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17 CFR Parts 230, 232, 239, and 274
Interactive Data for Mutual Fund Risk/ Return Summary; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, and 274

[Release Nos. 33–9006, 34–59391, 39–2462, IC–28617; File Number S7–12–08]

RIN 3235–AK13

Interactive Data for Mutual Fund Risk/Return Summary

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting rule amendments requiring mutual funds to provide risk/return summary information in a form that is intended to improve its usefulness to investors. Under the 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 will 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 will be provided as exhibits to registration statements and as exhibits to prospectuses with risk/return summary information that varies from the registration statement. The 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 also are adopting rules to permit investment companies to submit portfolio holdings information in our interactive data voluntary program without being required to submit other financial information.

DATES: *Effective Date:* July 15, 2009. *Compliance Date:* January 1, 2011. Section II.H. of this release contains information on the effective date and the compliance date.

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SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is adopting amendments to rules 485[1] and 497[2] under the Securities Act of 1933 (''Securities Act''), rules 11,[3] 202,[4] 401,[5] and 405[6] of Regulation S–T,[7] and Form N–1A[8] under the Securities Act and the Investment Company Act of 1940 (''Investment Company Act'').[9]

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Executive Summary

The principal elements of the rule amendments we are adopting today are as follows:

- Open-end management investment companies (''mutual funds'')[10] must submit 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 January 1, 2011.[11]
- An interactive data file submitted with a registration statement must be filed as a post-effective amendment under rule 485(b) under the Securities Act[12] and must be filed after effectiveness of the related filing, but no later than 15 business days after the effective date of the related filing. An interactive data file required to be submitted with a form of prospectus filed pursuant to rule 497(c) or (e) under the Securities Act may be submitted with the filing or subsequent thereto, but no later than 15 business days after the filing made pursuant to rule 497.
- Risk/return summary information in interactive data format must be provided as an exhibit identified in General Instruction C.3.(g).(iv) of Form N–1A.[13]
- The rules do not alter the requirements to provide risk/return summary information with the traditional format filings.[14]
- A mutual fund required to provide risk/return summary information in interactive data format to the Commission also is required to post that information in interactive data format on its Web site not later than the end of the calendar day it submitted or was required to submit the interactive data

[1] 17 CFR 230.485.

[2] 17 CFR 230.497.

[3] 17 CFR 232.11.

[4] 17 CFR 232.202.

[5] 17 CFR 232.401.

[6] The Commission recently added new rule 405 to Regulation S–T [17 CFR 232.405] in a separate release. *See* Securities Act Release No. 9002 (Jan. 30, 2009) [74 FR 6776 (Feb. 10, 2009)] (''Interactive Data Adopting Release'').

[7] 17 CFR 232.10 *et seq.*

[8] 17 CFR 239.15A and 274.11A.

[9] The Commission proposed these rule and form amendments in June 2008. *See* Securities Act Release No. 8929 (June 10, 2008) [73 FR 35442 (June 23, 2008)] (''Proposing Release'').

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

[11] We have adjusted the compliance date to provide mutual funds sufficient time to become familiar with interactive data. *See infra* Section II.H. Interactive data will be required as an exhibit to a registration statement or post-effective amendment thereto that contains risk/return summary information and to any form of prospectus filed pursuant to rule 497(c) or (e) under the Securities Act [17 CFR 230.497(c) or (e)] that contains risk/return summary information that varies from the registration statement. Interactive data will not be required as an exhibit to a post-effective amendment that does not contain risk/return summary information or to a form of prospectus filed pursuant to rule 497(c) or (e) that does not contain risk/return summary information that varies from the registration statement.

[12] A post-effective amendment filed under rule 485(b) under the Securities Act [17 CFR 230.485(b)] may become effective immediately upon filing. A post-effective amendment may only be filed under rule 485(b) if it is filed for one or more specified purposes, including to make non-material changes to the registration statement.

[13] 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.

[14] 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 Securities Act Release No. 8823 (July 11, 2007) [72 FR 39290, 39292 (July 17, 2007)].

exhibit to the Commission, whichever is earlier.[15]

• 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 will be automatically suspended until the fund submits and posts the interactive data as required.

• Mutual funds providing risk/return summary information in interactive data format are required to use the most recent list of tags released by XBRL U.S.[16] as required by Regulation S–T and the EDGAR Filer Manual.[17] Mutual funds also are 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 must be formatted using the appropriate list of tags as required by Regulation S–T and the EDGAR Filer Manual.

• New rule 406T of Regulation S–T[18] addresses the liability for an interactive data file and provides that an interactive data file is:

○ Subject to the anti-fraud provisions of Section 17(a)(1) of the Securities Act, Section 10(b) of and rule 10b–5 under the Securities Exchange Act of 1934 (''Exchange Act''), and Section 206(1) of the Investment Advisers Act of 1940 (''Investment Advisers Act''), except as provided below;

○ Deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act, is deemed not filed for purposes of Section 18 of the Exchange Act or Section 34(b) of the Investment Company Act, and otherwise is not subject to liability under these sections;

○ Deemed filed for purposes of (and, as a result, benefit from) rule 103 of Regulation S–T; [19] and

○ Subject to liability for a failure to comply with rule 405 of Regulation S–T,[20] but shall be deemed to have complied with rule 405 and would not be subject to liability under the anti-fraud provisions set forth above or under any other liability provision if the electronic filer:

■ Makes a good faith attempt to comply with rule 405; and

■ after the electronic filer becomes aware that the interactive data file fails to comply with rule 405, promptly amends the interactive data file to comply with rule 405.

• These liability provisions will apply only until October 31, 2014, and, thereafter, an interactive data file will be subject to the same liability provisions as the related official filing.

• The voluntary program is being modified to allow for participation by mutual funds with respect to risk/return summary information up until January 1, 2011, but continue to permit investment companies to participate with respect to financial statement information thereafter. As a result, the voluntary program will continue after the compliance date of these rule amendments for the financial statements of investment companies that are registered under the Investment Company Act, business development companies,[21] 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 are 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.

We intend to monitor implementation and, if necessary, make appropriate adjustments to the adopted amendments.

I. Introduction and Background

A. Commission Initiatives To Update the Public Disclosure Process

Over the last several decades, developments in technology and electronic data communication have facilitated greater transparency in the form of easier access to, and analysis of, financial reporting and disclosures. Technological developments also have significantly decreased the time and cost of filing disclosure documents with us. Most notably, in 1993 we began to require electronic filing on our Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'').[22] 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, consistent with our goal to promote efficient and transparent capital markets. Most recently, we unveiled the Interactive Data Electronic Applications database (''IDEA''), which will initially supplement and eventually replace EDGAR, and which is designed to take full advantage of interactive technology in order to provide investors with better and more useful financial disclosures.[23] Also, since 2003 we have required electronic filing of certain ownership reports filed on Forms 3,[24] 4,[25] and 5 [26] in a format that provides interactive data, and recently we adopted similar rules governing the filing of Form D.[27] In addition, recently we have encouraged, and in some cases required, mutual funds and public reporting companies to provide

[15] The Web site posting requirement applies only to the extent a mutual fund already maintains a Web site.

[16] The appropriate list of tags for document and entity identifier elements will be a list released by XBRL U.S., *see infra* note 46, and will be required to be used by all issuers required to submit interactive data.

[17] Rule 405 of Regulation S–T directly sets forth the basic tagging requirements and indirectly sets forth the rest of the tagging requirements through the requirement to comply with the EDGAR Filer Manual, which is available on the Commission's Web site at: *http://www.sec.gov/info/edgar/edmanuals.htm.* Consistent with rule 405, the EDGAR Filer Manual contains the technical tagging requirements. *See* Interactive Data Adopting Release, *supra* note 6 (adopting rule 405 of Regulation S–T). Currently, we are in the process of updating the EDGAR Filer Manual to reflect changes in the tagging requirements applicable to financial statements. *See* Interactive Data Adopting Release, *supra* note 6. We anticipate that similar updates to address revisions in the tagging requirements applicable to fund risk/return summary information and portfolio holdings will be finalized during 2009.

[18] *See* Interactive Data Adopting Release, *supra* note 6 (adopting rule 406T of Regulation S–T).

[19] The interactive data file is 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. Interactive data files are deemed filed for purposes of rule 103 regardless of whether they are eligible for the modified treatment provided by rule 406T at the time submitted. Rule 406T expressly provides that interactive data files are deemed filed for purposes of rule 103 to remove any negative inference that otherwise might be drawn due to the fact that rule 406T deems interactive data files to be not filed for other specified purposes.

[20] *See supra* note 17.

[21] Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act. *See* Section 2(a)(48) of the Investment Company Act [15 U.S.C. 80a–2(a)(48)].

[22] 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)].

[23] *See SEC Announces Successor to EDGAR Database*, Securities and Exchange Commission Press Release, Aug. 19, 2008, available at: *http://www.sec.gov/news/press/2008/2008-179.htm.*

[24] 17 CFR 249.103 and 274.202.

[25] 17 CFR 249.104 and 274.203.

[26] 17 CFR 249.105.

[27] 17 CFR 239.500.

disclosures and communicate with investors using the Internet.[28]

In addition, we also implemented a voluntary filer program, started in 2005,[29] that has allowed us to evaluate certain uses 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 Exchange Act and the Investment Company Act. Over 100 operating companies 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 participated in the program were still required to file their financial statements in American Standard Code for Information Interchange (''ASCII'') or HyperText Markup Language (''HTML'').[30] Four mutual fund complexes participated in the voluntary program and have submitted financial statement information in interactive data format.[31]

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.[32] The risk/return summary contains information about a fund's investment objectives and strategies, costs, risks, and past performance.[33] Twenty-five mutual funds from a variety of fund families have submitted risk/return summary information in interactive data format. These funds represent 15 fund complexes, and consist of a range of fund types, including 14 equity funds, two balanced funds, five bond funds, and four money market funds. The funds participating in the voluntary program also include larger and smaller funds.[34]

Since the establishment of the voluntary program for mutual fund risk/return summary information, the Commission has continued its evaluation of interactive data, including interactive data submitted by mutual funds. The Commission's evaluation of interactive data has included the hosting of three roundtables on the topic of interactive data reporting,[35] as well as the creation, in April 2008 of a viewer that allowed investors to read, analyze, and compare the interactive risk/return summary data submitted by mutual funds.[36]

Additionally, prior to launching the risk/return viewer, Commission staff reviewed all of the interactive data files submitted to the Commission to help ensure the accuracy of the interactive risk/return summary data displayed on the Commission's Web site, and the staff communicated with the filers in order to identify and correct any technical issues with the submissions.[37] Further, as noted below, Commission staff also surveyed voluntary program participants for specific data regarding the costs of preparing and submitting risk/return summary information in interactive data, including software costs and internal and external labor costs.[38] Six of the participating mutual funds responded, providing data in response to this voluntary program questionnaire. These six respondents represent mutual fund complexes whose assets comprise a range of approximately .01% to 12% of all the assets of the mutual funds that will be required to submit interactive data.[39]

In a companion release, we recently adopted rules requiring companies, other than 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 financial information to the Commission in interactive data format.[40] In this release, as part of our continuing efforts to assist investors who use Commission disclosures, as well as filers of that disclosure, we are adopting rule amendments to require that mutual fund risk/return summary information be provided in a format that makes the information interactive.

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.[41] 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.[42]

Electronic formats such as HTML, XML, and XBRL are open standards[43] 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 a 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 consortium of approximately 550 organizations representing many elements of the financial reporting community worldwide in more than 20 jurisdictions, national and regional.

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[28] *See, e.g.*, Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546 (Jan. 26, 2009)] (''Summary Prospectus Adopting Release''); Exchange Act Release No. 57172 (Jan. 18, 2008) [73 FR 4450 (Jan. 25, 2008)]; 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)].

[29] Securities Act Release No. 8529 (Feb. 3, 2005) [70 FR 6556 (Feb. 8, 2005)] (''Voluntary Program Adopting Release'').

[30] HTML is a standardized language commonly used to present text and other information on Web sites.

[31] These four fund complexes made 23 submissions representing 12 mutual funds.

[32] Securities Act Release No. 8823 (July 11, 2007) [72 FR 39290 (July 17, 2007)] (''Risk/Return Voluntary Program Adopting Release'').

[33] Items 2, 3, and 4 of Form N–1A.

[34] Based on industry assets as of September 2008, four of the five largest fund complexes have submitted tagged risk/return summary information as part of the voluntary filing program. Lipper-Directors' Analytical Data, Reuters Sept. 2008. As of September 2008, the two smallest mutual funds participating in the voluntary program had net assets of approximately $41 million and $17 million. *Id.*

[35] *See* materials available at *http://www.sec.gov/spotlight/xbrl/xbrl-meetings.shtml.*

[36] As discussed in Section I.B. *infra*, information in interactive data format is intended to be processed by software applications and is not readable by humans without a viewer.

[37] *See infra* Section II.E.3. (discussing the Commission's risk/return summary interactive data viewer).

[38] *See* Section III. below. Of the 22 mutual funds that participated in the voluntary program at the time the Commission proposed these amendments, nine were provided questionnaires on the details of their cost experience, and six responses were collected representing the cost data for ten funds.

[39] Based on total mutual fund assets of $10.6 trillion. Lipper-Directors' Analytical Data, Reuters Sept. 2008.

[40] Interactive Data Adopting Release, *supra*, note 6.

[41] 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.

[42] 15 U.S.C. 78p(a).

[43] The term ''open standard'' is generally applied to technological specifications that are widely available to the public, royalty-free, at minimal or no cost.

