Send or give Summary Prospectus
  - Post Summary Prospectus, statutory prospectus, SAI, and shareholder reports on Internet
- 

## Posted Information

---

- Human-readable
  - Convenient for reading online and printing on paper
  - Linked tables of contents for statutory prospectus and SAI
  - 2-click linkage of Summary Prospectus and statutory prospectus/SAI
  - Ability to retain copy
-

## Additional Requirements

---

- Delivery of statutory prospectus/ SAI/shareholder reports upon request within three business days
  - “Greater Prominence” of Summary Prospectus/no binding
- 

## Incorporation by Reference

---

- Information in statutory prospectus, SAI, and shareholder reports may be incorporated by reference into Summary Prospectus
    - Information from shareholder reports only permitted if also incorporated into the statutory prospectus
-

## Compliance Dates

---

- Compliance dates for Form N-1A amendments
    - January 1, 2010
      - Initial registration statements and post-effective amendments that are annual updates
      - Post-effective amendments that add a new series
    - January 1, 2011
      - Final compliance date for all registration statements
- 

## Filing Requirements

---

- Post-effective amendments on revised Form N-1A should be filed under rule 485(a)
  - Summary prospectuses should be filed no later than the date first used
-

## Remember the Purpose

---

- To provide key information in a manner that is:
    - plain English
    - concise
    - in a standardized order
  - Improve access to more detailed information
- 

## Background - Overview of the Rule Amendments

- a. Required Summary Section of the Statutory Prospectus
- b. Optional Summary Prospectus

Please take a minute to  
answer the polling question.

## Summary Prospectus: Legal Analysis

## **New Prospectus Delivery Option for Mutual Funds: Addressing Liability Concerns**

ICI Webinar on Summary Prospectus Rule  
February 12, 2009

Ruth S. Epstein  
Dechert LLP  
1775 I Street, N.W.  
Washington, D.C. 20006  
202.261.3322  
ruth.epstein@dechert.com

Dechert  
LLP

## **Enhanced Disclosure and New Prospectus Delivery Option**

- Harnessing the power of technology to provide better information to mutual fund investors
- “Revolutionary” change in mutual fund disclosure
- “Giant step forward” for mutual fund industry

Dechert  
LLP

## What was “Broke” in the 1998 Profile?

- Required delivery of the full prospectus with confirmation
- “Liability concerns”

“Liability fears . . . have shackled fund firms to fat prospectuses for more than half a century.” – Fund Directions (April 2007)

Dechert  
LLP

## Commitment to Solve the Problem

- “If we don’t solve the liability issue, then a two-page prospectus will be a nice summary, but it won’t be the document that people use.” – Andrew “Buddy” Donohue (March 2007)

Dechert  
LLP

## Statement of the Liability Problem

- The profile prospectus was a selling document that was required to omit material information.

Dechert  
LLP

## Securities Act of 1933 — Overview

- Section 2(a)(10): Definition of Prospectus (exception for supplemental sales literature)
- Section 10: Two Kinds of Permissible Prospectuses
  - (a): Full Statutory Prospectus
  - (b): Summary/Omitting Prospectus
- Section 5: Prospectus Delivery
  - (b)(1): Requires Section 10(a) or 10(b) prospectus for offers
  - (b)(2): Requires delivery of Section 10(a) prospectus with the security
- Section 11: Untrue Statements or Omissions of Material Fact in Registration Statement
- Section 12: Private Right of Action for
  - (a)(1): Offers or Sales in Violation of Section 5
  - (a)(2): Untrue Statements or Omissions of Material Fact in Prospectus
- Section 17: General Anti-Fraud Provision

Dechert  
LLP

## Profile Approach – Prospectus Delivery

- Profile was Section 10(b) omitting prospectus.
- Required delivery of full statutory Section 10(a) prospectus.

Dechert  
LLP

## Profile Approach – Liability

- Proposed Solution
  - incorporation by reference of the statutory prospectus and the SAI
  - rejected by the SEC
- Solution Adopted by SEC
  - Section 19(a) -- protects a defendant from liability for actions taken in good faith in conformity with any rule of the Commission
    - “The Commission believes that a fund that provides investors with a profile in good faith compliance with rule 498 would be able to rely on section 19(a) against a claim that its profile did not include information that is disclosed in the fund's prospectus.”