XBRL U.S., the international organization's U.S. jurisdiction representative, is a non-profit organization [44] that includes companies, public accounting firms, software developers, filing agents, data aggregators, stock exchanges, regulators, financial services companies, and industry associations.[45]

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 will use the most recent list of tags for risk/return summary information released by XBRL U.S.[46] This list of tags contains descriptive labels, authoritative references to Commission regulations where applicable, and other elements, all of which provide the contextual information necessary for interactive data [47] to be recognized and processed by software.[48]

The initial risk/return summary list of tags received acknowledgement from XBRL International in June 2007,[49] and was used by mutual funds participating in the Commission's voluntary program. More recently, XBRL U.S. has updated the architecture of the list of tags for risk/return summary information and conformed the list of tags to changes we recently adopted to the risk/return summary disclosure requirements.[50] The list was recently issued for public comment,[51] and it is expected to be finalized and submitted to XBRL International for acknowledgement by the end of January 2009. Related documents, such as the architecture and technical guides, also are due to be released publicly by the end of January 2009.

Data tags are applied to risk/return summary information by using commercially available software that guides a preparer to tag information in the risk/return summary, such as line item costs in a mutual fund's fee table, with 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 will create a company-specific element, called an extension. Alternatively, a mutual fund may choose to outsource the tagging process.

Because mutual fund risk/return summary information in interactive data format is intended to be processed by software applications, the unprocessed interactive data is not readable by humans. Thus, viewers are necessary to convert, or ''render,'' the interactive data file to human readable format. Some viewers, for example, may be compared to Web browsers that are used to read HTML files.

The Commission's Web site currently provides links to viewers that allow the public to read mutual fund and other company disclosures submitted using interactive data. One of these viewers allows users to view and compare mutual fund risk/return summary information, including investment objectives and strategies, costs, risks, and past performance, that is submitted in interactive data format.[52] These viewers are intended to demonstrate the capability of software to present interactive data in human-readable form and to provide open source software to give developers a free resource they can use as is or build upon. As noted above, software also is able to process interactive data so as to automate and, as a result, facilitate access to and analysis of tagged data. In addition, we are aware of other applications under development that may provide additional and advanced functionality.[53]

II. Discussion

The Commission received 16 comment letters on the proposed rule amendments, including comments from trade associations, fund complexes, a data aggregator, technology service providers, and individual investors and professionals.[54] The commenters

[44] XBRL U.S. is a 501(c)(6) organization. Internal Revenue Code Section 501(c)(6) applies to ''Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.'' *See* 26 U.S.C. 501(c)(6).

[45] XBRL U.S. supports efforts to promote interactive financial and business data specific to the U.S.

[46] Unless stated otherwise, when we refer to the ''list of tags for risk/return summary information'' we mean the interactive data list of tags released and maintained by XBRL U.S., including any modifications. This list was initially developed by the Investment Company Institute (''ICI''), which is a national association of the U.S. investment company industry.

[47] The rules define the interactive data in machine-readable format required to be submitted as the ''interactive data file,'' which will be required with every interactive data submission. *See* Interactive Data Adopting Release, *supra* note 6 (adopting new definitions under 17 CFR 232.11).

[48] For example, contextual information identifies the entity to which it relates, usually by using the filer's Central Index Key (''CIK'') number. A hypothetical filer converting its traditional electronic disclosure of total annual fund operating expenses of 0.73% must create interactive data that identifies what the 0.73% represents, total annual fund operating expenses, and that the number is a percentage. The contextual information includes 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].

[49] The list of tags is available on XBRL International's Web site at: *http://xbrl.org/Taxonomy/rr-summarydocument-20070516-acknowledged.htm.*

There are two levels of XBRL tag recognition: (1) ''Acknowledgement'' is formal recognition that a list of tags complies with XBRL specifications, including testing by a defined set of validation tools; and (2) ''approval'' is a formal recognition requiring more detailed quality assurance and testing, including compliance with official XBRL guidelines for the type of tag list under review, creation of a number of instance documents, and an open review period after acknowledgement. For more information regarding the XBRL tag list recognition process, see ''Taxonomy Recognition Process'' on the XBRL International Web site available at: *http://www.xbrl.org/TaxonomyRecognition/.*

[50] *See infra* Section II.E.1. (discussing the list of tags for risk/return summary information); Summary Prospectus Adopting Release, *supra* note 28.

[51] XBRL U.S. released the updated list of tags for risk/return summary information for public comment on October 21, 2008. The list is available on the XBRL U.S. Web site at: *http://xbrl.us/imtaxonomies/Pages/default.aspx. See XBRL U.S. Announces Public Review of Data Tags for Mutual Fund Risk/Return Summary and Schedule of Investments,* available on the XBRL U.S. Web site at: *http://xbrl.us/press/Pages/20081021.aspx.* The comment period closed on November 24, 2008.

[52] A mutual fund information viewer for the voluntary program is available at: *http://a.viewerprototype1.com/viewer.*

[53] A list of interactive data products and service providers is available at: *http://xbrl.us/Vendors/Pages/default-expand.aspx.*

[54] *See* comment letters of the American Bar Association (''ABA'') (Aug. 18, 2008); James J. Angel, Ph.D, C.F.A. (''Angel'') (Aug. 4, 2008); Gary J. Coles (''Coles'') (July 25, 2008); Committee of Annuity Insurers (''Annuity Insurers'') (July 23, 2008); Confluence (Aug. 1, 2008); Data Communiqué, Inc. (''Data Communiqué'') (July 31, 2008); Federated Investors, Inc. (''Federated'') (Aug. 12, 2008); Robert Gilmore, C.P.A. (''Gilmore'') (July 31, 2008); Walter C. Hamscher (''Hamscher'') (July 31, 2008); ICI (Aug. 1, 2008); Lipper (July 29, 2008); OppenheimerFunds, Inc. (''Oppenheimer'') (Aug. 4, 2008); Lorna A. Schnase (''Schnase'') (July 25, 2008); Jay Starkman, C.P.A. (''Starkman'') (July 30, 2008); T. Rowe Price Associates, Inc. (''T. Rowe Price'') (Aug. 1, 2008); and The Vanguard Group, Inc. (''Vanguard'') (Aug. 1, 2008). Comment letters received in response to the Proposing Release are available at: *http://www.sec.gov/comments/s7-12-08/s71208.shtml* or from our Public Reference Room at 100 F Street, NE., Washington, DC 20549.

generally supported both the use of technology to better inform mutual fund investors and the Commission's goal of providing risk/return summary information in interactive data format.[55] Most commenters, however, stated that requiring mutual funds to provide tagged risk/return summary information is premature.[56] As discussed below, commenters also raised other concerns regarding the proposal, including concerns regarding the adequacy of the existing technology necessary to create and submit interactive data files,[57] what information should be required to be tagged,[58] the proposed compliance date,[59] and the potential liability of mutual funds under the federal securities laws related to tagged risk/return summary information.[60]

For the reasons discussed below, we continue to believe that the enormous potential of interactive data for enhancing investors' access to mutual fund information justifies implementation of this initiative. Therefore, we are adopting the proposed amendments with some modifications to address commenters' concerns. The rule amendments are intended to make risk/return summary information easier for investors to analyze and to assist in automating regulatory filings and business information processing.

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

We are adopting, as proposed, rule amendments that require mutual funds to submit a complete set of their risk/return summary information, set forth in Items 2, 3, and 4 of Form N–1A,[61] in interactive data format.[62] In addition, mutual funds are 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 new requirement for interactive data reporting is intended to be disclosure neutral in that we do not intend the rules to result in mutual funds providing more, less, or different disclosure for any given disclosure item, regardless of whether the format is ASCII, HTML, or XBRL.

We are adopting these rule amendments because the submission of interactive risk/return summary information at this time is an important next step in increasing the accessibility of this information to mutual fund investors and others. Requiring mutual funds to submit the risk/return summary section of their prospectuses using interactive data format will 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 and an Internet connection will have the ability to acquire and download interactive data that have generally been available only to intermediaries and third-party analysts. The interactive data rule amendments do not change disclosure requirements under the federal securities laws and regulations, but will add a requirement to include risk/return summary information in an interactive data format as an exhibit. Thus, requiring that filers provide risk/return summary information using interactive data will not otherwise alter at all the disclosure or formatting standards of mutual fund prospectuses. These filings will continue to be available as they are today for those who prefer to view the traditional text-based document.

Interactive data can create new ways for investors, analysts, and others to retrieve and use the information. For example, users of risk/return summary information will be able to 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 mutual funds currently available.[63]

Interactive data also provides an 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 may eventually reduce costs. A mutual fund that uses a standardized interactive data format at earlier stages of its reporting cycle may 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 may allow investors to avoid additional costs associated with third-party sources.

As noted above, although most commenters generally supported the concept of interactive disclosure of risk/return summary information,[64] they also asserted that this initiative is premature.[65] In particular, several commenters urged the Commission to defer requiring mutual funds to submit interactive risk/return summary information because pending Commission proposals related to a mutual fund summary prospectus and exchange-traded funds (''ETFs'') would change the information in the risk/return summary.[66] Related to those comments, commenters also asserted that: (1) The list of tags for risk/return summary information would require updating if the proposed changes to the risk/return summary are adopted; (2) the

[55] Twelve commenters generally supported tagging risk/return summary information in interactive data format. *See* letters of ABA, Angel, Annuity Insurers, Confluence, Data Communiqué, Gilmore, Hamscher, ICI, Lipper, Oppenheimer, T. Rowe Price, and Vanguard. Three commenters did not support requiring interactive disclosure of risk/return summary data. *See* letters of Federated, Schnase, and Starkman. One commenter expressed no explicit opinion on the matter. *See* letter of Coles.

[56] *See* letters of ABA, Confluence, Data Communiqué, Federated, Gilmore, ICI, Oppenheimer, Schnase, T. Rowe Price, and Vanguard.

[57] *See* letters of Confluence, Federated, Gilmore, ICI, Oppenheimer, Schnase, Starkman, and T. Rowe Price.

[58] *See* letters of ABA, Confluence, Data Communiqué, Federated, and Schnase.

[59] *See* letters of Confluence, Data Communiqué, Federated, Gilmore, ICI, Oppenheimer, Schnase, T. Rowe Price, and Vanguard.

[60] *See* letters of ABA, Federated, ICI, Oppenheimer, and Schnase.

[61] Recently, the Commission adopted amendments to Form N–1A, *see* Summary Prospectus Adopting Release, *supra* note 28, under which the risk/return summary information, formerly contained in Items 2 and 3 of Form N–1A, was reconfigured in Items 2, 3, and 4 of Form N–1A. We apply the tagging rules to the information required by amended Form N–1A.

[62] *See* Item 405(b)(2) of Regulation S–T.

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

[64] *See supra* note 55.

[65] *See supra* note 56.

[66] *See* letters of Data Communiqué, Federated, ICI, Oppenheimer, Schnase, T. Rowe Price, and Vanguard. The Commission proposed revisions to Form N–1A's risk/return summary disclosure requirements as part of two separate rulemaking initiatives. *See* Investment Company Act Release No. 28064 (Nov. 21, 2007) [72 FR 67790 (Nov. 30, 2007)] (proposing amendments intended to enhance mutual fund disclosure of certain key information, including risk/return summary information, by, among other things, permitting mutual funds to provide such information in the form of a summary prospectus if certain conditions are satisfied) (''Summary Prospectus Initiative''); and Investment Company Act Release No. 28193 (Mar. 11, 2008) [73 FR 14618 (Mar. 18, 2008)] (proposing amendments to the mutual fund risk/return summary to provide certain information relating specifically to ETFs) (''ETF Initiative'').

list of tags' architecture needed to be updated; and (3) related tools are not sufficiently developed.[67] Commenters also stated that implementation is premature because more information needs to be collected from the current voluntary program.[68]

While we are sensitive to these commenters' concerns, they do not warrant delay in this important initiative, particularly given recent progress related to these comments. First, the Commission recently adopted amendments to Form N–1A related to the Summary Prospectus Initiative and the ETF Initiative.[69] These amendments do not significantly alter the content requirements of the risk/return summary section, consisting of limited modifications to the disclosure in the Fee Table.[70] Mutual funds will not be required to comply with these new Form N–1A disclosure requirements until January 1, 2010,[71] providing almost one year for them to revise their disclosure. Second, as discussed further below,[72] revisions to the list of tags for risk/return summary information to account for these limited disclosure changes and revisions to the architecture have been issued for public comment and are expected to be finalized by the end of January 2009. Again, this will provide mutual funds with substantial time to prepare to tag their risk/return summary information. Third, while the Commission's current viewer permits the rendering of tagged risk/return summary information, progress has been made to develop a more advanced tool that will allow issuers to test their tagged exhibits prior to submitting them to the Commission.[73] This upgrade to the viewer will be phased in, but should be completed during mid-2009.

Finally, the Commission has been exploring, via the voluntary program, the use of interactive data for several years, including the submission of tagged financial information and risk/return summary information. Twenty-five mutual funds have submitted over 40 exhibits tagged with interactive data, giving the Commission experience in adapting to the technology. In addition, over 100 operating companies have submitted financial statements tagged in interactive data format. Each submission has enabled issuers to gain experience with submitting tagged documents and enabled the Commission to refine its technology infrastructure to accept and efficiently render these interactive exhibits. Moreover, given the extended compliance date discussed below, mutual funds will have almost two years to resolve technical issues and may continue participating in the voluntary program in the interim to gain more experience submitting interactive data.

In addition to the recommendations to delay this initiative, some commenters expressed concern that limiting the interactive data filing requirement to only risk/return summary information could lead investors to place undue emphasis on this information,[74] and several commenters suggested that the Commission consider expanding this tagging requirement to include non-risk/return disclosures in the new mutual fund summary prospectus.[75] Two of these commenters recommended that all items in the summary prospectus should be tagged.[76] We believe that implementation of our interactive data initiative should begin with the mutual fund risk/return summary, but we will continue to evaluate the benefits of tagging all items in the summary prospectus, as well as other information.

Several commenters questioned whether XBRL is the appropriate standard format for interactive data disclosure, asserting that it is not sufficiently developed at this time.[77] Specifically, commenters asserted that there are a limited number of commercial software products that are compatible with XBRL,[78] and that rendering and validating are still expensive and problematic issues.[79] One commenter also expressed concern that endorsing XBRL could have the effect of stifling competition for other languages, although this commenter acknowledged that she was unaware of other languages that are likely to become competitive with XBRL.[80]

While we acknowledge that XBRL is an evolving technology, we believe it is the appropriate interactive data format with which to supplement ASCII and HTML. Our experience with the voluntary program, including feedback from company, accounting, and software communities, points to XBRL as the appropriate open standard for the purposes of this rule.[81] XBRL data will 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 create and compare disclosures more easily, the development process will likely be hastened by mutual fund disclosure using interactive data.

Several other factors support our views regarding XBRL's broad and growing acceptance, internationally as well as in the U.S. For example, the Advisory Committee on Improvements to Financial Reporting (''CIFiR'')[82]

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[67] *See* letters of Confluence, Federated, ICI, Oppenheimer, Schnase, and T. Rowe Price.

[68] *See* letters of Federated, ICI, and Schnase.

[69] These amendments were presented to the Commission at an open meeting on November 19, 2008. *See* Summary Prospectus Adopting Release, *supra* note 28. Form N–1A changes related to both the Summary Prospectus Initiative and the ETF Initiative were adopted together in the Summary Prospectus Adopting Release.

In the Summary Prospectus Initiative, we requested comment on whether the proposed linking requirements for documents posted on an Internet Web site should be modified. *See* Summary Prospectus Initiative, *supra* note 66. We received one comment on this issue opposing the modification of the proposed linking requirements. *See* letter of Data Communiqué. The linking requirements were adopted as proposed. *See* Summary Prospectus Adopting Release, supra note 28.

[70] These amendments include: (1) Requiring mutual funds that offer discounts on front-end sales charges for volume purchases (so-called ''breakpoint discounts'') to include a brief narrative disclosure alerting investors to the availability of those discounts, *see* Item 3 of Form N–1A; Instruction 1(b) to Item 3 of Form N–1A; (2) revising the parenthetical heading for ''Annual Fund Operating Expenses'' in the Fee Table to read ''expenses that you pay each year as a percentage of the value of your investment,'' *see* Item 3 of Form N–1A; (3) requiring mutual funds, other than money market funds, to include brief disclosure regarding portfolio turnover immediately following the fee table example, *see* Instruction 5 to Item 3 of Form N–1A; and (4) permitting mutual funds to place two additional captions in the Fee Table directly below the ''Total Annual Fund Operating Expenses'' caption in cases where there are expense reimbursement or fee waiver arrangements that will reduce any fund operating expenses, *see* Instruction 3(e) to Item 3 of Form N–1A. The amendments also require modification for ETFs to the narrative explanation preceding the Fee Table to clarify that investors may pay brokerage commissions not reflected in the Fee Table. Instruction 1(e)(i) and (ii) to Item 3 of Form N–1A.

[71] *See* Summary Prospectus Adopting Release, *supra* note 28.

[72] *See infra* Section II.E.1. (discussing the list of tags for risk/return summary information).

[73] *See infra* Section II.E.3. (discussing the Commission's risk/return summary interactive data viewer).

[74] *See* letters of ABA, Data Communiqué, and Federated. *See also* related discussion concerning commenters' suggestion that cautionary legends be permitted, *infra* Section II.B.

[75] *See* letters of Confluence, Data Communiqué, and Schnase; *see also* discussion of Summary Prospectus Initiative, *supra* note 66, and Summary Prospectus Adopting Release, *supra* note 28.

[76] *See* letters of Confluence and Schnase.

[77] *See* letters of Gilmore, Schnase, and Starkman.

[78] *See* letter of Starkman.

[79] *See* letter of Gilmore.

[80] *See* letter of Schnase.

[81] *See* note 58 of the Proposing Release, *supra* note 9.

[82] 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,

Continued

presented its final recommendations to the Commission in its final report issued in August 2008,[83] which includes a recommendation that the Commission, over the long term, require the filing of financial and non-financial information using XBRL once specified conditions are satisfied.[84] We believe that sufficient progress has been made regarding each of these conditions.[85] Also, XBRL has been used by other U.S. agencies,[86] and several foreign securities regulators have adopted voluntary or required XBRL reporting.[87]

B. Content and Submission Requirements for Interactive Risk/Return Summary Information

We are adopting, as proposed, the requirement that an interactive data file must be submitted to the Commission for any registration statement or post-effective amendment thereto on Form N–1A that includes or amends information provided in response to Items 2, 3, or 4.[88] In response to commenters' concerns,[89] however, we are modifying our rules to encompass changes to risk/return summary information that mutual funds may make pursuant to rule 497 under the Securities Act.[90] Specifically, in the Proposing Release, we asked for comment on whether mutual funds should be required to submit tagged risk/return summary information for prospectuses submitted pursuant to rule 497 under the Securities Act. Rule 497 sets out general filing requirements for fund prospectuses and provides, among other things, that funds must file any prospectus that contains information that varies from that in the registration statement.[91] Commenters addressing the matter uniformly recommended that updates to interactive risk/return summary information should be required when such information is revised in a filing made pursuant to rule 497 under the Securities Act,[92] asserting that failure to do so could: (1) Compromise the integrity of the entire interactive data program; [93] (2) result in a rendered file containing different information from the current prospectus, potentially leading to liability; [94] and (3) result in investors accessing stale tagged data.[95]

We agree with commenters' concerns that failure to include changes to risk/return summary information in filings made pursuant to rule 497 could result in investors and others accessing outdated interactive data. For that reason we are modifying the proposed rules, in response to the commenters' recommendations, to require that an interactive data file must be submitted to the Commission for any form of prospectus filed pursuant to rule 497(c) or (e) under the Securities Act that includes information provided in response to Items 2, 3, or 4 that varies from the registration statement.[96]

We also are adopting, as proposed, the requirement that an interactive data file to a Form N–1A filing, whether the filing is an initial registration statement or a post-effective amendment thereto, must be submitted as an amendment to the registration statement to which the interactive data file relates and 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.[97] Our requirement that the interactive data file be submitted 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 can be submitted under rule 485(b) of the Securities Act, which provides for immediate effectiveness of amendments that make non-material changes, and will 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.

To address the inclusion of tagged risk/return summary information submitted with rule 497 filings discussed above, our amendments provide that tagged risk/return summary exhibits must be submitted with or after the filing of a form of prospectus pursuant to rule 497(c) or (e) under the Securities Act. The tagged exhibits may be submitted concurrently with the rule 497 filing or up to 15 business days subsequent to the filing made pursuant to rule 497.[98] Similar to the submissions under rule 485(b), the 15 business days is intended to provide funds adequate

available at: *http://www.sec.gov/news/press/2007/2007-123.htm.*

CIFiR conducted open meetings on March 13–14, 2008 and May 2, 2008, in which it heard reactions from an invited panel of participants to CIFiR's proposal regarding required filing of financial information using interactive data. Archived Webcasts of the meetings are available at *http://sec.gov/about/offices/oca/acifr.shtml.* The 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.

[83] *See Final Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission* (August 1, 2008), (''CIFiR Report''), available at: *http://www.sec.gov/about/offices/oca/acifr/acifr-finalreport.pdf.*

[84] *Id.* at 98. The recommendation appears in chapter 4 of the CIFiR Report.

[85] *See* discussion at note 135, and accompanying text, of Interactive Data Adopting Release, *supra* note 6.

[86] Since 2005, the Federal Deposit Insurance Corporation (''FDIC''), the Board of Governors of the Federal Reserve System, and the Office of the Comptroller of the Currency 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.

[87] For example, such countries include Canada, China, Israel, Japan, Korea, and Thailand.

[88] *See* rule 405(b)(2) of Regulation S–T; General Instruction C.3.(g).(i) of Form N–1A. We are also adopting technical amendments to rule 405 that reflect this requirement. As previously noted, rule 405 of Regulation S–T directly sets forth the basic tagging requirements and indirectly sets forth the rest of the tagging requirements through the requirement to comply with the EDGAR Filer Manual. Consistent with rule 405, the EDGAR Filer Manual will contain the detailed tagging requirements.

[89] *See infra* note 96 and accompanying discussion.

[90] 17 CFR 230.497.

[91] Specifically, (1) rule 497(c) under the Securities Act requires mutual funds to file, within five days after the effective date of a registration statement or the commencement of a public offering after the effective date of a registration statement, whichever occurs later, ten copies of each form of prospectus and form of statement of additional information (''SAI'') used after the effective date; and (2) rule 497(e) under the Securities Act provides that, after the effective date of a registration statement, no prospectus that purports to comply with Section 10 of the Securities Act [15 U.S.C. 77j] or SAI that varies from any form of prospectus or form of SAI filed pursuant to rule 497(c) shall be used until filed with the Commission.

[92] *See* letters of Data Communiqué, ICI, and Schnase.

[93] *See* letter of Data Communiqué.

[94] *See* letter of ICI.

[95] *See* letter of Schnase.

[96] *See* General Instruction C.3.(g).(ii) of Form N–1A. We also revised paragraphs (c) and (e) of rule 497 to clarify that mutual funds must, if applicable pursuant to General Instruction C.3.(g) of Form N–1A, include an interactive data file.

[97] *See* General Instruction C.3.(g).(i) to Form N–1A.

[98] *See* General Instruction C.3.(g).(ii) to Form N–1A. Pursuant to the EDGAR Filer Manual, mutual funds should include an interactive data file as an exhibit (EX–101) contained in an EDGAR 497 submission. Funds submitting their exhibit subsequent to their initial rule 497 filing should make a second EDGAR 497 submission that includes (1) a 497 document (this 497 document may, in accordance with rule 411 under the Securities Act, incorporate by reference the first rule 497 filing and should include the accession number of that first rule 497 filing), and (2) any related interactive data exhibit.

time to prepare their interactive data exhibits.

We also are adopting, as proposed, the requirement that an interactive data file be submitted as an exhibit to Form N–1A, but also include a modification to address submissions made with rule 497 filings, providing that an interactive data file must be submitted as an exhibit to the filing made pursuant to rule 497.[99] Similar to the voluntary program, the rules require that the information contained in the risk/return summary section in the traditional format filing be the same as in the interactive data format.[100] We have not changed this equivalency standard for risk/return summary information provided in interactive data format as required by the rules. As proposed, we also are adopting the requirement that an interactive data file 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.[101] However, information that is not class-specific, such as investment objectives, is not required to be separately identified by class.

The rules do not eliminate or alter existing substantive disclosure requirements for risk/return summary information. The rules also do not eliminate or alter existing ASCII or HTML filing requirements. We believe investors and other users may wish to obtain an electronic or printed copy of the entire registration statement in ASCII or HTML, either in addition to or instead of disclosure formatted using interactive data. To clarify the intent of the rules, we have included an instruction to rule 405 of Regulation S–T stating that the rules require a disclosure format, but do not change substantive disclosure requirements.[102] The rules also 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.[103]

As noted previously, several commenters expressed concern that tagging only a fund's risk/return summary information may give such information too much emphasis, and may encourage some investors to act on incomplete information.[104] These commenters suggested that registrants be permitted to include a legend similar to that required as part of the voluntary program, cautioning investors, before making an investment decision, to read and consider the full prospectus or other filing from which the information was taken.[105] Because we believe it is inappropriate for the interactive data files to alter or differ from the information included in the related official filing, we have not included any provision permitting the inclusion of additional cautionary language in the interactive data file. Pursuant to commenters' recommendations, however, we intend to modify the Commission's interactive data viewer to include a legend recommending that users review a fund's full prospectus.[106] This legend on the viewer serves a similar goal as the tagged cautionary language within an interactive data file.[107]

While one commenter asserted that interactive data should be embedded in HTML filings,[108] two other commenters stated that such a requirement should be deferred until embedding technology is sufficiently developed.[109] We agree that 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 rules will treat interactive data as part of the official filing, instead of as only a supplement as is the case in the voluntary program.[110]

C. Web Site Posting of Interactive Data

In the Proposing Release, we proposed to require that each mutual fund provide the same interactive data that would be required to be provided to the Commission on its Web site, if it has one. Several commenters opposed this requirement,[111] with some asserting that posting interactive data files on the Web without a tool to convert them to viewable format may confuse and frustrate investors.[112]

We continue to believe that interactive data, consistent with our 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 improved access to and usability of the data, promoting its awareness and use. Encouraging widespread accessibility to mutual funds' risk/return summary information furthers our mission to promote fair, orderly, and efficient markets, and facilitates capital formation. Web site availability of the interactive data will encourage its widespread dissemination, contributing to lower access costs for users. We therefore are adopting the requirement that each mutual fund provide its interactive data files on the fund's Web site, if it has one.[113] The interactive data is required to be posted on a fund's Web site no later than the end of the calendar day it is submitted to the Commission or is required to be submitted to the Commission, whichever is earlier.[114] As proposed, funds would have been required to post the interactive data on their Web sites by the end of the business day on the earlier of the date the interactive data is submitted or is required to be submitted to the Commission. In order to make it easier for mutual funds to satisfy the posting requirement by providing several more hours in which to comply but still have the posted information available in a timely manner, the rule amendments, as adopted, will require posting by the end of the calendar rather than business day specified.

We also are revising the proposed rule to require that the interactive data be posted on a fund's Web site as long as the registration statement to which it

[99] *See* General Instruction C.3.(g).(iv) of Form N–1A.

[100] *See* rule 405(b)(2) of Regulation S–T.