Dechert  
LLP

## SEC's New Approach – Prospectus Delivery

- Section 5(b)(2) prospectus delivery obligations are satisfied if the conditions of Rule 498 are met.

Dechert  
LLP

## Prospectus Delivery – Operation of New Rule 498

- Prospectus delivery requirements of Section 5(b)(2) are satisfied if:
  - Summary Prospectus that complies with the rule is sent/given no later than delivery of the security
  - Summary Prospectus is “not bound together” with other materials (limited exception for variable products funds)
  - Statutory prospectus and other information are provided online, for free, in a prescribed “user friendly” manner
- Summary Prospectus can be used to precede or accompany supplemental sales literature, subject to the “not bound together” restriction and online conditions
- Limited safe harbor for temporary online unavailability:
  - Reasonable procedures to ensure materials are available
  - Prompt action if materials are not available in manner required
- Additional Rule 498 Requirements (not conditions to satisfaction of Section 5)
  - Summary Prospectus must be given “greater prominence” than accompanying materials
  - Statutory prospectus must be sent in paper or by email upon request
  - Enforceable by SEC – not conditions to satisfaction of Section 5 obligations

Dechert  
LLP

## Website Content, Place & Time Conditions

- Content of Website
  - Summary Prospectus
  - Statutory prospectus
  - Statement of additional information
  - Most recent annual and semi-annual reports to shareholders
- Place and Time
  - At website address specified on cover page of Summary Prospectus
  - When Summary Prospectus is sent/given until at least 90 days after security is delivered (or after Summary Prospectus is used to precede or accompany sales literature)

Dechert  
LLP

## Website Format & Technology Conditions

- Online information must be “human readable” and printable in “human readable” form
- “User friendly” links (one or two mouse clicks) allowing movement back and forth between:
  - Tables of contents and related sections in statutory prospectus and SAI
  - Summary Prospectus (or bookmarks) and related sections of statutory prospectus and SAI
- “Convenient” standard for viewing and printing (Rule 498 requirement, not a condition of Section 5)
  - Materials on website must be “convenient” for both reading online and printing on paper

Dechert  
LLP

## Retention Capability Condition

- Investors must be able to permanently retain an electronic version of the Summary Prospectus, full prospectus, SAI and shareholder reports in a format that meets the “human readable” and linking requirements
- “Convenient” standard for retention of information (Rule 498 requirement, not a condition of Section 5)
  - Materials on website must be retainable in format “convenient” for reading and printing

Dechert  
LLP

## SEC’s New Approach – Liability

- Summary Prospectus permits incorporation by reference of the statutory prospectus, SAI and certain parts of shareholder reports.
- Rule 498(b)(3)(iii):
  - For purposes of Rule 159, information is conveyed to a person no later than the time that a Summary Prospectus is received by the person if the information is incorporated by reference into the Summary Prospectus in accordance with this rule.
- Information incorporated into the Summary Prospectus will be provided at the same time as the Summary Prospectus though by different means.
- The Summary Prospectus disclosure regime enhances the accessibility of the information that is available to investors and increases their options for how to receive the information; it does not take away any information or any option for the method by which the information is received.

Dechert  
LLP

## Rule 159 Under the Securities Act

- The Rule

For purposes of sections 12(a)(2) and 17(a)(2) only, for purposes of determining whether a prospectus included an untrue statement or omission of material fact at the time of sale, information conveyed to the purchaser only after the time of sale will not be taken into account.

- The Release

For purposes of Sections 12(a)(2) and 17(a)(2), whether or not information has been conveyed to an investor at or prior to the time of sale is a **facts and circumstances determination**. Such information **could include information in the prospectus or incorporated by reference therein**.