[101] *See* General Instruction C.3.(g).(iv) of Form N–1A.

[102] *See* Interactive Data Adopting Release, *supra* note 6 (adopting Preliminary Note 2 to rule 405).

[103] *See* rule 405(b)(2) of Regulation S–T.

[104] *See* letters of ABA, Federated, ICI, Oppenheimer, and Schnase.

[105] *Id.*

[106] *See infra* Section II.E.3. (discussing the Commission's risk/return summary interactive data viewer).

[107] The Commission encourages third-party viewers also to include this legend, however, we note that the liability provisions we have adopted attach only to interactive data as viewed on the Commission's viewer. *See infra* Section II.F. (discussing liability).

[108] *See* letter of Hamscher.

[109] *See* letters of Data Communiqué and Schnase.

[110] As further discussed below in Section II.F., however, for a specified period, interactive data generally will be deemed not filed for purposes of specified liability provisions.

[111] *See* letters of ABA, ICI, Schnase, Starkman, T. Rowe Price, and Vanguard.

[112] *See* letters of ICI and T. Rowe Price.

[113] *See* General Instruction C.3.(g).(i) and (ii) of Form N–1A.

[114] *See* Interactive Data Adopting Release, *supra* note 6 (adopting rule 405(g)); rule 405(a). 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 rules, the Web posting would be required at any time on the same calendar day that the interactive data exhibit to a mutual fund filing is deemed officially filed or required to be filed, whichever is earlier.

relates remains current.[115] We believe that such a period strikes an appropriate balance between the fund effort needed to post and the investor benefit from having access to the posted material through the additional source of the mutual fund's Web site. In this regard, we note that the interactive data will be available on the Commission's Web site.

One commenter, who opposed the proposal to require Web site posting, recommended that funds instead be required to post a link to the Commission's Web site to access the XBRL files.[116] However, we believe that access to the interactive data on mutual fund Web sites will enable search engines and other data aggregators to more quickly and cheaply aggregate the data and make them available to investors because the data will be available directly from the filer, instead of through third-party sources that may charge a fee. It could also transfer reliability costs of data availability to the public sector by reducing the likelihood that investors cannot access the data through the Commission's Web site due to down-time for maintenance or to increased network traffic. We also believe that the availability of interactive data on mutual fund Web sites will make it easier and faster for investors to collect information on a particular fund, rather than if investors were required to visit separately (for example, by hyperlink) and search the Commission's Web site for information, particularly if the investor is already searching the mutual fund's Web site. Therefore, to help further our goals of decreasing user cost and increasing information availability over the long term, our rules do not allow mutual funds to comply with the Web posting requirement by including a hyperlink to the Commission's Web site.

This requirement is 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. We also believe that this requirement can provide an incentive for mutual funds to add content to or otherwise enhance their Web sites thereby improving investor experience. For example, we recently adopted amendments that would permit a person to satisfy the mutual fund prospectus delivery obligations under the Securities Act by sending or giving key information directly to investors in the form of a summary prospectus and providing the statutory prospectus on an Internet Web site.[117] Mutual funds may also satisfy certain disclosure obligations by posting required disclosures on their Web sites.[118] In addition, many mutual funds provide on their Web sites access to their prospectuses, statements of additional information, and other Commission filings.[119] This rule will expand such Web site posting by requiring mutual funds with Web sites to post their interactive data as well.

D. Consequences of Non-Compliance and Hardship Exemption

We are adopting, as proposed, a rule amendment providing 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, will be automatically suspended.[120] Any suspension becomes effective at the time that the filer fails to meet the requirement to submit or post interactive data and terminates as soon as the filer has submitted and posted that data. The suspension applies to a failure to submit and post interactive data as an exhibit to a registration statement or as an exhibit to a filing under rule 497 under the Securities Act.

The suspension applies to post-effective amendments filed after the suspension becomes effective, but does not apply to post-effective amendments that were filed before the suspension became effective. The suspension does not apply to post-effective amendments filed solely for purposes of submitting interactive data, which will enable a filer to cure its failure to submit interactive data by filing an amendment under rule 485(b) and posting the information on its Web site. Similarly, a filer may cure a failure to submit an interactive data file that is required to be submitted with a rule 497 filing by making a subsequent rule 497 filing with the interactive data exhibit and also posting the information on its Web site.

Several commenters opposed this automatic suspension as unnecessary, particularly given Commission authority to punish those who violate its rules.[121] Some commenters asserted that it could lead to potential penalties for minor violations of the interactive filing requirements.[122] We continue to believe that precluding the use of immediate effectiveness of post-effective amendments during any period of failure to comply is an appropriate means to direct attention to the 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. The provision strikes an appropriate balance between limiting non-compliant mutual funds from using the immediate effectiveness provision, yet also providing an easy remedy to diminish any risk of any undue penalty to funds.

We previously proposed conditioning a fund using rule 485(b) upon the fund having on file with the Commission a current report on Form N–SAR.[123] We ultimately did not adopt that proposal in response to commenters' criticisms that the proposal was unnecessary and potentially unfair to funds, and their recommendation that the Commission rely upon its enforcement remedies to punish late filers.[124] One commenter urged us to take a similar approach related to our proposed suspension for failure to comply with the interactive

[115] *See* rule 405(a)(4) of Regulation S–T; *see also* General Instruction C.3.(g).(iii) of Form N–1A. 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.

[116] *See* letter of Data Communiqué.

[117] *See* Summary Prospectus Adopting Release, *supra* note 28. Upon an investor's request, a mutual fund also would be required to send the statutory prospectus to the investor in paper or by e-mail.

[118] *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 19, 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).

[119] 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 SAI 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.

[120] *See* rule 485(c)(3) under the Securities Act.

[121] *See* letters of ABA, Federated, ICI, and Oppenheimer.

[122] *See* letters of Federated and ICI.

[123] 17 CFR 274.101. *See* Securities Act Release No. 7015 (Sept. 21, 1993) [58 FR 50291 (Sept. 27, 1993)].

[124] *See* Securities Act Release No. 7083 (Aug. 17, 2004) [59 FR 43460 (August 24, 1994)].

data requirements.[125] Unlike that prior proposal, which linked a fund's ability to rely upon rule 485(b) to Form N–SAR, a form separate from the registration statement, the suspension that we are adopting today relates to a specific requirement in Form N–1A. We believe that it is appropriate to link a fund's ability to receive immediate effectiveness with a requirement that the fund be current in its filing obligations with respect to that form.

Several commenters also raised concerns over the language of the suspension in proposed rule 485(c), which would apply to any ''registrant.'' [126] The commenters asserted that a fund that is part of a series fund may be prevented from filing a post-effective amendment to its registration statement under rule 485(b) if another fund in that series had an issue with an interactive data file.

One of those commenters recommended that, if the proposal is adopted, the Commission clarify that ''registrant'' means the specific series at issue.[127] We do not believe that the commenter's recommendation is workable. Specifically, multi-series funds are generally contained within the same prospectus in a registration statement, and post-effective amendments are typically filed concurrently for multiple series. In such a case, it is generally unworkable to permit automatic effectiveness for certain series while prohibiting reliance upon rule 485(b) for other series in the same filing. Further, the requirement that a fund's registration statement is compliant with its interactive data obligations should apply to all of the risk/return summary information in that registration statement, and, thus, if a registrant is not current in its obligations, the ability to rely upon rule 485(b) should be suspended until remedied.

As noted in the Proposing Release, the failure to provide the required interactive data submission will not affect a mutual fund's ability to incorporate by reference the mutual fund's prospectus or statement of additional information (''SAI'') into another document, such as the summary prospectus.[128] We received no comments regarding this issue.

Consistent with the treatment of other applicable reporting obligations, we are adopting, as proposed, a continuing hardship exemption for the inability timely to submit electronically interactive data. Rule 202 of Regulation S–T provides for continuing hardship exemptions.[129]

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 Commission or 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.

As proposed, we are revising rule 202 to provide that a grant of a continuing hardship exemption for interactive data will not require a paper submission.[130] 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) will be suspended until it does electronically submit the interactive data.[131] Similarly, we are revising rule 202 to provide an essentially mirror-image exemption from the requirement for a mutual fund that has a Web site to post the interactive data on its Web site.[132] We did not receive any comments addressing this issue.

E. Interactive Data List of Tags and Commission Viewer

1. Data Tags

Under the rule, mutual funds are required to submit their risk/return summary information in an interactive data file using the most recent list of tags released by XBRL U.S. for risk/return summary information, as approved for use by the Commission.[133] Interactive data is required for the entirety of the risk/return summary information, including information for all series and all classes.[134]

The submission also must include any supporting files as prescribed by the EDGAR Filer Manual.[135] Mutual funds are 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 identity identifiers are formatted using the appropriate list of tags as required by Regulation S–T and the EDGAR Filer Manual.[136]

Several commenters asserted that the list of tags for risk/return summary information required additional development before the Commission mandates filing of risk/return summaries in interactive data format.[137] Three commenters asserted that there are significant technical difficulties relating to the current list of tags,[138] noting, for example, that the current tagging software did not provide a way to accurately replicate footnotes to the fee table, or special symbols such as registered marks.[139] Commenters further asserted that mutual funds would not have sufficient time to resolve these technical issues,[140] to test the final list of tags,[141] or to review the various software options for compliance with the rules.[142] Several commenters also asserted that currently-available tagging software has yet to be finalized for use in rendering interactive versions of risk/return summary information.[143] These commenters urged that required use of the list of tags be delayed until these deficiencies have been remedied,[144] and the list has been acknowledged by XBRL International.[145] One commenter expressed concern that the revisions to the list would not be finalized and acknowledged by XBRL International in a brief enough time period to allow thorough evaluation and

[125] *See* letter of Federated.

[126] *See* letters of ICI, Oppenheimer, and Schnase.

[127] *See* letter of Schnase.

[128] Rule 303(a)(3) of Regulation S–T [17 CFR 232.303(a)(3)] restricts the ability of registered investment companies to incorporate by reference into an electronic filing documents that have not been filed in electronic format. We will not interpret rule 303 to apply to the failure to file interactive data files.

[129] Rule 201 of Regulation S–T [17 CFR 232.201] provides for temporary hardship exemptions. We are not adopting a temporary hardship exemption because our rules provide a mutual fund with a 15-business day period for submitting the interactive data file for a related official filing.

[130] *See* rule 202 as adopted in Interactive Data Adopting Release, *supra* note 6.

[131] Amendment to Note 4 to rule 202 as adopted in Interactive Data Adopting Release, *supra* note 6; rule 485(c)(3).

[132] *Id.*

[133] *See* Interactive Data Adopting Release, *supra* note 6 (adopting amendments to rule 11 of Regulation S–T and adopting new rule 405(a)) and amendments to rule 405(a).

[134] *See* General Instruction C.3.(g) of Form N–1A.

[135] As discussed *supra* note 17, rule 405 of Regulation S–T directly sets forth the basic tagging requirements and indirectly sets forth the rest of the tagging requirements, which are contained in the EDGAR Filer Manual. *See* Interactive Data Adopting Release, *supra* note 6 (adopting rule 405 of Regulation S–T).

[136] *Id.*

[137] *See* letters of Federated, Gilmore, ICI, Oppenheimer, Schnase, and Vanguard.

[138] *See* letters of Federated, ICI, and Vanguard.

[139] *See* letters of Federated and Vanguard.

[140] *See* letter of Federated.

[141] *See* letter of ICI.

[142] *See* letters of ICI and Oppenheimer.

[143] *See* letters of Federated, Gilmore, ICI, and Oppenheimer.

[144] *See* letters of Federated and Vanguard.

[145] *See* letters of ICI and Schnase.

implementation prior to the proposed compliance date.[146]

Given the status of the list of tags for risk/return summary information, we do not believe the issues raised by commenters warrant delay of the initiative. As previously noted, XBRL U.S. has updated the architecture of the list of tags developed by the ICI and conformed the list to the changes in the risk/return summary that we adopted as part of our Summary Prospectus Initiative.[147] Among other things, the updates are intended to address technical problems, such as the difficulty of tagging footnotes that were cited by commenters. It is anticipated that these changes related to the architecture and addition of new tags will be finalized by the end of January 2009,[148] almost two years before the compliance date for submission of tagged risk/return summary information. Further, the contract with XBRL U.S. requires that the list of tags receive acknowledgement prior to finalization.

Furthermore, there are a growing number of software applications available to preparers and consumers that are designed to help 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, are growing and that the list of tags for risk/return summary information is now sufficiently comprehensive to require that mutual funds provide their risk/return summary information in interactive data format.

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 summary information, we believe that, with the enhancements to the list of tags that XBRL U.S. is developing, the list of tags will be sufficiently developed to support the interactive data disclosure requirements in the rules.

One of the useful aspects 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 mutual funds. In order to promote comparability across funds, we are adopting, as proposed, the rule provision that limits the use of extensions to circumstances where the appropriate element does not exist in the standard list of tags.[149] Wherever possible and when a standard element is appropriate, preparers are required to change the label for an element that exists in the standard list of tags, instead of creating a new customized tag.[150] We received no comments concerning this issue.

2. Regulation S–T and the EDGAR Filer Manual

We are adopting, as proposed, the requirement that mutual funds provide interactive data in the form of exhibits to the related registration statement on Form N–1A, and we are also adopting a requirement that mutual funds provide interactive data in the form of exhibits to any related form of prospectus filed pursuant to rule 497(c) or (e) under the Securities Act that includes risk/return summary information that varies from the registration statement.[151] Interactive data will be required to comply with our Regulation S–T [152] and the EDGAR Filer Manual. The EDGAR Filer Manual is available on our Web site.[153] It includes technical information for making electronic filings with the Commission. Volume II of this manual includes guidance on the preparation, submission, and validation of interactive data submitted under the voluntary program.[154]

In addition to both Regulation S–T, which includes the rules we are adopting, 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.

3. Commission Viewer

Some commenters asserted that the Commission's mutual fund viewer required more development before the Commission requires filings in interactive data format.[155] Specifically, commenters expressed concern that the viewer was too narrow and uncomfortable to read,[156] that filers in the voluntary program were unable to view an interactive data exhibit prior to submitting the exhibit,[157] and that existing viewers, including the Commission's, do not display the tagged files consistently.[158]

While, as discussed above, the Commission's current viewer permits the rendering of tagged risk/return summary information, we are in the process of implementing changes to develop a more advanced tool that should address many of these concerns. The upgraded viewer will permit filers to conduct test filings and view rendered documents prior to submitting their exhibits. We expect these upgrades to be completed during mid-2009.

Further evaluation will be useful with respect to the availability of inexpensive and sophisticated interactive data viewers. Currently software providers are developing interactive data viewers, and we anticipate that these will become widely available and increasingly useful to investors.

As noted previously, commenters also expressed concern about the potential risks to investors of providing them with only the risk/return summary without a reference to the additional information that is contained in the registration statement.[159] In order to avoid confusion, three of these commenters suggested that the viewable interactive data be accompanied by a cautionary legend encouraging investors to read and consider the full prospectus or other filing from which the

[146] *See* letter of Oppenheimer.

[147] *See* Summary Prospectus Adopting Release, *supra* note 28.

[148] *See supra* note 51 and accompanying text.

[149] Rule 405(c)(1)(iii)(B) as adopted in Interactive Data Adopting Release, *supra* note 6.

[150] Rule 405(c)(1)(iii)(A) as adopted in Interactive Data Adopting Release, *supra* note 6.

[151] The requirement to submit interactive data as an exhibit appears in General Instruction C.3.(g).(iv) of Form N–1A.

[152] Rule 405 of Regulation S–T directly sets forth the basic tagging and posting requirements for the XBRL data and requires compliance with the EDGAR Filer Manual. Consistent with rule 405, the EDGAR Filer Manual contains the detailed tagging requirements.

[153] The EDGAR Filer Manual is available at: *http://www.sec.gov/info/edgar/edmanuals.htm.*

[154] As previously noted, the EDGAR Filer Manual is currently being updated to incorporate changes to the tagging requirements applicable to financial data and to fund risk/return summary information. *See supra* note 17.

[155] *See* letters of ICI, Oppenheimer, Schnase, Starkman, and Vanguard.

[156] *See* letter of Starkman.

[157] *See* letter of Vanguard.

[158] *See* letter of ICI.

[159] *See* letters of ABA, Federated, ICI, Oppenheimer, and Schnase. *See also* discussion at Section II.B. *supra*, note 104 and accompanying text.

information is taken.[160] Specifically, one commenter suggested that the viewable interactive data be accompanied by a cautionary legend similar to that required to be included in fund advertisements by rule 482 under the Securities Act.[161] We agree that it is appropriate to place context on the information presented in the viewer, and to encourage investors to review a fund's prospectus. Accordingly, we will include language within any rendered risk/return summary information on the Commission's upgraded mutual fund viewer to: (1) Inform users that the information is derived from a portion of the fund's prospectus; (2) explain that the prospectus contains additional information about the mutual fund; and (3) state that a fund's prospectus should be read carefully before investing.

Commenters also raised concerns about potential liability under the federal securities laws relating to rendered interactive data filings.[162] These concerns are addressed in Section II.F., below.

F. Application of Federal Securities Laws

Complete, accurate, and reliable disclosures are essential to investors and the proper functioning of the securities markets. Our 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 Commission's application of technology, market forces, and the liability provisions of the federal securities laws, help further those goals.

New rule 406T of Regulation S–T[163] addresses the liability for an interactive data file and provides that an interactive data file is:

- Subject to the anti-fraud provisions of Section 17(a)(1) of the Securities Act, Section 10(b) of and rule 10b–5 under the Exchange Act, and Section 206(1) of the Investment Advisers Act except as provided below;
- Deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act, is deemed not filed for purposes of Section 18 of the Exchange Act or Section 34(b) of the Investment Company Act, and otherwise is not subject to liability under these sections;
- Deemed filed for purposes of rule 103 of Regulation S–T; and
- Subject to liability for a failure to comply with rule 405 of Regulation S–T, but shall be deemed to have complied with rule 405 and would not be subject to liability under the anti-fraud provisions set forth above or under any other liability provision if the electronic filer:
  - Makes a good faith attempt to comply with rule 405; and
  - After the electronic filer becomes aware that the interactive data file fails to comply with rule 405, promptly amends the interactive data file to comply with rule 405.

In regard to correcting an interactive data file, the Commission added the term ''promptly'' to the list of defined terms in Rule 11 under Regulation S–T.[164] Rule 11 defines ''promptly'' as ''as soon as reasonably practicable under the facts and circumstances at the time.'' The definition is followed by a non-exclusive safe harbor. The safe harbor generally provides that a correction made by the later of 24 hours or 9:30 a.m. on the next business day after the filer becomes aware of the need for the correction is deemed promptly made. If a fund fails to comply with the safe harbor, the fund still may have corrected promptly depending on the applicable facts and circumstances.

As adopted, the liability provisions of new Rule 406T will apply only until October 31, 2014. We believe that limiting the modified application of the federal securities laws to a specified period improves the balance between avoiding unnecessary cost and expense and encouraging accuracy in regard to interactive data because it recognizes that issuers and service providers likely will grow increasingly skilled at and comfortable with the tagging requirements.

Except for the period limitation, this provision is substantially the same as the proposed treatment of interactive data files under the proposed rules.[165] In the Proposing Release, the Commission sought comment on this topic, and commenters generally supported limiting the liability of mutual funds for good faith errors in tagging or formatting interactive data submissions.[166] As adopted, however, we include a provision that, after October 31, 2014, these liability provisions will no longer apply and an interactive data file will be subject to the same liability provisions as the related official filing.[167] We adopt this provision because we believe, over time, information in interactive data should be subject to the same liability as all other information in a fund's filing. The provision, however, provides funds with protections over a substantial period to become comfortable with ensuring the accuracy of their interactive data files.

As proposed, rule 406 of Regulation S–T also provided that the usual liability provisions of the federal securities laws would apply to human-readable interactive data that is identical in all material respects to the corresponding data in the traditional format filing[168] as displayed by a viewer that the Commission provides. Commenters raised substantial concerns over this proposal, including: (1) Seeking clarification of the liability applicable to situations not intended to be addressed explicitly by the proposed rules, such as for errors arising as a result of the Commission's interactive data rendering software,[169] or as a result of comparative applications provided by either the Commission or a third party; [170] (2) requesting clarifications that funds should not be held responsible for information converted into viewable form by non-Commission viewers,[171] or for interactive data posted on fund Web sites; [172] and (3) requesting that a mutual fund be able to incorporate by reference the fund's full prospectus and SAI into the viewable interactive data exhibit.[173]

[160] *See* letters of ABA, ICI, and Schnase.

[161] *See* letter of ICI. *See also* rule 482(b)(1) under the Securities Act [17 CFR 230.482]. Rule 482(b)(1) requires a mutual fund advertisement to include a statement that ''[a]dvises an investor to consider the investment objectives, risks, and charges and expenses of the investment company carefully before investing; explains that the prospectus contains this and other information about the investment company; identifies a source from which an investor may obtain a prospectus; and states that the prospectus should be read carefully before investing.''

[162] *See* letters of ABA, ICI, Oppenheimer, and Schnase.

[163] *See* Interactive Data Adopting Release, *supra* note 6 (adopting rule 406T of Regulation S–T).

[164] *See* Interactive Data Adopting Release, *supra* note 6 (amending Rule 11).

[165] *See* Proposing Release, *supra* note 9 (proposing rule 406).

[166] *See* letters of ABA, Angel, ICI, and Schnase.

[167] *See* rule 406T(d) of Regulation S–T.

[168] As proposed, the human-readable interactive data would have been 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.

[169] *See* letter of ABA.

[170] *See* letter of Oppenheimer.

[171] *See* letters of ABA, ICI, and Oppenheimer.

[172] *See* letters of ABA and ICI.

[173] *See* letters of Federated, ICI, and Schnase. One commenter noted that the risk/return summary information in a prospectus is subject to liability under Sections 11 or 12 of the Securities Act, but

Continued

In response to commenters' concerns we believe that interactive data in viewable form are best addressed in relation to interactive data files and traditional concepts of liability. Interactive data in viewable form that are displayed on the Commission's Web site will reflect the related interactive data file and, as a result, such interactive data in viewable form should be treated in the same manner as the related interactive data file in regard to a fund's failure to correctly tag an interactive data file that results in a failure of the interactive data in viewable form to reflect the related official filing. Interactive data in viewable form that are displayed on other Web sites would be subject to general anti-fraud principles applicable to republication of another person's statements.[174] Consistent with traditional concepts of liability, a fund could not be liable twice for a failure that occurs in both an interactive data file and the related interactive data in viewable form.

We believe that this change is appropriate to address commenters' concerns and provide certainty as to the parameters of their liability related to interactive data. We also believe that it is appropriate given other protections that investors will receive related to the interactive data, including that 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 of the Exchange Act and, in the appropriate circumstance, to Section 11 of the Securities Act.

In the Interactive Data Adopting Release, we elaborate further upon interactive data in viewable form and our decision not to impose any separate liability for such data.[175] Given that the rules do not include such provisions, we do not address further commenters' requests for clarification related to liability for rendered documents. Further, we do not believe it is needed to provide funds with the ability to incorporate by reference into rendered documents, given that liability is not imposed separately upon interactive data in viewable form.

In the Proposing Release, we did not propose to permit or require cautionary legends for interactive risk/return summary information. Several commenters expressed concern about the potential consequences of investor reliance on incomplete information.[176] Two commenters suggested that the Commission require viewable interactive risk/return disclosures to include a cautionary disclosure similar to the legend we recently required for the new mutual fund summary prospectus, which advises investors where to locate additional information about the fund in the fund's prospectus and SAI, and permits a fund to incorporate certain information by reference into the summary prospectus.[177] As noted in Section II.E. above, we agree with commenters that it is appropriate to alert investors about the availability of additional information in a fund's prospectus. Therefore, we will include cautionary language on the Commission's mutual fund viewer encouraging investors to review a fund's full prospectus.

We believe, however, that attempting to place in interactive data legends of the type suggested would be impracticable because interactive data will often be accessed in its machine-readable form and, even if it were accessed in viewable form, might not be accessed in a place where the legend would appear. As to a legend that states people should not rely on the interactive data in particular, such a legend would be inappropriate because there is no reason the data should not be reliable and, were it not reliable, it would have little value.[178]

We are adopting, as proposed, the requirement that an interactive data file consist of ''no more and no less'' than the corresponding risk/return summary information in the related official filing.[179] One commenter expressed concern that submitting interactive risk/return summary information for multiple funds may confuse some investors who seek data about only a single fund.[180] However, as a result of our Summary Prospectus Initiative, multiple fund prospectuses must present the summary information for each fund sequentially and not integrate the information for more than one fund.[181] Since risk/return summary information for multiple funds will no longer be permitted to be combined in the prospectus, this information will also, in accordance with rule 405, be presented separately in interactive format. In view of this requirement, interactive risk/return summary information for multiple funds should be as easy for investors to locate and understand as similar information for a single-fund prospectus.

To assist mutual funds in ensuring the accuracy of their XBRL filings, we plan, in the future, to make available to mutual funds the opportunity to make a test submission with the Commission to create viewable interactive data.[182] If the validation system finds an error, it will advise the filer of the nature of the error and whether the error was major or minor. As occurs in the voluntary program, a major error in an interactive data exhibit that is part of a live filing will cause the exhibit to be held in suspense in the electronic filing system. The rest of the filing will be accepted and disseminated if there are no major errors outside of the interactive data exhibit. If that happens, the filer will 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 is part of a live filing will not prevent the interactive data exhibit from being accepted and disseminated together with the rest of the filing if there are no major errors in the rest of the filing. We believe it is 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.

The rule does not require mutual funds 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.[183] We are

only in connection with the full prospectus in which it is contained, and the SAI that is typically incorporated therein. *See* letter of ICI. The commenter asserted that it would not be appropriate to isolate the risk/return summary information from the context of the entire registration statement and impose liability.

[174] These general anti-fraud principles relate to, among other areas, aiding and abetting, control persons, entanglement, and adoption.

[175] *See* Interactive Data Adopting Release, *supra* note 6.

[176] *See* letters of ABA, Federated, ICI, Oppenheimer, and Schnase.

[177] *See* letters of ICI and Schnase; *see also* Summary Prospectus Adopting Release, *supra* note 28.

[178] We reach a different conclusion regarding a tagged legend in the voluntary program and continue to require such legends to provide investors with limited additional notice because that information is not part of the official filing and was intended for experimental submissions.

[179] Rule 405(b)(2) of Regulation S–T.

[180] *See* letter of ICI.

[181] *See* Summary Prospectus Adopting Release, *supra* note 28.

[182] The EDGAR Filer Manual addresses test submissions primarily at Section 6.6.5 of Volume II.

[183] With respect to registration statements, SAS 37 (AU Section 711) was issued in April 1981 to address the auditor's responsibilities in connection

taking this approach after considering various factors, including:

- Commenters' views;
- 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., XBRL International, and Commission resources for preparers of tagged data; [184]
- 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 practices 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.