Dechert  
LLP

## Incorporation by Reference

- Summary Prospectus may incorporate by reference information from the full prospectus, SAI and parts of shareholder reports incorporated by reference in the statutory prospectus
  - Not from any other source
  - Only by reference to the specific document that contains the information (no double incorporation)
  - Legend must identify the type of document and the date of the document from which information is being incorporated; if incorporating part of a document, the legend must identify the specific part being incorporated by reference
  - Clear disclosure in the summary prospectus legend
  - Only if the internet availability conditions are satisfied
  - Documents incorporated by reference are “provided at the same time, though by different means”
  - Investors choose what they want to review and how to review it
  - Information incorporated by reference in the summary prospectus is “conveyed” when the summary prospectus is received, for purposes of Rule 159

Dechert  
LLP

## Final Rule Response to Liability Comments

- Elimination of “greater prominence” and “convenience” standards as conditions of the rule
- Substitution of “human-readable” standard (objective) for “convenient” standard for presentation and retention of information on the internet
- Clarification that information in Summary Prospectus must be the same as information in the summary section of the statutory prospectus
- Incorporation by reference from shareholder reports limited to information from the shareholder reports that is incorporated by reference into statutory prospectus

Dechert  
LLP

ICI INVESTMENT  
COMPANY  
INSTITUTE\*

## Summary Prospectus: Legal Analysis

38

Please take a minute to  
answer the polling question.

Summary Prospectus:  
Technology Requirements

## Summary Prospectus – Technology Requirements

### Web Posting

- Usability standards for materials:
  - "human-readable"
  - "convenient for reading and printing"
- Technology-neutral: HTML, PDF, & other formats may be used
- Rules define basic functionality; they do not preclude sophisticated implementations

41

## Summary Prospectus – Technology Requirements

### Linking Within the Statutory Prospectus

- Must link between table of contents and section
- Table of contents may be outside document ( HTML frame, PDF bookmark)
- "Back and forth" linking between table and sections

42

## Summary Prospectus – Technology Requirements

### Linking between Summary and Statutory Prospectus

- Not required to link each section of summary
- Two options
  - Beginning and end of summary
  - "Continuously visible"

43

## Summary Prospectus – Technology Requirements

### Saving Documents

- Must be able to save:
  - Summary or statutory prospectus
  - SAI
  - Shareholder reports
- Must preserve links within saved document
- Links to other documents not required

44

## Summary Prospectus – Technology Requirements

### Safe Harbor for Temporary Noncompliance

- Covers internet provision, format, linking and saving requirements
- Protection for posting failures due to technology problems, disasters, etc.
- No protection for repeated or prolonged failures

45

## Summary Prospectus – Technology Requirements

### Sending Documents

- Must provide paper or electronic copies within three days of request
- Electronic delivery satisfied by sending hyperlink if:
  - Current version of document available at link for 6 months after sending
  - Email explains availability, option to save

46

## Summary Prospectus: Technology Requirements

47

Please take a minute to  
answer the polling question.

48

# Summary Prospectus: Operational Considerations

49

## Summary Prospectus – Operational Considerations

---

- Current process - How does fulfillment work today?
  - Initial & subsequent fund purchases
  - Annual prospectus mailings

50

## Summary Prospectus – Operational Considerations

- Impacts of the Summary Prospectus
  - Immediate use of Summary Prospectuses as adopted
  - Costs savings for funds & intermediaries
  - Greatly reduces need to stock/deliver statutory prospectuses

51

## Summary Prospectus – Operational Considerations

- Other considerations
  - Print on demand
  - Fund legends & contact information
  - Website requirements
  - Greater prominence
  - Other

52

## Summary Prospectus: Operational Considerations

53

Please take a minute to  
answer the polling question.

54

## Getting it Done: Other Implementation Considerations

55

## Questions

Mara Shreck  
[mshreck@ici.org](mailto:mshreck@ici.org)  
202-326-5923

Martin Burns  
[mburns@ici.org](mailto:mburns@ici.org)  
202-326-5980

Lee Butler  
[lbutler@ici.org](mailto:lbutler@ici.org)  
202-326-5931

Frances Stadler  
[frances@ici.org](mailto:frances@ici.org)  
202-326-5822

Kathleen Joaquin  
[kjoaquin@ici.org](mailto:kjoaquin@ici.org)  
202-326-5930

56

## Conclusion

---

Thank you for participating in today's webinar on the Summary Prospectus and Enhanced Disclosure Rules. If you are seeking CLE credit for this event, you **MUST** submit your request to ICI's Continuing Education Department at [CLE@ici.org](mailto:CLE@ici.org). Please call Judy Lee with any questions regarding CLE at 202-218-3575.