G. Changes to the Voluntary Program

Mutual funds will 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 amending rule 401 of Regulation S–T to remove risk/return summary information as a category of information permitted to be submitted under the voluntary program effective after the compliance date for the mandatory rules.[185] This amendment differs from our proposal which would have removed the option to file risk/return summary information under the voluntary program altogether. This change makes explicitly clear that mutual funds may continue to experiment with the submission of risk/return summary information in interactive data format up until the compliance date for these rule amendments. For this same reason, we are not adopting proposed changes to rule 8b–33 under the Investment Company Act and certain technical amendments to rule 401 of Regulation S–T.[186]

Further, in order to encourage participation in the voluntary program for tagging investment company financial information, we are adopting, substantially as proposed, 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.[187] As with the current voluntary program, volunteers will be able to participate merely by submitting a tagged *Schedule I—Investments in Securities of Unaffiliated Issuers* (''Schedule I'').[188] To facilitate this, XBRL U.S. developed a list of tags that could be used to tag portfolio holdings. On October 21, 2008, XBRL U.S. issued its Schedule of Investments Taxonomy for public comment.[189] The taxonomy is expected to be finalized by XBRL U.S. by the end of January 2009.

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 Form N–1A.[190] 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.

Several commenters asserted that expanding the voluntary program to include fund portfolio holdings information was premature.[191] These commenters stated that (1) the information would not be meaningful to individual investors; [192] (2) the taxonomy does not yet exist; [193] and (3) more experience with the technology is necessary before expansion of the program.[194] Given that participants may already provide portfolio holdings information as part of their financial statements under the voluntary program, we disagree with these comments. The expansion of the voluntary program to permit the submission of portfolio holdings information simply provides volunteers with an alternative to submitting complete financial statement information and increases the options for participation in the program. 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 may be even more useful to these various stakeholders if such data is interactive.

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.[195] 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 requiring, as proposed, that this disclosure be included in the exhibits submitted pursuant to the voluntary program as a tagged data element,[196] consistent with how the cautionary disclosure is presented in risk/return summary exhibits under the current voluntary program.

H. Compliance Date

The rules require all mutual funds to submit interactive data with any registration statement or post-effective

with filings under the federal securities statutes. With respect to our rule, an auditor will not be required to apply AU Section 711 to the interactive data provided as an exhibit in a fund's registration statement, or to the viewable interactive data.

[184] An example of Commission resources includes the EDGAR Filer Manual.

[185] *See* rule 401(b)(iv).

[186] *See* proposed rule 8b–33; proposed rule 401(b)(1)(iv); proposed rule 401(d)(1)(i); and proposed rule 401(d)(2)(i) in the Proposing Release, *supra* note 9.

[187] Rule 401(b)(1)(v) (designating *Schedule I—Investments in securities of unaffiliated issuers* as mandatory content under the voluntary program). The voluntary program will 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 Adopting Release, *supra* note 6 (rule 401(a)).

[188] Rule 12–12 of Regulation S–X [17 CFR 210.12–12].

[189] *See supra* note 51.

[190] Rule 401(b)(1) of Regulation S–T [17 CFR 232.401(b)(1)].

[191] *See* letters of Data Communiqué, ICI, and Vanguard.

[192] *See* letter of Data Communiqué.

[193] *See* letter of ICI.

[194] *See* letter of Vanguard.

[195] Rule 401(d)(1)(ii) of Regulation S–T [17 CFR 232.401(d)(1)(ii)].

[196] *See* rule 401(d)(2).

amendment on Form N–1A that includes or amends risk/return summary information and with any form of prospectus filed pursuant to rule 497(c) or (e) under the Securities Act that contains risk/return summary information that varies from the registration statement.[197] The first required submissions will be for initial registration statements and post-effective amendments that are annual updates to effective registration statements [198] and that become effective after January 1, 2011. Further, no mutual fund is required to comply with the provision to submit a tagged risk/return summary exhibit with any form of prospectus filed pursuant to rule 497(c) or (e) under the Securities Act until that fund has first submitted an exhibit with its registration statement.

In the Proposing Release, we asked for comment on an anticipated compliance date that would require submissions for initial registration statements and post-effective amendments that are annual updates to effective registration statements and that become effective after December 31, 2009. Commenters generally objected to this compliance date, asserting that adoption of the requirement to tag risk/return summary information is premature, given that the Commission's pending Summary Prospectus Initiative and ETF Initiative would change the required information in the risk/return summary.[199]

Commenters also asserted that the proposed schedule for implementation of interactive data tagging should be delayed because it did not allow mutual funds sufficient time to resolve outstanding technical issues or to review the various options for compliance with the rule.[200] Others asserted that more information is needed to be collected from the current voluntary program, including costs and benefits.[201] Two commenters supported phasing in the interactive data requirements based on the size of a mutual fund's total net assets, with larger funds becoming subject to the rules first.[202] Finally, commenters also noted that implementing tagging of the current risk/return summary is premature given that the risk/return summary and the taxonomy could potentially change as a result of the Summary Prospectus Initiative and the ETF Initiative.[203]

While we believe that these comments warrant a change in the compliance date to ensure funds have sufficient time to prepare their first risk/return summary submissions in interactive data format, they do not justify a substantial delay in implementation of this initiative. First, as we discussed above, we recently adopted final amendments to Form N–1A in the Summary Prospectus Adopting Release,[204] and, therefore, do not believe those commenter concerns warrant delaying implementation of this tagged risk/return summary information.[205]

Second, for the reasons we discussed in Section II.A., we believe that the compliance date we are adopting will allow mutual funds sufficient time to prepare risk/return summary information in interactive data format. As we noted previously, XBRL U.S. has updated the list of tags to reflect our most recent revisions to mutual fund risk/return disclosure requirements, and has submitted this list for public comment, after which it will be submitted for acknowledgment to XBRL International. This process should be completed by the end of January 2009. Therefore, we believe 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. Further, as discussed above, over the last three years the Commission has gained experience with interactive data in the voluntary program covering both mutual fund risk/return and financial statement information.

We do, however, recognize that requiring mutual funds to tag their risk/return summary information at the same time that they are revising their prospectuses for the recent amendments to Form N–1A in the Summary Prospectus Adopting Release could result in an unnecessary burden. For that reason, we are making a modification to the compliance date so that mutual funds have an additional year before they are required to submit tagged risk/return summary information. This period of almost two years should provide funds with sufficient time to prepare the amended disclosures and interactive data submissions based on those disclosures.

While the requirements we recently adopted for interactive submission of financial data include a schedule of tiered implementation, we believe that mutual fund investors have an important interest in having access to interactive risk/return data from all funds concurrently. Therefore, we are adopting, as proposed, a single compliance date for all mutual funds. We expect that most mutual funds that are part of smaller fund families, which generally are disproportionately affected by regulatory costs, will 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 will provide efficiencies in future periods. As a result, there may be potential future 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 will likely result in start-up expenses for all mutual fund families, we expect that both software and third-party services will be available to help meet the needs of mutual fund families, including meeting the unique needs of smaller mutual fund families.

We are sensitive to concerns expressed by some commenters that undue expense and burden may accompany the adoption of required interactive data reporting.[206] We believe that the extended compliance date and the proposed 15-business day period for making interactive data submissions seem to alleviate these concerns.[207]

Under the rules we are adopting, the voluntary program is being modified to allow for participation by mutual funds with respect to risk/return summary information up until January 1, 2011, but continue to permit investment companies to participate with respect to financial statement information thereafter. Investment companies may submit their tagged portfolio holdings information, pursuant to the rules we are adopting, at any time after the effective date of these rules, July 15, 2009. This effective date was chosen to coincide with the release of an updated EDGAR Filer Manual which will

[197] *See* General Instruction C.3.(g) to Form N–1A.

[198] *See supra* note 11 and accompanying text.

[199] *See supra* note 69 and accompanying text.

[200] *See* letters of Federated, ICI, and Oppenheimer.

[201] *See* letters of Federated, ICI, and Schnase.

[202] *See* letters of Data Communiqué and Schnase.

[203] *See* letter of ICI, Oppenheimer, T. Rowe Price, and Vanguard.

[204] *See supra* notes 69 and 70 and accompanying text.

[205] These amendments were adopted on November 19, 2008. *See supra* note 69, and Summary Prospectus Adopting Release, *supra* note 28.

[206] *See* letters of ICI, Schnase, and Starkman.

[207] We discuss more fully *supra* at Section II.F liability related to required submissions of interactive data.

incorporate the new list of tags for portfolio holdings information.

We intend to monitor implementation and, if necessary, make appropriate adjustments to the adopted amendments.

III. Paperwork Reduction Act

A. Reporting and Burden Estimate

Certain provisions of the rule and form amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[208] The titles for the collections of information are: (1) ''Mutual Fund Interactive Data'' (OMB Control No. 3235–0642) and (2) ''Voluntary XBRL-Related Documents'' (OMB Control No. 3235–0611). We published notice soliciting comments on the collection of information requirements in the release proposing the amendments [209] and submitted the proposed collections of information to the Office of Management and Budget (''OMB'') for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.[210] OMB has assigned a control number to the collection of information for mutual fund interactive data. We received four comments on the collection of information requirements [211] and have revised the estimated reporting and cost burdens of the rule and form amendments, as discussed below. 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. Because we have modified our proposals as described above, we are revising the burden estimate for the Mutual Fund Interactive Data collection of information. We have submitted a revised request to OMB.

The title for the new collection of information for submitting risk/return summary information in interactive data format that the amendments establish is ''Mutual Fund Interactive Data''. 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 amendments 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 will continue to be required to be submitted to the Commission in traditional format under existing disclosure requirements. Compliance with the amendments is mandatory beginning with initial registration statements and post-effective amendments that are annual updates to effective registration statements that become effective after January 1, 2011.[212]

The title for the collection of information for submitting portfolio holdings in interactive data format is ''Voluntary XBRL-Related Documents''. The amendments will 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 these amendments is voluntary.

B. 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 [213] 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, corresponds to the risk/return summary information now required by Form N–1A and is required to appear in exhibits to Form N–1A, exhibits to prospectuses with risk/return summary information that varies from the registration statement, and on mutual funds' Web sites.

In the Proposing Release, we estimated that each mutual fund would submit one interactive data document as an exhibit to a registration statement or a post-effective amendment thereto on Form N–1A that includes or amends information provided in response to Items 2 or 3.[214] We estimated in the Proposing Release 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.[215] Therefore, we estimated the average annual burden over a three-year period to be approximately 12 hours.[216]

In response to commenters' concerns, however, we are modifying our rules to include changes to risk/return summary information that mutual funds are permitted to make pursuant to rule 497 under the Securities Act.[217] Based on a limited, random, non-statistical survey by Commission staff of filings made pursuant to rule 497, we estimate that 5% of mutual funds, or approximately 443 funds,[218] will make changes to risk/return summary information in filings submitted pursuant to rule 497. Based on estimates of 8,856 mutual funds each submitting one interactive data document as an exhibit to a registration statement or post-effective amendment thereto [219] and 443 mutual funds submitting an additional interactive data document as an exhibit to a filing pursuant to rule 497, each incurring 12 hours per year on average, we estimate that, in the aggregate, interactive data adoption will result in an additional 111,588 burden hours for all mutual funds for each of the first three years.[220] Converted into dollars, this amounts to approximately $23,768,244.[221]

One commenter challenged the estimates provided in the Proposing Release, asserting that the sample of voluntary program participants is too small and consists mostly of large fund

[208] 44 U.S.C. 3501 *et seq.*

[209] *See* Proposing Release, *supra* note 9, 73 FR at 35459.

[210] *See* Proposing Release, *supra* note 9, 73 FR at 35457–59.

[211] *See* letters of Confluence, ICI, Schnase, and Starkman.

[212] *See supra* Section II.H.

[213] 17 CFR 239.15A; 17 CFR 274.11A.

[214] This information is now contained in Items 2, 3, and 4. *See supra* note 61.

[215] The average burden hours for the first and subsequent submissions were calculated using data collected from a voluntary program participant questionnaire. *See infra* Section IV.

[216] (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.

[217] *See supra* notes 90 through 95 and accompanying text.

[218] 5% × 8,856 mutual funds = approximately 443 mutual funds.

[219] This estimate is based on an analysis by the Division of Investment Management staff of publicly available data.

[220] (8,856 mutual funds + 443 mutual funds) × 12 incremental burden hours per mutual fund = 111,588 burden hours.

[221] This cost increase is estimated using an estimated hourly wage rate of $213.00 ((111,588 burden hours) × ($213.00 hourly wage rate) = $23,768,244 total incremental internal cost). The estimated wage figure is based on published rates for compliance attorneys and programmer analysts, 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 and Financial Markets Association, *Report on Management & Professional Earnings in the Securities Industry 2007* (Sept. 2007) (''SIFMA 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 per hour (($270 × .25) + ($194 × .75)).

complexes.[222] We note that the 22 participants in the voluntary program at that time included both larger and smaller funds, and, therefore, the estimates derived from our experiences with this program reflect burdens incurred by funds of varying sizes.[223] Of these 22 funds, six funds, representing a range of fund complex sizes, provided data in response to the voluntary program questionnaire concerning internal and external costs of preparing and submitting interactive risk/return summary information.[224]

We further estimate, as we did in the Proposing Release, that mutual funds will require an average of approximately 1 burden hour to post interactive data to their Web sites. Based on estimates of 8,856 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 will result in an additional 8,856 burden hours for all mutual funds.[225] Converted into dollars, this amounts to approximately $2,214,000.[226]

One commenter asserted that the Commission's cost estimates may be vastly understated because they omit the much larger cost of converting fund Web sites to XBRL compatibility.[227] This commenter did not provide any specific cost estimates to support this assertion. Complying with the Web site posting requirement, however, does not require conversion of the fund's Web site infrastructure.

We also estimate, as we did in the Proposing Release, that software and consulting services will be used by mutual funds for an increase of approximately $802 per mutual fund.[228] Based on the estimate of 8,856 mutual funds using software and consulting services at an annual cost of $802 we estimate that, in the aggregate, the total external costs to the industry will be approximately $7,098,970.[229] While one commenter asserted that these estimates do not include professional costs from outside accountants and lawyers,[230] we note that this estimate does reflect the external cost data provided in response to the voluntary program questionnaire. Respondents to the questionnaire universally indicated that they did not use the services of outside accountants in preparing their interactive data submissions. A few of the respondents indicated that they used the services of an outside attorney in preparing their interactive data submissions, however, only one respondent indicated a *de minimis* expense for such services. A few respondents who did not use the services of an outside attorney for their voluntary filing did indicate they would work with an outside attorney to prepare their interactive data submission upon adoption of our rule amendments. These costs were reflected in our estimates in the Proposing Release.

One commenter also stated that costs for the voluntary program participants were low because many fund groups received tagging software and services at no cost, which the commenter anticipated would not be the case upon the adoption of our rule amendments.[231] We note, however, that our survey data included information from funds that used no-cost software and from one fund that created its own software in-house at great expense.[232] We believe our cost estimates provide an adequate picture of the initial software expenditures for funds to comply with our rule amendments.

One commenter asserted that automated tagging and filing processes would reduce the risk and cost associated with manual processes.[233] We agree that such software tools may help minimize both the burden on respondents and the risk of errors in the collection process. While this commenter noted that additional software tools would need to be introduced in order to allow data to be identified and tagged at its source, thereby automating the processing of the risk/return data, we expect that the development of such tools is likely to be hastened by mutual fund disclosure using interactive data. As noted previously,[234] there is a growing number of software applications available to preparers and consumers that are designed to help make interactive data increasingly useful to both retail and institutional investors.

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 requirements that govern the electronic submission of documents. The changes to these items that we are adopting will add and revise rules under Regulations C and S–T. As we explained in the Proposing Release, the additional collection of information burden that will result from these changes, however, are included in Form N–1A, and we have reflected the burden for these new requirements in the burden estimate for the new collection of information ''Mutual Fund Interactive Data.'' The rules in Regulations C and S–T do not impose any separate burden.

C. Changes to the Voluntary Program

We are decreasing the burden associated with the existing collection of information for Voluntary XBRL-Related Documents to reflect the amendments. Mutual funds will 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.[235] We estimated that 10% of the approximately 545 fund complexes that have mutual funds, or 55 fund complexes, would each submit

[222] *See* letter of Schnase.

[223] As we noted above in Section I.A., to date 25 funds have participated in the voluntary program. However, at the time of our Proposing Release, only 22 funds had submitted interactive data risk/return summary information.

[224] The average burden hours for the first and subsequent submissions were calculated using data collected from six responses to a voluntary program participant questionnaire from mutual funds that participated in the voluntary program. *See infra* Section IV.A.

[225] 8,856 mutual funds × 1 burden hour per mutual fund = 8,856 burden hours.

[226] ($250 × 1 hour × 8,856 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 infra* Section IV.A.

[227] *See* letter of Starkman.

[228] For purposes of this estimate, we assumed that the largest 50 fund complexes will develop software in-house incurring costs of $125,000 in the first year. Assuming that the largest 50 fund complexes will develop software for use in all of their funds, and that their funds encompass 80% of the number of funds (7,085), then the average first year cost for those funds will be ($125,000 × 50)/7,085 = $882. Therefore, for those funds using software developed internally, the average 3 year cost will be approximately $827 ($882 in the first year + $800 in the second year + $800 in the third year) ÷ 3 years = approximately $827. The average 3 year cost for those funds that use commercial software will 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 $827 and 20% of funds incurred costs of $700, the average software and consulting cost per mutual fund will be approximately $802. These estimates were derived from responses to a voluntary program questionnaire. *See infra* Section IV.A.

[229] 8,856 mutual funds × $802 = approximately $7,098,970.

[230] *See* letter of Schnase.

[231] *See* letter of ICI.

[232] *See infra* note 252.

[233] *See* letter of Confluence.

[234] *See supra* Section II.E.

[235] *See* Risk/Return Voluntary Program Adopting Release, *supra* note 32.

documents containing tagged risk/return summary information for one mutual fund.[236] 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.[237]

Based on our previous 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.[238] 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.[239]

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.[240] 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.[241] Altogether, we estimated the total annual increase in external costs related to the amendments would be $169,611.[242]

Given that mutual funds will no longer be able to submit risk/return summary information in interactive data format through the voluntary program some time after adoption of the amendments, we will reduce the internal hour burden associated with the voluntary program by 1,774 hours and the internal cost burden by $393,828. We will also reduce the external cost burden by $169,611.

The amendments to the voluntary program also 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 can participate, without pre-approval, merely by submitting Schedule I in interactive data format.

One commenter stated that the cost estimates from the voluntary program did not include many, or any, costs associated with tagging data other than the risk/return summary, such as portfolio holdings information.[243] We note, however, that the hour and cost burdens for voluntary interactive data submissions of portfolio holdings information were discussed separately from the hour and cost burdens for the submission of risk/return summary information in interactive data format in the Proposing Release and also are discussed below.

We estimate that 20 registrants will choose to submit a schedule of portfolio holdings in interactive data format.[244] 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 will 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 will 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 will 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.[245] A list of tags that could be used to tag portfolio holdings is expected to be finalized by the end of January 2009. 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 will require, on average, approximately 12 burden hours per registrant,[246] and the creation of such information in interactive data format in subsequent years will require an average of 10 burden hours per registrant.[247] 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.[248]

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 will incur an additional 220 burden hours associated with the proposed amendments.[249] We estimate

[236] In the case of a mutual fund with multiple series, our estimate treated each series as a separate mutual fund.

[237] (110 hours in the first year + 10 hours in the second year + 10 hours in the third year) ÷ 3 years = 43 hours.

[238] 55 documents per year × 43 hours per submission = 2,365 hours.

[239] *See* note 82 of the Risk/Return Voluntary Program Adopting Release, *supra* note 32.

[240] *See* note 83 of the Risk/Return Voluntary Program Adopting Release, *supra* note 32.

[241] $333 per participant × 55 participants = $18,315.

[242] This annual total consisted of $151,296 in outside professional costs plus $18,315 in software costs.

[243] *See* letter of Schnase.

[244] This estimate is based on the current level of participation in the voluntary program, in which 25 funds have submitted interactive risk/return summary information.

[245] Form N–CSR [17 CFR 249.331; 17 CFR 274.128]; Form N–Q [17 CFR 249.332; 17 CFR 274.130].

[246] 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 will require, on average, approximately 12 burden hours per volunteer.

[247] 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 will be a similar 2 hour reduction, or approximately 10 burden hours per volunteer.

[248] (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.

[249] 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

Continued

that this internal burden increase converted to dollars will amount to approximately $47,000.[250]

We also estimate that external professionals and consultants will be retained by the registrant for an increase of approximately $600.00.[251] It is our understanding that annual software licensing costs generally would be included in the cost of hiring external professionals and consultants.[252] Based 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 will be $12,000.[253]

As a result of the changes to the voluntary program, we therefore estimate a total decrease in internal burden hours of approximately 1,600 [254] and a total decrease in internal costs of approximately $347,000.[255] We further estimate a total decrease in external costs of approximately $158,000.[256]

program will submit portfolio holdings information in interactive data format once each year.

[250] 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 221.

[251] ($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 two of the participants indicated that each of their external service providers had waived its fee for the initial submission.

[252] 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 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 270.

We also note that one commenter stated that our estimated costs for interactive data software and services were low because many fund groups received tagging software and services at no cost. *See supra* note 231 and accompanying text.

[253] 20 registrants submitting interactive data files under the voluntary program × $600.00 = $12,000.

[254] (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.)

[255] ($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.)

[256] ($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.)

IV. Cost/Benefit Analysis

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

The interactive data framework that we are adopting has the potential 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 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.

In the Proposing Release, we requested public comment and empirical data regarding the costs and benefits of the amendments. Three commenters generally expressed concern about the costs of implementing the Commission's proposal and the uncertain nature of any cost efficiencies or cost savings.[257] One commenter stated that investors will not be helped by the additional costs incurred by mutual funds as a result of the proposal and that the required interactive disclosure will be static and quickly outdated.[258] None of these commenters provided any specific quantitative data relating to cost estimates.

1. Benefits of Interactive Data Submissions and Web Site Posting

The 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 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 enables 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.[259] 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 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. Any investor with a computer has 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 can 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 will 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

[257] *See* letters of Gilmore, ICI, and Schnase.

[258] *See* letter of Federated.

[259] *See supra* Section II.A.

both institutional and retail investors.[260] 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 will 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 provides 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 timeliness of, and speed at which they generate information. For example, with standardized interactive data tags, registration statements may require less time for information gathering and review. One commenter expressed some skepticism about the ability of interactive data to create internal efficiencies that may ultimately result in cost savings.[261] We continue to believe, however, that internal efficiencies may be one of several possible benefits of interactive data tagging.

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 in both the number and capabilities of software products and applications to assist mutual funds to tag their risk/return summary information using interactive data helping make interactive data increasingly useful.[262]

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

Market Efficiency

The requirements may benefit investors by making financial markets more efficient in regard to the following: [263]

- 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, as anticipated, 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.[264] This may reduce the likelihood that their data is readily available to investors who use commercially available products to assess mutual fund performance. 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.[265] An increase in quality and improvement in content should enable investors to better allocate their capital among mutual funds.

Information quality in mutual fund markets is likely to be higher as a result of interactive data reporting, 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 is likely to improve the quality of risk/return summary information available to end users, and helps 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.[266] Lowering information collection costs (through a requirement to submit interactive data information) should

[260] *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.*

[261] *See* letter of ICI.

[262] *Id.*

[263] 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.

[264] Analysis by Division of Investment Management staff based on publicly available data.

[265] 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.

[266] Also, we expect that because the rules require the use of the XBRL interactive data standard, the open standard nature of XBRL will 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.

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.[267]

Another potential information consequence of the requirements is how the precision and comparability of the information disseminated by data service providers may change because the interactive data requirements will 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, the requirement for mutual funds to submit interactive data information will require mutual funds to independently decide within the confines of applicable requirements which ''tag'' best describes each item within the risk/return summary—lessening the amount of interpretation required by data service providers or end-users of the data. Once a standard tag is chosen, comparison to other funds is straightforward. However, because mutual funds have some discretion in how to select tags, and can extend the taxonomy (create new tags) when an appropriate tag does not exist, 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 fund-submitted information disseminated by data service providers 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 will be eliminated and more precise because it will reflect decisions by the mutual funds themselves. Replicating prior methods still will be possible, however, because mutual funds continue to be required to file risk/return summary information in traditional format. As a result, nothing prohibits data service providers from continuing to provide data in the same manner that they did before. 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 requirements to submit and post interactive data information are designed to be disclosure neutral, it is possible they may affect what is disclosed.

2. Costs of Interactive Data Submissions and Web Site Posting

The primary cost of the rule amendments 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 rules 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.

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 will, based on certain assumptions, be as follows:

[267] 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.

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

	First submission	Subsequent submissions
Preparation [268]	$2,600	$2,300
Software and consulting services [269]	[270] 20,600	800
Web site posting [271]	250	250
Total cost	23,450	3,350

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 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.[272] 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 and commenters' 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.[273]

- 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 to submit and post interactive 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 will 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 the time the Commission proposed these amendments, 22 mutual funds had participated in the voluntary program for interactive risk/return summaries. Of these, nine were provided questionnaires on the details of their cost experience, and six responses were collected representing the cost data for ten funds.[274] 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.[275] The reported costs are calculated using responses from the 6 voluntary program participants that provided responses. Those six respondents represent mutual fund complexes whose assets comprise a range of approximately.01% to 12.00% of all the assets of the mutual funds that will be required to submit interactive data.[276]

[268] 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* SIFMA Report, *supra* note 221.

[269] 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.

[270] 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 is 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.

[271] 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.

[272] *See supra* note 270 with respect to the high end of the range.

[273] 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.

[274] The questionnaires requested data for one fund; however, several questionnaire respondents voluntarily submitted cost information for more than one fund.

[275] *See supra* note 221. These estimates are from the 2007 SIFMA Report, modified to account for an 1,800-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.

[276] Based on total mutual fund assets of $10.6 trillion. Lipper-Directors' Analytical Data, Reuters Sept. 2008.

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	[277] $127,500
Subsequent submissions:		
Estimated costs	$555.00	$5,640
Average reduction in cost:		
From first to second submission	24.54%	[278] 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 will change in light of the adoption of the rule amendments.

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.[279] Until the market of mutual funds that submit interactive data information grows substantially larger, 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 will be higher if the demand for interactive data services increases (from 15 mutual fund complexes currently participating in the voluntary program to approximately 683 mutual fund complexes [280] participating) at a faster rate than the supply for these same services. More broadly, if the interactive data requirement results 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 will 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 January 1, 2011. This delay is designed to 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 rule amendments will 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.

1. Benefits

We believe that portfolio holdings information in interactive data format will 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 will reduce the cost to populate databases and improve the accuracy of that data. Additionally, the changes to the voluntary program will 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 will 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 will allow retail investors (or financial advisers assisting such investors) to perform more personalized and sophisticated analyses and comparisons of mutual funds and other investment options, which will 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

[277] We note that these costs are higher due to one questionnaire respondent who spent significantly more than all other respondents to create its own interactive data software in-house. *See supra* note 270.

[278] *Id.*

[279] In addition, mutual fund complexes with a large number of funds may consider developing software in-house since that cost could be allocated across all of their funds.

[280] *See* ICI 2008 Investment Company Fact Book, *supra* note 63, at 14 (683 fund sponsors).

and increased competition, they may be significant, given the size of the mutual fund industry.

Other benefits resulting from the inclusion of portfolio holdings information as a stand-alone item in the voluntary program will 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 benefit is that portfolio holdings information submitted in interactive data format will allow automated, instantaneous extraction of every investment disclosed in the schedule of portfolio holdings. Finally, the investment analysis process may become more efficient and effective through the increased use of automation and reduced human intervention that should result from the use of interactive data.

2. Costs

The amendments to the voluntary program will lead to some costs for filers choosing to submit portfolio holdings information in interactive data format. For purposes of the PRA, we estimated that the increase in annual internal burden hours to the industry will be approximately 220 hours, which will amount to an increase in costs of approximately $47,000 and that the increase in annual external costs per filer will amount to approximately $600 per year for a total estimated increase to the industry of approximately $12,000 on an annual basis.[281]

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.[282] Due to the fact that no mutual fund has submitted portfolio holdings information through the voluntary program, however, we have limited data to quantify the cost of implementing the use of interactive data tags applied to portfolio holdings information. 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.

Combined with the removal of risk/return summary information from the voluntary program, we estimated for PRA purposes that there will be a total decrease of 1,600 burden hours which will amount to approximately $347,000, and a total decrease in external costs of approximately $158,000. Therefore, the total cost decrease to the industry for purposes of the PRA for the rule amendments related to the voluntary program is $505,000.[283]

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

Section 23(a)(2) of the Exchange Act[284] 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)[285] of the Securities Act, Section 3(f)[286] of the Exchange Act, and Section 2(c)[287] of the Investment Company Act require the Commission, when engaging in rulemaking that requires it 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 rule amendments 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. As discussed previously,[288] we believe that these amendments are likely to benefit investors by making financial markets more efficient in regard to capital formation by reducing some of the information barriers that make it costly for mutual funds to find appropriate sources of new investors. Similarly, these requirements may enable investors to better allocate their capital among mutual funds by reducing the cost to access, collect, and analyze mutual fund risk/return summary information and by improving the content of fund-reported information available to investors. Since lower data collection costs would lower entry barriers for suppliers of interactive-data-related fund comparative products, these requirements also may result in increased competition among these suppliers, which, in turn, would help spur innovation with respect to such products.

We requested comment on whether the proposed amendments would promote efficiency, competition, and capital formation. One commenter asserted that requiring funds to utilize the current list of tags when revisions are likely in the near term would be inefficient and costly.[289] As noted above, however, revisions to the list of tags for risk/return summary information have been issued for public comment and are expected to be finalized by the end of January 2009. Again, this will provide mutual funds with substantial time to prepare to tag their risk/return summary information. This commenter also stated that its members were skeptical that using XBRL for risk/return summary information will create internal efficiencies that would ultimately result in cost savings.[290] While the internal efficiencies of interactive data for mutual funds are currently unquantified, we continue to believe that they may be available to mutual funds. Further, as discussed in detail above, we anticipate that the rules may lead to more efficient capital formation and allocation.[291]

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 adopted interactive data requirements might affect. Since interactive data technology is designed to remove an informational barrier,

[281] *See infra* Section III.A.2.

[282] *See supra* note 268.

[283] This estimate was derived from previously reported costs estimates from the voluntary program.

[284] 15 U.S.C. 78w(a)(2).

[285] 15 U.S.C. 77b(b).

[286] 15 U.S.C. 78c(f).

[287] 15 U.S.C. 80a–2(c).

[288] *See supra* Section IV.A.1.

[289] *See* letter of ICI.

[290] *Id.*

[291] *See supra* Section IV.A.1.

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. 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 increased competition from new market entrants could reduce industry profit margins, and, as a result, the quality of services may suffer. For example, and illustration purposes only, assume that an Internet service company develops an interactive data-based tool that easily provides 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 and the quality of services should not be impaired. However, if the incumbent service providers provide a higher quality of information that improves investor interpretation beyond risk/return summary information, but they find that it is no longer profitable to produce this information as a result of subsidized products from inferior providers, then valuable information production may be lost.

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

B. Changes to the Voluntary Program

The amendments 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 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 amendments is voluntary, the Commission estimates that the impact of the amendments 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 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 amendments will have a significant impact on capital formation. Finally, because the amendments are designed to permit mutual funds and other entities to provide information in a format that we believe will be more useful to investors, we believe that the amendments are appropriate in the public interest and for the protection of investors.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with the Regulatory Flexibility Act.[292] It relates to the amendments we are adopting that will require mutual funds to provide risk/return summary information to the Commission and on their Web sites in interactive data format and 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. Need for the Rule

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

The main purpose of the 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 will:

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

2. Changes to the Voluntary Program

The main purpose of the 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 changes to the voluntary program will 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 changes to the voluntary program also will help us assess the effect of

[292] 5 U.S.C. 604.

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 changes to the voluntary program will better enable us to study the extent to which interactive data will:

- 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 changes to the voluntary program will 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. Significant Issues Raised by Public Comment

In the Proposing Release, we requested comment on the number of small entity issuers that may be affected, the existence or nature of the potential impact and how to quantify the impact of the amendments. Commenters generally supported both the use of technology to better inform mutual fund investors and the Commission's goal of providing risk/return summary information in an interactive data format, but most commenters stated that requiring mutual funds to provide tagged risk/return summary information at this time is premature.[293] Two commenters suggested that funds should be phased into the mandatory interactive data program based on fund size.[294] As discussed more extensively below, however, we do not believe a phase-in or alternate procedures for small entities are warranted as such a phase-in would detract from the completeness and uniformity of tagged risk/return summary information. We continue to believe that the potential of interactive data for enhancing investors' access to mutual fund information justifies implementation of this initiative at this time.

[293] *See supra* notes 55 and 56 and accompanying text.

[294] *See* letters of Data Communiqué and Schnase.

C. Small Entities Subject to the Rules

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.[295] Approximately 127 mutual funds registered on Form N–1A meet this definition.[296] All of these mutual funds will become subject to the rules to require submission of risk/return summary information using interactive data. A smaller subset of these mutual funds may voluntarily submit tagged portfolio holdings information, but, because submitting portfolio holdings information will 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. Projected Reporting, Recordkeeping and Other Compliance Requirements

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

All mutual funds subject to the amendments are 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 will 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 will 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.[297]

2. 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 will be minimal.

No registrant will be required to submit documents in interactive data format under the changes we are adopting to the voluntary program. The submission of portfolio holdings information in interactive data format will 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.[298]

E. 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 amendments, the Commission considered the following alternatives: (1) The establishment of different compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the amendments for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the amendments, or any part thereof, for small entities.

1. 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 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 amendments will enable investors and others to search and analyze the information dynamically; facilitate

[295] 17 CFR 270.0–10.

[296] This estimate is based on analysis by the Division of Investment Management staff of publicly available data as of December 2007.

[297] The internal labor and external costs required to comply with the rules we are adopting are discussed more fully in Sections III and IV above.

[298] *Id.*

comparison of mutual fund information; and, possibly, provide an 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 that all mutual funds, including small entities, are not required to comply with the new requirements until after January 1, 2011.[299]

2. Changes to the Voluntary Program

The purpose of the 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 is 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 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 to find alternatives to minimize any burden on small entities.

VII. Statutory Authority

The Commission is adopting 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, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, 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 and 274

Investment Companies, Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Amendments

■ For the reasons set forth above, the Commission amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITES 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, 78*l* , 78m, 78n, 78o, 78t, 78w, 78*ll*(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 (§§ 239.15A and 274.11A of this chapter). 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.

* * * * *

■ 3. Amend § 230.497 by adding a sentence at the end of paragraphs (c) and (e) to read as follows:

§ 230.497 Filing of investment company prospectuses—number of copies.

* * * * *

(c) * * * Investment companies filing on Form N–1A must, if applicable pursuant to General Instruction C.3.(g) of Form N–1A, include an Interactive Data File (§ 232.11 of this chapter).

* * * * *

(e) * * * Investment companies filing on Form N–1A must, if applicable pursuant to General Instruction C.3.(g) of Form N–1A, include an Interactive Data File (§ 232.11 of this chapter).

* * * * *

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

■ 4. 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), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.* ; and 18 U.S.C. 1350.

* * * * *

■ 5. Further amend § 232.11 as published at 74 FR 6813, February 10, 2009, by revising the definition of ''Related Official Filing'' to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

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.

* * * * *

■ 6. Further amend § 232.202 as published beginning at 74 FR 6813, February 10, 2009, by revising Note 4 to § 232.202 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).

[299] In this regard, in Section II.H. 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.

■ 7. Further amend § 232.401 as published at 74 FR 6814, February 10, 2009, 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 (other than a Form N–1A (§ 239.15A and § 274.11A of this chapter)) to which the XBRL-Related Documents relate; an amendment to such filing, but, in the case of a Form N–1A filing, an amendment made only after the effective date of the Form N–1A filing to which the XBRL-Related Documents relate; 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.

* * * * *

■ 8. Amend § 232.401 by:
■ a. Removing ''or'' at the end of paragraph (b)(1)(iii);
■ b. Revising paragraph (b)(1)(iv);
■ c. Adding paragraph (b)(1)(v); and
■ d. Revising paragraph (d)(2), introductory text.

The addition and revisions read as follows:

§ 232.401 XBRL-Related Document submissions.

* * * * *

(b) * * *

(1) * * *

(iv) The risk/return summary information set forth in Items 2, 3, and 4 of Form N–1A provided that the filing is submitted prior to January 1, 2011, and, in the case of a Form N–1A filing that includes more than one series (as that term is used in rule 18f–2(a) under the Investment Company Act (§ 270.18f–2(a) of this chapter), a filer may include in mandatory content complete risk/return summary information for any one or more of those series; or

(v) 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) * * *

(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:

* * * * *

■ 9. Further amend § 232.405 as published beginning at 74 FR 6814, February 10, 2009, by:
■ a. Revising Preliminary Note 1;
■ b. Revising paragraphs (a), (b) and (g); and
■ c. Adding a sentence at the end of the Note to § 232.405.

The revisions and addition read as follows:

§ 232.405 Interactive Data File submissions and postings.

Preliminary Note 1. Sections 405 and 406T of Regulation S–T (§§ 232.405 and 232.406T) 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), paragraph 101 of the Information Not Required to be Delivered to Offerees or Purchasers of both Form F–9 (§ 239.39 of this chapter) and Form F–10 (§ 239.40 of this chapter), Item 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.7 of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.6 of the General Instructions to Form 6–K (§ 249.306 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 in the Note to § 232.405.

* * * * *

(a) *Content, format, submission and posting requirements—General.* An Interactive Data File 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, paragraph 101 of the Information Not Required to be Delivered to Offerees or Purchasers of either Form F–9 or Form F–10, Item 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.7 of the General Instructions to Form 40–F, paragraph C.6 of the General Instructions to Form 6–K, or General Instruction C.3.(g) of Form N–1A, as applicable, as an exhibit to:

(i) A form that contains the disclosure required by this section; or

(ii) If the electronic filer is not an open-end management investment company registered under the Investment Company Act, an amendment to a form that contains the disclosure required by this section if the amendment is filed no more than 30 days after the earlier of the due date or filing date of the form and the Interactive Data File is the first Interactive Data File the electronic filer submits or the first Interactive Data File the electronic filer submits that complies or is required to comply, whichever occurs first, with paragraphs (d)(1) through (d)(4), (e)(1), and (e)(2) of this section;

(3) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, Item 601(b)(101) of Regulation S–K, paragraph 101 of the Information Not Required to be Delivered to Offerees or Purchasers of either Form F–9 or Form F–10, Item 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.7 of the General Instructions to Form 40–F, paragraph C.6 of the General Instructions to Form 6–K, 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, paragraph 101 of the Information Not Required to be Delivered to Offerees or Purchasers of either Form F–9 or Form F–10, Item 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.7 of the General Instructions to Form 40–F, paragraph

C.6 of the General Instructions to Form 6–K, 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, 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 all of the following categories:

(i) The complete set of the electronic filer's financial statements (which includes the face of the financial statements and all footnotes); and

(ii) All schedules set forth in Article 12 of Regulation S–X (§§ 210.12–01—210.12–29) related to the electronic filer's financial statements.

Note to paragraph (b)(1): It is not permissible for the Interactive Data File to present only partial face financial statements, such as by excluding comparative financial information for prior periods.

(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, 3, and 4 of Form N–1A.

* * * * *

(g) *Posting.* Any electronic filer that maintains a corporate Web site and is required to submit an Interactive Data File must post that Interactive Data File on that Web site by the end of the calendar day on the earlier of the date the Interactive Data File is submitted or is required to be submitted, and, if the electronic filer is not an open-end management company registered under the Investment Company Act of 1940, the Interactive Data File must remain accessible on that Web site for at least a 12-month period. For an electronic filer 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 period of time for which an Interactive Data File must remain accessible on a company's Web site.

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

■ 10. 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, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*, 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 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 11. 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), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

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

* * * * *

3.

* * * * *

(g) *Interactive Data File.*

(i) 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, 3, or 4. 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.

(ii) An Interactive Data File 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 for any form of prospectus filed pursuant to rule 497(c) or (e) under the Securities Act [17 CFR 230.497(c) or (e)] that includes information provided in response to Items 2, 3, or 4 that varies from the registration statement. The Interactive Data File may be submitted with or up to 15 business days subsequent to the filing made pursuant to rule 497.

(iii) An Interactive Data File is required to be posted on the Fund's Web site for as long as the registration statement or post-effective amendment to which the Interactive Data File relates remains current.

(iv) An Interactive Data File must be submitted as an exhibit to Form N–1A, under paragraph (i) of this Instruction, or as an exhibit to the filing made pursuant to rule 497, under paragraph (ii) of this Instruction. The Interactive Data File must 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.

Dated: February 11, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–3359 Filed 2–18–09; 8:45 am]

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